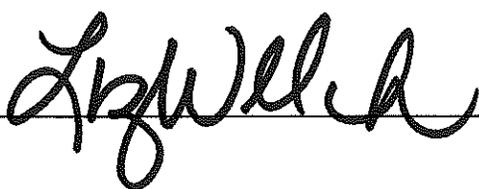


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Chapter No. 469  
14/SS01/R739  
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**SENATE BILL NO. 2933**

Originated in Senate  Secretary

SENATE BILL NO. 2933

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AN ACT TO PROVIDE FOR THE METHOD OF APPORTIONMENT OF INCOME FOR INCOME TAX PURPOSES OF A MAJOR SUPPLIER OF MEDICAL OR PHARMACEUTICAL PRODUCTS FOR A MISSISSIPPI DISTRIBUTION FACILITY; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 27-7-24.8, Mississippi Code of 1972:

27-7-24.8. (1) For purposes of the income tax imposed by this chapter, a major medical or pharmaceutical supplier of a Mississippi distribution facility whose business activity is taxable both within and without this state shall apportion its business income (income which is includable in the apportionable tax base) to this state by multiplying such income by an apportionment percentage determined in accordance with this section.

(2) The apportionment percentage of a major medical or pharmaceutical supplier of a Mississippi distribution facility shall be determined by:

(a) Adding together:

(i) A payroll factor, which shall be counted twice,

(ii) A property factor, which shall be counted twice, and

(iii) A sales factor, which shall be counted once; and

~~(b) Then dividing the sum of such factors by five (5).~~

(3) The payroll factor, property factor, and sales factor of a major medical or pharmaceutical supplier of a Mississippi distribution facility shall be calculated as follows:

(a) The payroll factor is a fraction, the numerator of which is the total amount paid to employees for services performed in this state for the taxable year and the denominator of which is the total amount paid both within and without this state during the taxable year;

(b) The property factor is a fraction, the numerator of which is the value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year (valued at eight (8) times the annual rental rate) and the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year and the denominator of which is the value of real property and tangible personal property rented to the taxpayer (valued at eight (8) times the annual rental rate)

and the average value of the taxpayer's real and tangible personal property owned that is located or used within and without this state during the taxable year; and

(c) The sales factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year.

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(4) For purposes of this section:

(a) "Major medical" or "pharmaceutical supplier" means a company or group of affiliated companies (as defined in Section 27-7-37) who ship medical or pharmaceutical products to a Mississippi distribution facility.

(b) "Mississippi distribution facility" means and has the same definition as such term has in Section 27-13-13(2) (d).

**SECTION 2.** Section 27-7-23, Mississippi Code of 1972, is amended as follows:

27-7-23. (a) **Definitions.**

(1) "Doing business" means the operation of any business enterprise or activity in Mississippi for financial profit or economic gain, including, but not limited to, the following:

(A) The regular maintenance of an office or other place of business in Mississippi; or

(B) The regular maintenance in Mississippi of an inventory of merchandise or material for sale, distribution or

manufacture, regardless of whether kept on the premises of the taxpayer or otherwise; or

(C) The selling or distributing of merchandise to customers in Mississippi directly from a company-owned or operated vehicle when title to the merchandise is transferred from the seller or distributor to the customer at the time of the sale or distribution (transient selling); or

~~(D) The regular rendering of service to clients or customers in Mississippi in person or by agents or employees; or~~

(E) The owning, renting or operating of business or income-producing property, real or personal, in Mississippi; or

(F) The performing of contracts, prime or sublet work, for the construction, repair or renovation of real or personal property.

(2) "Business income" means income of any type or class, and from any activity that meets the relationship described in the transactional test or the functional test described in this paragraph (2). The classification of income by occasionally used labels, including, but not limited to, manufacturing income, compensation for services, sales income interest, dividends, rents, royalties, gains, operating income, and nonoperating income shall not be considered when determining whether income is business or nonbusiness income. All income of the taxpayer is business income unless clearly classifiable as nonbusiness income. A taxpayer seeking to overcome a classification of income as

business income must establish by a preponderance of the evidence that the income has been incorrectly classified.

(A) Transactional test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Mississippi, the resulting income of the transaction or activity is business income for Mississippi. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Mississippi.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transactions or activity need not be one that frequently occurs in the trade or business, although most frequently occurring transactions or activities shall be considered to be in the regular course of a trade or business. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what the trade or business does.

(B) Functional test. Business income includes income from tangible and intangible property if the acquisition,

management and/or disposition of the property constitute integral parts of the taxpayer's regular trade or business operation.

(i) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It shall be sufficient if the property from which the income is derived is or was an integral, functional, necessary or operative component of the taxpayer's trade or business operations, part of which trade or business is or was conducted within this state.

(ii) Income that is derived from isolated sales, leases, assignments, licenses and other infrequently occurring dispositions, transfers or transactions involving property, including transactions made in liquidation or the winding up of business is business income if the property is or was used in the taxpayer's trade or business operation. Income from the licensing of intangible assets, such as patents, copyrights, trademarks, service marks, goodwill, know-how, trade secrets and similar assets, that were developed or acquired for use by the taxpayer in his trade or business operations, constitute business income whether the licensing itself constituted the operation of a trade or business and whether the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iii) Under the functional test, income from intangible property is business income when the intangible property serves an operating function, as opposed to solely an investment function. The relevant inquiry shall focus on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited solely to an investment function as in the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(iv) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from the property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Mississippi.

(v) If, with respect to an item of property, a taxpayer takes a deduction from business income that is apportioned to Mississippi, or includes that item of property in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of this action.

(vi) Application of the functional test is generally unaffected by the form of the property. Income arising from intangible property is business income when the intangible property itself or the underlying value of the intangible property is or was an integral, functional, necessary or operative component to the taxpayer's trade or business operation. Therefore, while treatment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, establishment of such a relationship is not the exclusive basis for concluding that the income constitutes business income. It is sufficient to support a finding of business income if the holding of the intangible property served an operational rather than an investment function.

(3) "Nonbusiness income" means all income that does not meet the definition of business income.

(4) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(5) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) **Nonresident individuals, partnerships, trusts and estates.**

(1) The tax imposed by this article shall apply to the entire net income of a taxable nonresident derived from employment, trade, business, professional, personal service or other activity for financial gain or profit, performed or carried on within Mississippi, including the rental of real or personal property located within this state or for use herein and including the sale or exchange or other disposition of tangible or intangible property having a situs in Mississippi.

(2) Income derived from trade, business or other commercial activity shall be taxed to the extent that it is derived from such activity within this state. Mississippi net income shall be determined in the manner prescribed by the commissioner for the allocation and/or apportionment of income of foreign corporations having income from sources both within and without the state.

(3) A taxable nonresident shall be allowed to deduct expenses, interest, taxes, losses, bad debts, depreciation and similar business expenses only to the extent that they are allowable under this article and are attributable to the production of income allocable to and taxable by the State of Mississippi. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, medical expenses, taxes, interest and the optional standard deduction,

such taxable nonresident shall be allowed deductions therefor in the ratio that the net income from sources within Mississippi bears to the total net income from all sources of such taxable nonresident, computed as if such taxable nonresident \* \* \* was a resident of Mississippi.

**(c) Foreign corporations, associations, organizations and other entities.**

~~(1) Corporations and organizations required to file.~~

All foreign corporations and other organizations which have obtained a certificate of authority from the Secretary of State to do business in Mississippi, or corporations or organizations which are in fact doing business in Mississippi, are subject to the income tax levy and are required to file annual income tax returns unless the corporation or organization is specifically exempt from tax by this article.

(2) Allocation and apportionment of income. Except as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 \* \* \*, 27-7-24.7 and 27-7-24.8, Mississippi Code of 1972, any corporation or organization having business income from business activity which is taxable both within and without this state shall allocate and apportion its net business income as prescribed by the commissioner. If the business income of the corporation is derived solely from property owned or business done in this state and the corporation is not taxable in another state, the entire business income shall be allocated to this state. A

corporation is taxable in another state if, in that state the corporation is subject to a net income tax, or a franchise tax measured by net income, or if that state has jurisdiction to subject the corporation to a net income tax regardless of whether the state does or does not subject the corporation to a net income tax.

(3) Nonbusiness income. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as follows:

(A) Net rents and royalties from real property are allocable to the state in which the property is located.

(B) Net rents and royalties from tangible personal property are allocable to the state in which the property is used, or to this state in their entirety if the corporation's commercial domicile is in this state and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.

(C) Capital gains and losses from sales of real property are allocable to the state in which the property is located.

(D) Capital gains and losses from sales of tangible personal property are allocable to the state in which the property is located, or to this state if the corporation's

commercial domicile is in this state and the corporation is not taxable in the state in which the property had a situs.

(E) Capital gains and losses from sales of intangible personal property are allocable to the state of the corporation's commercial domicile.

(F) Interest and dividends are allocable to the state of the corporation's commercial domicile.

~~(G) Patent and copyright royalties are allocable to the state in which the patent or copyright is utilized by the payer, or to this state if and to the extent that the patent or copyright is utilized by the payer in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.~~

(H) Any other nonbusiness income shall be allocated as prescribed by the commissioner.

(I) All expenses connected with earning nonbusiness income, such as interest, taxes, general and administrative expenses and such other expenses relating to the production of nonbusiness income, shall be deducted from gross nonbusiness income. Nonbusiness interest expense shall be computed by using the ratio of nonbusiness assets to total assets applied to total interest expense.

(d) **Foreign lenders.**

(1) In the case of any foreign lender, (corporation, association, organization, individual, partnership, trusts or

estates), other than: (A) a foreign insurance company subject to certification by the Commissioner of Insurance, as provided by Section 83-21-1 et seq.; or (B) a foreign lender qualified under the general laws of this state to do business herein; or (C) a foreign lender which maintains an office or place of business within this state; or (D) lenders that sold properties in this state and financed such sale and reported on the installment method, interest income received or accrued on or after January 1, 1977, from loans secured by real estate or from lending on the security of real estate located within this state shall be excluded from Mississippi gross income and exempt from the Mississippi income tax levy and the reporting requirements.

(2) In the case of any foreign lender exempted in paragraph (1) of this subsection, interest income received on any loan finalized or consummated after January 1, 1977, shall be excluded from Mississippi gross income and the net profits derived therefrom shall be exempt from the Mississippi income tax levy for the life of such loan.

(e) **Insurance companies.** Insurance companies, other than life insurance companies, deriving premium income from within and without the state, may determine their Mississippi net income from underwriting by apportioning to this state a part of their total net underwriting income by such processes or formulas of general apportionment as are prescribed by the commissioner; provided that a company adopting this method of reporting for any year must

adhere to said method of reporting for subsequent years, unless permission is granted by the commissioner to change to a different method of reporting; and provided that all affiliated companies of the same group shall use the same method of reporting.

(f) **Bond requirements.** Any individual or corporation subject to the tax imposed by this article, engaged in the business of performing contracts which may require the payment of net income taxes, may be required by the commissioner, before entering into the performance of any contract or contracts the consideration of which is more than Ten Thousand Dollars (\$10,000.00), to execute and file a good and valid bond with a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi will be paid when due. Provided, however, that such bond shall not exceed five percent (5%) of the total contracts entered into during the taxable period, and, provided further, that any taxpayer, in lieu of furnishing such bond, may pay the maximum sum required herein as advance payment of taxes due on the net income realized from any contract or contracts performed or completed in this state.

**SECTION 3.** This act shall take effect and be in force from and after January 1, 2014.

PASSED BY THE SENATE  
February 26, 2014

  
\_\_\_\_\_  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 18, 2014

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
\_\_\_\_\_  
GOVERNOR

3/31/14

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