

By: The Entire Membership

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 11

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE AMOUNT OF COMPENSATION RECEIVED BY MEMBERS OF THE
3 NATIONAL GUARD OR RESERVE FORCES THAT IS EXEMPT FROM INCOME
4 TAXATION; TO EXEMPT FROM INCOME TAXATION CERTAIN AMOUNTS RECEIVED
5 BY TAXPAYERS AS QUALIFIED DISASTER RELIEF PAYMENTS; TO EXEMPT FROM
6 INCOME TAXATION CERTAIN WITHDRAWALS FROM RETIREMENT PLANS FOR
7 RELIEF RELATING TO HURRICANE KATRINA; TO PROVIDE THAT THE INCOME
8 TAX EXEMPTION FOR PERSONS WHO ARE PRISONERS OF WAR OR MISSING IN
9 ACTION APPLIES TO THOSE IN ANY MILITARY CONFLICT, NOT JUST THE
10 VIETNAM CONFLICT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 27-7-15, Mississippi Code of 1972, is
13 amended as follows:

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

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

35 (a) **Dealers in property.** Federal rules, regulations
36 and revenue procedures shall be followed with respect to
37 installment sales unless a transaction results in the shifting of
38 income from inside the state to outside the state.

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

40 (i) Prior to January 1, 2001, federal rules,
41 regulations and revenue procedures shall be followed with respect
42 to installment sales except they shall be applied and administered
43 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
44 106th Congress, had not been enacted. This provision will
45 generally affect taxpayers, reporting on the accrual method of
46 accounting, entering into installment note agreements on or after
47 December 17, 1999. Any gain or profit resulting from the casual
48 sale of property will be recognized in the year of sale.

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

65 purpose by the original note holder, or the original note holder
66 is merged, liquidated, dissolved or withdrawn from this state,
67 then all deferred tax payments under this section shall
68 immediately become due and payable.

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

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

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

94 (e) **Alimony and separate maintenance payments.** The
95 federal rules, regulations and revenue procedures in determining
96 the deductibility and taxability of alimony payments shall be
97 followed in this state.

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

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

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

109 (a) The proceeds of life insurance policies and
110 contracts paid upon the death of the insured. However, the income
111 from the proceeds of such policies or contracts shall be included
112 in the gross income.

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

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

120 (d) Interest upon the obligations of the United States
121 or its possessions, or securities issued under the provisions of
122 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
123 War Finance Corporation, or obligations of the State of
124 Mississippi or political subdivisions thereof.

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

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

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

145 (h) In case of insurance companies, there shall be
146 excluded from gross income such portion of actual premiums
147 received from an individual policyholder as is paid back or
148 credited to or treated as an abatement of premiums of such
149 policyholder within the taxable year.

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

154 (j) Amounts paid by the United States to a person as
155 added compensation for hazardous duty pay as a member of the Armed
156 Forces of the United States in a combat zone designated by
157 Executive Order of the President of the United States.

158 (k) Amounts received as retirement allowances,
159 pensions, annuities or optional retirement allowances paid under
160 the federal Social Security Act, the Railroad Retirement Act, the
161 Federal Civil Service Retirement Act, or any other retirement
162 system of the United States government, retirement allowances paid
163 under the Mississippi Public Employees' Retirement System,

164 Mississippi Highway Safety Patrol Retirement System or any other
165 retirement system of the State of Mississippi or any political
166 subdivision thereof. The exemption allowed under this paragraph
167 (k) shall be available to the spouse or other beneficiary at the
168 death of the primary retiree.

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

180 (m) Compensation not to exceed the aggregate sum of
181 Fifteen Thousand Dollars (\$15,000.00) for any taxable year
182 received by a member of the National Guard or Reserve Forces of
183 the United States as payment for inactive duty training, active
184 duty training and state active duty.

185 (n) Compensation received for active service as a
186 member below the grade of commissioned officer and so much of the
187 compensation as does not exceed the maximum enlisted amount
188 received for active service as a commissioned officer in the Armed
189 Forces of the United States for any month during any part of which
190 such members of the Armed Forces (i) served in a combat zone as
191 designated by Executive Order of the President of the United
192 States or a qualified hazardous duty area as defined by federal
193 law, or both; or (ii) was hospitalized as a result of wounds,
194 disease or injury incurred while serving in such combat zone. For
195 the purposes of this paragraph (n), the term "maximum enlisted

196 amount" means and has the same definition as that term has in 26
197 USCS 112.

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

200 (p) The amount representing the difference between the
201 increase of gross income derived from sales for export outside the
202 United States as compared to the preceding tax year wherein gross
203 income from export sales was highest, and the net increase in
204 expenses attributable to such increased exports. In the absence
205 of direct accounting the ratio of net profits to total sales may
206 be applied to the increase in export sales. This paragraph (p)
207 shall only apply to businesses located in this state engaging in
208 the international export of Mississippi goods and services. Such
209 goods or services shall have at least fifty percent (50%) of value
210 added at a location in Mississippi.

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

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

221 (s) Amounts paid by the Mississippi Soil and Water
222 Conservation Commission from the Mississippi Soil and Water
223 Cost-Share Program for the installation of water quality best
224 management practices.

225 (t) Dividends received by a holding corporation, as
226 defined in Section 27-13-1, from a subsidiary corporation, as
227 defined in Section 27-13-1.

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

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

237 (w) Income resulting from transactions with a related
238 member where the related member subject to tax under this chapter
239 was required to, and did in fact, add back the expense of such
240 transactions as required by Section 27-7-17(2). Under no
241 circumstances may the exclusion from income exceed the deduction
242 add-back of the related member, nor shall the exclusion apply to
243 any income otherwise excluded under this chapter.

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

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

251 (z) Interest, dividends, gains or income of any kind on
252 any account in a qualified tuition program and amounts received as
253 distributions under a qualified tuition program shall be treated
254 in the same manner as provided under the United States Internal
255 Revenue Code, as amended. For the purposes of this paragraph (z),
256 the term "qualified tuition program" means and has the same
257 definition as that term has in 26 USCS 529.

258 (aa) The amount deposited in a health savings account,
259 and any interest accrued thereon, that is a part of a health
260 savings account program as specified in the Health Savings

261 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
262 any amount withdrawn from such account for purposes other than
263 paying qualified medical expenses or to procure health coverage
264 shall be included in gross income, except as otherwise provided by
265 Sections 83-62-7 and 83-62-9.

266 (bb) Amounts received as qualified disaster relief
267 payments shall be treated in the same manner as provided under the
268 United States Internal Revenue Code, as amended. For the purposes
269 of this paragraph (bb), the term "qualified disaster relief
270 payment" means and has the same definition as that term has in 26
271 USCS 139.

272 (cc) Amounts received as qualified Hurricane Katrina
273 distributions as defined in the Katrina Emergency Tax Relief Act
274 of 2005, P.L. 109-73.

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

276 (a) **Members of the Armed Forces.** Gross income does not
277 include compensation received for active service as a member of
278 the Armed Forces of the United States for any month during any
279 part of which such member is in a missing status, as defined in
280 paragraph (c) of this subsection, during any military conflict as
281 a result of such conflict.

282 (b) **Civilian employees.** Gross income does not include
283 compensation received for active service as an employee for any
284 month during any part of which such employee is in a missing
285 status during any military conflict as a result of such conflict.

286 (c) "Missing status" means the status of an employee or
287 member of the Armed Forces who is in active service and is
288 officially carried or determined to be absent in a status of (i)
289 missing; (ii) missing in action; (iii) interned in a foreign
290 country; (iv) captured, beleaguered or besieged by a hostile
291 force; or (v) detained in a foreign country against his will; but
292 does not include the status of an employee or member of the Armed

293 Forces for a period during which he is officially determined to be
294 absent from his post of duty without authority.

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

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

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

307 (g) If refund or credit of any overpayment of tax for
308 any taxable year resulting from the application of subsection (5)
309 of this section is prevented by the operation of any law or rule
310 of law, such refund or credit of such overpayment of tax may,
311 nevertheless, be made or allowed if claim therefor is filed with
312 the State Tax Commission within three (3) years after the date of
313 the enactment of this subsection.

314 * * *

315 (6) A shareholder of an S corporation, as defined in Section
316 27-8-3(1)(g), shall take into account the income, loss, deduction
317 or credit of the S corporation only to the extent provided in
318 Section 27-8-7(2).

319 **SECTION 2.** This act shall take effect and be in force from
320 and after January 1, 2005.