



## PROPOSED LEGISLATION WOULD SIGNIFICANTLY EXPAND STATE'S INCOME TAX NEXUS STANDARD

Two bills, HB 970 and SB 2724, were recently introduced in the House of Representatives and Senate of the Mississippi Legislature. If passed, these bills would change the definition of “doing business” and significantly expand the state’s nexus standard for imposition of Mississippi income taxes.

Both bills would, among other things:

1. Impose Mississippi income tax on services provided outside Mississippi if benefits from the services are received within Mississippi even though the service provider has no physical location in Mississippi, and would apportion the income from services to the state where the benefits of the services are received,
2. Define “doing business” for income tax purposes to include the issuance of “credit, debit or travel and entertainment cards” to customers in Mississippi. The proposed legislation would also impose Mississippi income tax on non-residents that extend credit to Mississippi customers. *Compare J.C. Penney National Bank v. Johnson*, 19 S.W. 3d 831 (Tenn. Ct. App. 1999) (concluding that extending credit and issuing cards to customers in the state did not create nexus for a non-resident bank),
3. Define “doing business” for income tax purposes to include the “regular” sale or distribution of products or services to customers that receive the products or services in the state, even if the seller does not have a physical presence in Mississippi, and
4. Extend the Mississippi income tax to apply to affiliates of companies located in Mississippi even though the affiliates have no physical location in Mississippi.

HB 970 is sponsored by Representative Jeffrey Smith (R), Chairman of the House Ways and Means Committee, and was placed on the House Calendar on March 1, 2012. Passage of the bill requires a three-fifths vote of the House of Representatives. The deadline for floor action is March 28, 2012.

SB 2724 is sponsored by Senator Joey Fillingane (R), Chairman of the Senate Finance Committee. No action has been taken by the Finance Committee on the bill.

The Mississippi Department of Revenue is reportedly lobbying in support of both bills, even though the proposed expansion of nexus for Mississippi income tax purposes could be subject to challenge by affected taxpayers based on constitutional grounds. Businesses that might be affected by the proposed legislation may want to provide commentary on the proposed legislation.

—For additional information, please contact [William M. Backstrom, Jr.](#), or [Robert E. Box, Jr.](#), members of the Tax & Estates Practice Group, or [Dennis W. Miller](#), a member of the Government Relations Practice Group.



*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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