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Chapter No. 419

13/SS26/R290

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# *SENATE BILL NO. 2684*

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2684

AN ACT TO AMEND SECTIONS 27-13-5, 27-13-7, 27-13-17, 79-7-1 AND 79-11-57, MISSISSIPPI CODE OF 1972, TO CORRECT INTERNAL CODE SECTION REFERENCES TO THE MODEL BUSINESS CORPORATION ACT; TO REPEAL SECTION 79-17-41, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR CHANGING THE CORPORATE FORM OF A COOPERATIVE ASSOCIATION; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 27-13-5, Mississippi Code of 1972, is amended as follows:

27-13-5. (1) **Franchise tax levy.** Except as otherwise provided in subsections (3), (4), (5) and (7) of this section, there is hereby imposed, to be paid and collected as hereinafter provided, a franchise or excise tax upon every corporation, association or joint-stock company or partnership treated as a corporation under the income tax laws or regulations, organized or created for pecuniary gain, having privileges not possessed by individuals, and having authorized capital stock now existing in this state, or hereafter organized, created or established, under and by virtue of the laws of the State of Mississippi, equal to

Two Dollars and Fifty Cents (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction thereof, of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided. In no case shall the franchise tax due for the accounting period be less than Twenty-five Dollars (\$25.00). It is the purpose of this section to require the payment to the State of Mississippi of this tax for the right granted by the laws of this state to exist as such organization, and to enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by the form of such existence.

(2) **Annual report of domestic corporations.** Each domestic corporation shall file \* \* \* an annual report as required by the provisions of Section \* \* \* 79-4-16.22.

(3) A corporation that has negotiated a fee-in-lieu as defined in Section 57-75-5 shall not be subject to the tax levied by this section on such project; provided, however, that the fee-in-lieu payment shall be otherwise treated in the same manner as the payment of franchise taxes.

(4) An approved business enterprise as defined in the Growth and Prosperity Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the approved business enterprise in a growth and prosperity county or supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise in such a county as provided in Section 57-64-33.

(6) The tax levied by this chapter and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

(7) A business enterprise as defined in Section 57-113-1 that is exempt from certain state taxes under Section 57-113-5 shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise.

**SECTION 2.** Section 27-13-7, Mississippi Code of 1972, is amended as follows:

27-13-7. (1) **Franchise tax levy.** Except as otherwise provided in subsections (3), (4), (5) and (7) of this section, there is hereby imposed, levied and assessed upon every corporation, association or joint-stock company, or partnership treated as a corporation under the Income Tax Laws or regulations as hereinbefore defined, organized and existing under and by virtue of the laws of some other state, territory or country, or

organized and existing without any specific statutory authority, now or hereafter doing business or exercising any power, privilege or right within this state, as hereinbefore defined, a franchise or excise tax equal to Two Dollars and Fifty Cents (\$2.50) of each One Thousand Dollars (\$1,000.00), or fraction thereof, of the value of capital used, invested or employed within this state, except as hereinafter provided. In no case shall the franchise tax due for the accounting period be less than Twenty-five Dollars (\$25.00). It is the purpose of this section to require the payment of a tax by all organizations not organized under the laws of this state, measured by the amount of capital or its equivalent, for which such organization receives the benefit and protection of the government and laws of the state.

(2) **Annual report of foreign corporations.** Each foreign corporation authorized to transact business in this state shall file \* \* \* an annual report as required by the provisions of Section \* \* \* 79-4-16.22.

(3) A corporation that has negotiated a fee-in-lieu as defined in Section 57-75-5 shall not be subject to the tax levied by this section on such project; provided, however, that the fee-in-lieu payment shall be otherwise treated in the same manner as the payment of franchise taxes.

(4) An approved business enterprise as defined in the Growth and Prosperity Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the

approved business enterprise in a growth and prosperity county or supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise in such a county as provided in Section 57-64-33.

(6) The tax levied by this chapter and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

(7) A business enterprise as defined in Section 57-113-1 that is exempt from certain state taxes under Section 57-113-5 shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise.

**SECTION 3.** Section 27-13-17, Mississippi Code of 1972, is amended as follows:

27-13-17. (1) **In general.** The tax levied by this chapter is assessed for the annual accounting period regularly used by the taxpayer in keeping its books, with no proration for a portion of the year in the case of dissolution of domestic corporations or withdrawal from the state by foreign corporations or where a

corporation otherwise ceases to become taxable under this chapter. The tax accrues on the first day of each accounting period, to be known as the accrual date, and annually thereafter, and is computed on the basis of the previous accounting period closing immediately prior to the accrual date, to be known as the measuring date.

For all corporations having an accrual date on or after June 1, 1975, the tax is due and payable in full to the commissioner on or before the fifteenth day of the third month following the close of the annual accounting period. With its payment, the taxpayer shall deliver to the commissioner a full, accurate and complete report and statement signed by a duly authorized officer of the corporation, containing such information as the commissioner may require.

(2) **Accounting periods.** If permission is granted to change the corporate accounting period, as provided in subsection (4) of this section, the corporation shall file a return and make payment of the tax for the period from the end of the twelve-month period for which the tax had already accrued to the first closing of the new accounting period. The tax to be paid in this case shall be based on the preceding accounting period closing and shall be computed by multiplying the ratio that the number of months from the closing date under the prior accounting period to the closing of the new accounting period bears to twelve (12) times the tax as computed on the yearly basis. Subsequent returns will be filed on

the basis of the new accounting period in accordance with the provisions of this chapter.

(3) **Newly taxable corporations.** When a corporation is incorporated, domesticated, commences business or qualifies to do business in this state, it shall, on or before the sixtieth day following the date of its charter of incorporation (as to domestic corporation), domestication, qualification or commencement of business in this state, make and deliver to the commissioner, in such form as he may prescribe, a full, accurate and complete statement signed by either its president, vice president or treasurer containing such facts and information as may be required by the commissioner in the administration of the tax levied by this chapter. After the first closing of the corporate books, the tax is payable as provided in subsection (1) of this section. No corporation, foreign or domestic, shall be permitted to do business in this state without paying the franchise tax levied by this chapter.

(4) **Accounting period not to be changed.** No accounting period, other than calendar year, will be recognized, unless before its close it was definitely established as an accounting period by the taxpayer and the books of such taxpayer were kept in accordance therewith. No accounting period shall be changed without the approval of the commissioner.

(5) **Combined returns.** A combined return of franchise tax, being Section 27-13-1 et seq.; income tax, being Section 27-7-1 et

seq.; and the annual report of domestic and foreign corporations, being Section \* \* \* 79-4-16.22, is herein authorized, to be filed in accordance with rules or regulations promulgated by the commissioner. In the case of authorized extensions of time for filing returns, including the annual report of domestic or foreign corporations, the provisions of the Mississippi Income Tax Law of 1952, being Section 27-1-1 et seq., as amended, shall control with respect to extensions of time for the filing of a combined return.

(6) **Final return.** An organization which begins the accounting year for which the tax is due shall be liable for payment of the full tax, notwithstanding its dissolution or withdrawal prior to the end of said year or prior to the due date of the return.

**SECTION 4.** Section 79-7-1, Mississippi Code of 1972, is amended as follows:

79-7-1. Small business investment companies organized under the provisions of the Small Business Investment Act of 1958, Public Law 699, 85th Congress, may be incorporated in this state under the provisions of Chapter \* \* \* 4, Title 79, Mississippi Code of 1972, \* \* \* except that the charter of any such corporation may include a statement of such powers and limitations as is acceptable to the Small Business Administration and not contrary to law and need not include a statement that the rights and powers that may be exercised by said corporation in addition

thereto are those conferred by said Chapter \* \* \* 4, Title 79, Mississippi Code of 1972.

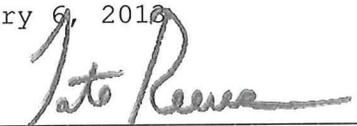
**SECTION 5.** Section 79-11-57, Mississippi Code of 1972, is amended as follows:

79-11-57. Any corporation which is a "private foundation" (as defined in Section 509(a) of the United States Internal Revenue Code) may amend its articles of incorporation expressly to exclude the application of Sections 79-11-51 and 79-11-53, or any portion thereof, in the manner provided by Section \* \* \* 79-4-10.01 et seq. or Sections 79-11-101 through 79-11-399, whichever is applicable. The corporation shall not be liable to anyone for any payments made under Section 79-11-53 prior to such amendment.

**SECTION 6.** Section 79-17-41, Mississippi Code of 1972, which provides for changing the corporate form of a cooperative association, is repealed.

**SECTION 7.** This act shall take effect and be in force from and after July 1, 2013.

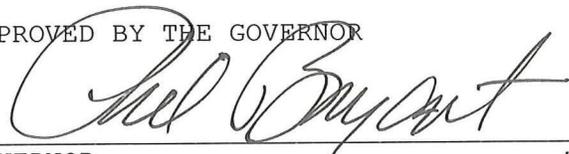
PASSED BY THE SENATE  
February 6, 2013

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

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 7, 2013

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
\_\_\_\_\_  
GOVERNOR

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