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To: Finance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2005

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO  
2 EXEMPT FROM INCOME TAXATION CERTAIN AMOUNTS RECEIVED BY TAXPAYERS  
3 AS QUALIFIED DISASTER RELIEF PAYMENTS AND CERTAIN AMOUNTS RECEIVED  
4 AS A QUALIFIED HURRICANE KATRINA DISTRIBUTION; AND FOR RELATED  
5 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 service as a  
181 member below the grade of commissioned officer and so much of the  
182 compensation as does not exceed the maximum enlisted amount  
183 received for active service as a commissioned officer in the Armed  
184 Forces of the United States for any month during any part of which  
185 such members of the Armed Forces (i) served in a combat zone as  
186 designated by Executive Order of the President of the United  
187 States or a qualified hazardous duty area as defined by federal  
188 law, or both; or (ii) was hospitalized as a result of wounds,  
189 disease or injury incurred while serving in such combat zone. For  
190 the purposes of this paragraph (n), the term "maximum enlisted

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

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

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

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

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

216 (s) Amounts paid by the Mississippi Soil and Water  
217 Conservation Commission from the Mississippi Soil and Water  
218 Cost-Share Program for the installation of water quality best  
219 management practices.

220 (t) Dividends received by a holding corporation, as  
221 defined in Section 27-13-1, from a subsidiary corporation, as  
222 defined in Section 27-13-1.

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

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

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

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

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

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

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



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

261 (bb) Amounts received as qualified disaster relief  
262 payments shall be treated in the same manner as provided under the  
263 United States Internal Revenue Code, as amended.

264 (cc) Amounts received as a "qualified Hurricane Katrina  
265 distribution" as defined in the United States Internal Revenue  
266 Code, as amended.

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

268 (a) **Members of the Armed Forces.** Gross income does not  
269 include compensation received for active service as a member of  
270 the Armed Forces of the United States for any month during any  
271 part of which such member is in a missing status, as defined in  
272 paragraph (d) of this subsection, during the Vietnam Conflict as a  
273 result of such conflict.

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

278 (c) **Period of conflict.** For the purpose of this  
279 subsection, the Vietnam Conflict began February 28, 1961, and ends  
280 on the date designated by the President by Executive Order as the  
281 date of the termination of combatant activities in Vietnam. For  
282 the purpose of this subsection, an individual is in a missing  
283 status as a result of the Vietnam Conflict if immediately before  
284 such status began he was performing service in Vietnam or was  
285 performing service in Southeast Asia in direct support of military  
286 operations in Vietnam. "Southeast Asia," as used in this  
287 paragraph, is defined to include Cambodia, Laos, Thailand and  
288 waters adjacent thereto.

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

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

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

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

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

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

319           (6) A shareholder of an S corporation, as defined in Section  
320 27-8-3(1)(g), shall take into account the income, loss, deduction

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

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