

By: The Entire Membership

To: Ways and Means

HOUSE BILL NO. 11
(As Passed the House)

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 EXEMPT FROM INCOME
8 TAXATION INCOME FROM SALES OF TIMBER DAMAGED DUE TO HURRICANE
9 KATRINA IN CERTAIN COUNTIES; TO PROVIDE THAT THE INCOME TAX
10 EXEMPTION FOR PERSONS WHO ARE PRISONERS OF WAR OR MISSING IN
11 ACTION APPLIES TO THOSE IN ANY MILITARY CONFLICT, NOT JUST THE
12 VIETNAM CONFLICT; AND FOR RELATED PURPOSES.

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

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

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

32 agreement authorized under Section 25-17-5 shall be excluded from
33 the term "gross income" within the meaning of this article.

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

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

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

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

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

65 for the tax. If at any time the installment note is sold,
66 contributed, transferred or disposed of in any manner and for any
67 purpose by the original note holder, or the original note holder
68 is merged, liquidated, dissolved or withdrawn from this state,
69 then all deferred tax payments under this section shall
70 immediately become due and payable.

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

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

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

96 (e) **Alimony and separate maintenance payments.** The
97 federal rules, regulations and revenue procedures in determining

98 the deductibility and taxability of alimony payments shall be
99 followed in this state.

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

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

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

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

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

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

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

127 (e) The amounts received through accident or health
128 insurance as compensation for personal injuries or sickness, plus
129 the amount of any damages received for such injuries or such
130 sickness or injuries, or through the War Risk Insurance Act, or

131 any law for the benefit or relief of injured or disabled members
132 of the military or naval forces of the United States.

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

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

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

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

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

160 (k) Amounts received as retirement allowances,
161 pensions, annuities or optional retirement allowances paid under
162 the federal Social Security Act, the Railroad Retirement Act, the
163 Federal Civil Service Retirement Act, or any other retirement

164 system of the United States government, retirement allowances paid
165 under the Mississippi Public Employees' Retirement System,
166 Mississippi Highway Safety Patrol Retirement System or any other
167 retirement system of the State of Mississippi or any political
168 subdivision thereof. The exemption allowed under this paragraph
169 (k) shall be available to the spouse or other beneficiary at the
170 death of the primary retiree.

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

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

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

197 the purposes of this paragraph (n), the term "maximum enlisted
198 amount" means and has the same definition as that term has in 26
199 USCS 112.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

277 (dd) Income from sales of timber damaged due to
278 Hurricane Katrina in those counties south of and traversed by
279 Interstate 20 for the period of August 29, 2005, through February
280 28, 2006.

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

282 (a) **Members of the Armed Forces.** Gross income does not
283 include compensation received for active service as a member of
284 the Armed Forces of the United States for any month during any
285 part of which such member is in a missing status, as defined in
286 paragraph (c) of this subsection, during any military conflict as
287 a result of such conflict.

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

292 (c) "Missing status" means the status of an employee or
293 member of the Armed Forces who is in active service and is
294 officially carried or determined to be absent in a status of (i)
295 missing; (ii) missing in action; (iii) interned in a foreign

296 country; (iv) captured, beleaguered or besieged by a hostile
297 force; or (v) detained in a foreign country against his will; but
298 does not include the status of an employee or member of the Armed
299 Forces for a period during which he is officially determined to be
300 absent from his post of duty without authority.

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

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

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

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

320 * * *

321 (6) A shareholder of an S corporation, as defined in Section
322 27-8-3(1)(g), shall take into account the income, loss, deduction
323 or credit of the S corporation only to the extent provided in
324 Section 27-8-7(2).

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