

By: Representative Robinson (84th)

To: Ways and Means

HOUSE BILL NO. 389

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "GROSS INCOME" TO EXCLUDE
3 COMPENSATION RECEIVED FOR ACTIVE FEDERAL SERVICE AS A MEMBER OF
4 THE ARMED FORCES OF THE UNITED STATES IN AN ACTIVE DUTY STATUS;
5 AND FOR RELATED PURPOSES.

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

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 unless a transaction results in the shifting of
33 income from inside the state to outside the state.

34 (b) **Casual sales of property.**

35 (i) Prior to January 1, 2001, federal rules,
36 regulations and revenue procedures shall be followed with respect
37 to installment sales except they shall be applied and administered
38 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
39 106th Congress, had not been enacted. This provision will
40 generally affect taxpayers, reporting on the accrual method of
41 accounting, entering into installment note agreements on or after
42 December 17, 1999. Any gain or profit resulting from the casual
43 sale of property will be recognized in the year of sale.

44 (ii) From and after January 1, 2001, federal
45 rules, regulations and revenue procedures shall be followed with
46 respect to installment sales except as provided in this
47 subparagraph (ii). Gain or profit from the casual sale of
48 property shall be recognized in the year of sale. When a taxpayer
49 recognizes gain on the casual sale of property in which the gain
50 is deferred for federal income tax purposes, a taxpayer may elect
51 to defer the payment of tax resulting from the gain as allowed and
52 to the extent provided under regulations prescribed by the
53 commissioner. If the payment of the tax is made on a deferred
54 basis, the tax shall be computed based on the applicable rate for
55 the income reported in the year the payment is made. Except as
56 otherwise provided in subparagraph (iii) of this paragraph (b),
57 deferring the payment of the tax shall not affect the liability
58 for the tax. If at any time the installment note is sold,
59 contributed, transferred or disposed of in any manner and for any

60 purpose by the original note holder, or the original note holder
61 is merged, liquidated, dissolved or withdrawn from this state,
62 then all deferred tax payments under this section shall
63 immediately become due and payable.

64 (iii) If the selling price of the property is
65 reduced by any alteration in the terms of an installment note,
66 including default by the purchaser, the gain to be recognized is
67 recomputed based on the adjusted selling price in the same manner
68 as for federal income tax purposes. The tax on this amount, less
69 the previously paid tax on the recognized gain, is payable over
70 the period of the remaining installments. If the tax on the
71 previously recognized gain has been paid in full to this state,
72 the return on which the payment was made may be amended for this
73 purpose only. The statute of limitations in Section 27-7-49 shall
74 not bar an amended return for this purpose.

75 (c) **Reserves of insurance companies.** In the case of
76 insurance companies, any amounts in excess of the legally required
77 reserves shall be included as gross income.

78 (d) **Affiliated companies or persons.** As regards sales,
79 exchanges or payments for services from one to another of
80 affiliated companies or persons or under other circumstances where
81 the relation between the buyer and seller is such that gross
82 proceeds from the sale or the value of the exchange or the payment
83 for services are not indicative of the true value of the subject
84 matter of the sale, exchange or payment for services, the
85 commissioner shall prescribe uniform and equitable rules for
86 determining the true value of the gross income, gross sales,
87 exchanges or payment for services, or require consolidated returns
88 of affiliates.

89 (e) **Alimony and separate maintenance payments.** The
90 federal rules, regulations and revenue procedures in determining
91 the deductibility and taxability of alimony payments shall be
92 followed in this state.

93 (f) **Reimbursement for expenses of moving.** There shall
94 be included in gross income (as compensation for services) any
95 amount received or accrued, directly or indirectly, by an
96 individual as a payment for or reimbursement of expenses of moving
97 from one residence to another residence which is attributable to
98 employment or self-employment.

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

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

104 (a) The proceeds of life insurance policies and
105 contracts paid upon the death of the insured. However, the income
106 from the proceeds of such policies or contracts shall be included
107 in the gross income.

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

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

115 (d) Interest upon the obligations of the United States
116 or its possessions, or securities issued under the provisions of
117 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
118 War Finance Corporation, or obligations of the State of
119 Mississippi or political subdivisions thereof.

120 (e) The amounts received through accident or health
121 insurance as compensation for personal injuries or sickness, plus
122 the amount of any damages received for such injuries or such
123 sickness or injuries, or through the War Risk Insurance Act, or
124 any law for the benefit or relief of injured or disabled members
125 of the military or naval forces of the United States.

126 (f) Income received by any religious denomination or by
127 any institution or trust for moral or mental improvements,
128 religious, Bible, tract, charitable, benevolent, fraternal,
129 missionary, hospital, infirmary, educational, scientific,
130 literary, library, patriotic, historical or cemetery purposes or
131 for two (2) or more of such purposes, if such income be used
132 exclusively for carrying out one or more of such purposes.

133 (g) Income received by a domestic corporation which is
134 "taxable in another state" as this term is defined in this
135 article, derived from business activity conducted outside this
136 state. Domestic corporations taxable both within and without the
137 state shall determine Mississippi income on the same basis as
138 provided for foreign corporations under the provisions of this
139 article.

140 (h) In case of insurance companies, there shall be
141 excluded from gross income such portion of actual premiums
142 received from an individual policyholder as is paid back or
143 credited to or treated as an abatement of premiums of such
144 policyholder within the taxable year.

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

149 (j) Amounts paid by the United States to a person as
150 added compensation for hazardous duty pay as a member of the Armed
151 Forces of the United States in a combat zone designated by
152 Executive Order of the President of the United States.

153 (k) Amounts received as retirement allowances,
154 pensions, annuities or optional retirement allowances paid under
155 the federal Social Security Act, the Railroad Retirement Act, the
156 Federal Civil Service Retirement Act, or any other retirement
157 system of the United States government, retirement allowances paid
158 under the Mississippi Public Employees' Retirement System,

159 Mississippi Highway Safety Patrol Retirement System or any other
160 retirement system of the State of Mississippi or any political
161 subdivision thereof. The exemption allowed under this paragraph
162 (k) shall be available to the spouse or other beneficiary at the
163 death of the primary retiree.

164 (l) Amounts received as retirement allowances,
165 pensions, annuities or optional retirement allowances paid by any
166 public or governmental retirement system not designated in
167 paragraph (k) or any private retirement system or plan of which
168 the recipient was a member at any time during the period of his
169 employment. Amounts received as a distribution under a Roth
170 Individual Retirement Account shall be treated in the same manner
171 as provided under the Internal Revenue Code of 1986, as amended.
172 The exemption allowed under this paragraph (l) shall be available
173 to the spouse or other beneficiary at the death of the primary
174 retiree.

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

180 (n) Compensation received for active federal service as
181 a member * * * in the Armed Forces of the United States in an
182 active duty status.

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

185 (p) The amount representing the difference between the
186 increase of gross income derived from sales for export outside the
187 United States as compared to the preceding tax year wherein gross
188 income from export sales was highest, and the net increase in
189 expenses attributable to such increased exports. In the absence
190 of direct accounting the ratio of net profits to total sales may
191 be applied to the increase in export sales. This paragraph (p)

192 shall only apply to businesses located in this state engaging in
193 the international export of Mississippi goods and services. Such
194 goods or services shall have at least fifty percent (50%) of value
195 added at a location in Mississippi.

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

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

206 (s) Amounts paid by the Mississippi Soil and Water
207 Conservation Commission from the Mississippi Soil and Water
208 Cost-Share Program for the installation of water quality best
209 management practices.

210 (t) Dividends received by a holding corporation, as
211 defined in Section 27-13-1, from a subsidiary corporation, as
212 defined in Section 27-13-1.

213 (u) Interest, dividends, gains or income of any kind on
214 any account in the Mississippi Affordable College Savings Trust
215 Fund, as established in Sections 37-155-101 through 37-155-125, to
216 the extent that such amounts remain on deposit in the MACS Trust
217 Fund or are withdrawn pursuant to a qualified withdrawal, as
218 defined in Section 37-155-105.

219 (v) Interest, dividends or gains accruing on the
220 payments made pursuant to a prepaid tuition contract, as provided
221 for in Section 37-155-17.

222 (w) Income resulting from transactions with a related
223 member where the related member subject to tax under this chapter
224 was required to, and did in fact, add back the expense of such

225 transactions as required by Section 27-7-17(2). Under no
226 circumstances may the exclusion from income exceed the deduction
227 add-back of the related member, nor shall the exclusion apply to
228 any income otherwise excluded under this chapter.

229 (x) Amounts that are subject to the tax levied pursuant
230 to Section 27-7-901, and are paid to patrons by gaming
231 establishments licensed under the Mississippi Gaming Control Act.

232 (y) Amounts that are subject to the tax levied pursuant
233 to Section 27-7-903, and are paid to patrons by gaming
234 establishments not licensed under the Mississippi Gaming Control
235 Act.

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

237 (a) **Members of the Armed Forces.** Gross income does not
238 include compensation received for active service as a member of
239 the Armed Forces of the United States for any month during any
240 part of which such member is in a missing status, as defined in
241 paragraph (d) of this subsection, during the Vietnam Conflict as a
242 result of such conflict.

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

247 (c) **Period of conflict.** For the purpose of this
248 subsection, the Vietnam Conflict began February 28, 1961, and ends
249 on the date designated by the President by Executive Order as the
250 date of the termination of combatant activities in Vietnam. For
251 the purpose of this subsection, an individual is in a missing
252 status as a result of the Vietnam Conflict if immediately before
253 such status began he was performing service in Vietnam or was
254 performing service in Southeast Asia in direct support of military
255 operations in Vietnam. "Southeast Asia," as used in this
256 paragraph, is defined to include Cambodia, Laos, Thailand and
257 waters adjacent thereto.

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

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

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

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

279 (h) If refund or credit of any overpayment of tax for
280 any taxable year resulting from the application of subsection (5)
281 of this section is prevented by the operation of any law or rule
282 of law, such refund or credit of such overpayment of tax may,
283 nevertheless, be made or allowed if claim therefor is filed with
284 the State Tax Commission within three (3) years after the date of
285 the enactment of this subsection.

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

288 (6) A shareholder of an S corporation, as defined in Section
289 27-8-3(1)(g), shall take into account the income, loss, deduction

290 or credit of the S corporation only to the extent provided in
291 Section 27-8-7(2).

292 **SECTION 2.** Nothing in this act shall affect or defeat any
293 claim, assessment, appeal, suit, right or cause of action for
294 taxes due or accrued under the income tax laws before the date on
295 which this act becomes effective, whether such claims,
296 assessments, appeals, suits or actions have been begun before the
297 date on which this act becomes effective or are begun thereafter;
298 and the provisions of the income tax laws are expressly continued
299 in full force, effect and operation for the purpose of the
300 assessment, collection and enrollment of liens for any taxes due
301 or accrued and the execution of any warrant under such laws before
302 the date on which this act becomes effective, and for the
303 imposition of any penalties, forfeitures or claims for failure to
304 comply with such laws.

305 **SECTION 3.** This act shall take effect and be in force from
306 and after January 1, 2005.