

By: Representative Ellington

To: Ways and Means

HOUSE BILL NO. 1498

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 EXCLUDE DIVIDENDS RECEIVED FROM A SUBSIDIARY CORPORATION FROM
3 GROSS INCOME UNDER THE MISSISSIPPI INCOME TAX LAW; AND FOR RELATED
4 PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
5 MISSISSIPPI:

6
7 SECTION 1. Section 27-7-15, Mississippi Code of 1972, is
8 amended as follows:

9 27-7-15. (1) For the purposes of this article, except as
10 otherwise provided, the term "gross income" means and includes the
11 income of a taxpayer derived from salaries, wages, fees or
12 compensation for service, of whatever kind and in whatever form
13 paid, including income from governmental agencies and subdivisions
14 thereof; or from professions, vocations, trades, businesses,
15 commerce or sales, or renting or dealing in property, or
16 reacquired property; also from annuities, interest, rents,
17 dividends, securities, insurance premiums, reinsurance premiums,
18 considerations for supplemental insurance contracts, or the
19 transaction of any business carried on for gain or profit, or
20 gains, or profits, and income derived from any source whatever and
21 in whatever form paid. The amount of all such items of income
22 shall be included in the gross income for the taxable year in
23 which received by the taxpayer. The amount by which an eligible
24 employee's salary is reduced pursuant to a salary reduction
25 agreement authorized under Section 25-17-5 shall be excluded from
26 the term "gross income" within the meaning of this article.

27 (2) In determining gross income for the purpose of this
28 section, the following, under regulations prescribed by the
29 commissioner, shall be applicable:

30 (a) Dealers in property. Federal rules, regulations
31 and revenue procedures shall be followed with respect to
32 installment sales.

33 (b) Casual sales of property. Federal rules,
34 regulations and revenue procedures shall be followed with respect
35 to installment sales.

36 (i) The term "installment sale" means a
37 disposition of property where at least one (1) payment is to be
38 received after the close of the taxable year in which the
39 disposition occurs.

40 (ii) The term "installment method" means a method
41 under which the income recognized for any taxable year from the
42 disposition is that proportion of the payments received in that
43 year which the gross profit (realized or to be realized when
44 payment is completed) bears to the total contract price.

45 (c) Reserves of insurance companies. In the case of
46 insurance companies, any amounts in excess of the legally required
47 reserves shall be included as gross income.

48 (d) Affiliated companies or persons. As regards sales,
49 exchanges or payments for services from one to another of
50 affiliated companies or persons or under other circumstances where
51 the relation between the buyer and seller is such that gross
52 proceeds from the sale or the value of the exchange or the payment
53 for services are not indicative of the true value of the subject
54 matter of the sale, exchange or payment for services, the
55 commissioner shall prescribe uniform and equitable rules for
56 determining the true value of the gross income, gross sales,
57 exchanges or payment for services, or require consolidated returns
58 of affiliates.

59 (e) Alimony and separate maintenance payments. The
60 federal rules, regulations and revenue procedures in determining
61 the deductibility and taxability of alimony payments shall be
62 followed in this state.

63 (f) Reimbursement for expenses of moving. There shall

64 be included in gross income (as compensation for services) any
65 amount received or accrued, directly or indirectly, by an
66 individual as a payment for or reimbursement of expenses of moving
67 from one residence to another residence which is attributable to
68 employment or self-employment.

69 (3) In the case of taxpayers other than residents, gross
70 income includes gross income from sources within this state.

71 (4) The words "gross income" do not include the following
72 items of income which shall be exempt from taxation under this
73 article:

74 (a) The proceeds of life insurance policies and
75 contracts paid upon the death of the insured. However, the income
76 from the proceeds of such policies or contracts shall be included
77 in the gross income.

78 (b) The amount received by the insured as a return of
79 premium or premiums paid by him under life insurance policies,
80 endowment, or annuity contracts, either during the term or at
81 maturity or upon surrender of the contract.

82 (c) The value of property acquired by gift, bequest,
83 devise or descent, but the income from such property shall be
84 included in the gross income.

85 (d) Interest upon the obligations of the United States
86 or its possessions, or securities issued under the provisions of
87 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
88 War Finance Corporation, or obligations of the State of
89 Mississippi or political subdivisions thereof.

90 (e) The amounts received through accident or health
91 insurance as compensation for personal injuries or sickness, plus
92 the amount of any damages received for such injuries or such
93 sickness or injuries, or through the War Risk Insurance Act, or
94 any law for the benefit or relief of injured or disabled members
95 of the military or naval forces of the United States.

96 (f) Income received by any religious denomination or by
97 any institution or trust for moral or mental improvements,

98 religious, Bible, tract, charitable, benevolent, fraternal,
99 missionary, hospital, infirmary, educational, scientific,
100 literary, library, patriotic, historical or cemetery purposes or
101 for two (2) or more of such purposes, if such income be used
102 exclusively for carrying out one or more of such purposes.

103 (g) Income received by a domestic corporation which is
104 "taxable in another state" as this term is defined in this
105 article, derived from business activity conducted outside this
106 state. Domestic corporations taxable both within and without the
107 state shall determine Mississippi income on the same basis as
108 provided for foreign corporations under the provisions of this
109 article.

110 (h) In case of insurance companies, there shall be
111 excluded from gross income such portion of actual premiums
112 received from an individual policyholder as is paid back or
113 credited to or treated as an abatement of premiums of such
114 policyholder within the taxable year.

115 (i) Income from dividends that has already borne a tax
116 as dividend income under the provisions of this article, when such
117 dividends may be specifically identified in the possession of the
118 recipient.

119 (j) Amounts paid by the United States to a person as
120 added compensation for hazardous duty pay as a member of the Armed
121 Forces of the United States in a combat zone designated by
122 Executive Order of the President of the United States.

123 (k) Amounts received as retirement allowances,
124 pensions, annuities or optional retirement allowances paid under
125 the federal Social Security Act, the Railroad Retirement Act, the
126 Federal Civil Service Retirement Act, or any other retirement
127 system of the United States government, retirement allowances paid
128 under the Mississippi Public Employees' Retirement System,
129 Mississippi Highway Safety Patrol Retirement System or any other
130 retirement system of the State of Mississippi or any political
131 subdivision thereof. The exemption allowed under this paragraph

(k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(l) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid by any public or governmental retirement system not designated in subsection (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. Amounts received as a distribution under a Roth individual retirement account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended. The exemption allowed under this paragraph (l) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) Compensation not to exceed the aggregate sum of Five Thousand Dollars (\$5,000.00) for any taxable year received by a member of the National Guard or Reserve Forces of the United States as payment for inactive duty training, active duty training and state active duty.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the aggregate sum of Five Hundred Dollars (\$500.00) per month received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.

(o) The proceeds received from federal and state forestry incentives programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in

166 expenses attributable to such increased exports. In the absence
167 of direct accounting the ratio of net profits to total sales may
168 be applied to the increase in export sales. This item (p) shall
169 only apply to businesses located in this state engaging in the
170 international export of Mississippi goods and services. Such
171 goods or services shall have at least fifty percent (50%) of value
172 added at a location in Mississippi.

173 (q) Amounts paid by the federal government for the
174 construction of soil conservation systems as required by a
175 conservation plan adopted pursuant to 16 USCS 3801 et seq.

176 (r) The amount deposited in a medical savings account,
177 and any interest accrued thereon, that is a part of a medical
178 savings account program as specified in the Medical Savings
179 Account Act under Sections 71-9-1 through 71-9-9; provided,
180 however, that any amount withdrawn from such account for purposes
181 other than paying eligible medical expense or to procure health
182 coverage, shall be included in gross income.

183 (s) Amounts paid by the Mississippi Soil and Water
184 Conservation Commission from the Mississippi Soil and Water
185 Cost-Share Program for the installation of water quality best
186 management practices.

187 (t) Dividends received from a subsidiary corporation.

188 (5) Prisoners of war, missing in action-taxable status.

189 (a) Members of the Armed Forces. Gross income does not
190 include compensation received for active service as a member of
191 the Armed Forces of the United States for any month during any
192 part of which such member is in a missing status, as defined in
193 paragraph (d) of this subsection, during the Vietnam Conflict as a
194 result of such conflict.

195 (b) Civilian employees. Gross income does not include
196 compensation received for active service as an employee for any
197 month during any part of which such employee is in a missing
198 status during the Vietnam Conflict as a result of such conflict.

199 (c) Period of conflict. For the purpose of this

subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia" as used in this paragraph is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the Armed Forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the Armed Forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of subsection (5) of this section is prevented by the operation of any law or rule

234 of law, such refund or credit of such overpayment of tax may,
235 nevertheless, be made or allowed if claim therefor is filed with
236 the State Tax Commission within three (3) years after the date of
237 the enactment of this subsection.

238 (i) The provisions of this subsection shall be
239 effective for taxable years ending on or after February 28, 1961.

240 (6) A shareholder of an S corporation, as defined in Section
241 27-8-3(1)(g), shall take into account the income, loss, deduction
242 or credit of the S corporation only to the extent provided in
243 Section 27-8-7(2).

244 SECTION 2. Nothing in this act shall affect or defeat any
245 claim, assessment, appeal, suit, right or cause of action for
246 taxes due or accrued under the income tax laws before the date on
247 which this act becomes effective, whether such claims,
248 assessments, appeals, suits or actions have been begun before the
249 date on which this act becomes effective or are begun thereafter;
250 and the provisions of the income tax laws are expressly continued
251 in full force, effect and operation for the purpose of the
252 assessment, collection and enrollment of liens for any taxes due
253 or accrued and the execution of any warrant under such laws before
254 the date on which this act becomes effective, and for the
255 imposition of any penalties, forfeitures or claims for failure to
256 comply with such laws.

257 SECTION 3. This act shall take effect and be in force from
258 and after January 1, 1999.