

By: Senator(s) Robertson

To: Finance

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 FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

60 then all deferred tax payments under this section shall
61 immediately become due and payable.

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

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

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

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

91 (f) **Reimbursement for expenses of moving.** There shall
92 be included in gross income (as compensation for services) any

93 amount received or accrued, directly or indirectly, by an
94 individual as a payment for or reimbursement of expenses of moving
95 from one residence to another residence which is attributable to
96 employment or self-employment.

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

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

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

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

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

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

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

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

126 religious, Bible, tract, charitable, benevolent, fraternal,
127 missionary, hospital, infirmary, educational, scientific,
128 literary, library, patriotic, historical or cemetery purposes or
129 for two (2) or more of such purposes, if such income be used
130 exclusively for carrying out one or more of such purposes.

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

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

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

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

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

159 subdivision thereof. The exemption allowed under this paragraph
160 (k) shall be available to the spouse or other beneficiary at the
161 death of the primary retiree.

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

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

178 (n) Compensation received for active service as a
179 member below the grade of commissioned officer and so much of the
180 compensation as does not exceed the maximum enlisted amount
181 received for active service as a commissioned officer in the Armed
182 Forces of the United States for any month during any part of which
183 such members of the Armed Forces (i) served in a combat zone as
184 designated by Executive Order of the President of the United
185 States or a qualified hazardous duty area as defined by federal
186 law, or both; or (ii) was hospitalized as a result of wounds,
187 disease or injury incurred while serving in such combat zone. For
188 the purposes of this paragraph (n), the term "maximum enlisted
189 amount" means and has the same definition as that term has in 26
190 USCS 112.

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

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

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

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

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

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

221 (u) Interest, dividends, gains or income of any kind on
222 any account in the Mississippi Affordable College Savings Trust
223 Fund, as established in Sections 37-155-101 through 37-155-125, to

224 the extent that such amounts remain on deposit in the MACS Trust
225 Fund or are withdrawn pursuant to a qualified withdrawal, as
226 defined in Section 37-155-105.

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

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

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

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

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

251 (aa) The amount deposited in a health savings account,
252 and any interest accrued thereon, that is a part of a health
253 savings account program as specified in the Health Savings
254 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
255 any amount withdrawn from such account for purposes other than
256 paying qualified medical expenses or to procure health coverage

257 shall be included in gross income, except as otherwise provided by
258 Sections 83-62-7 and 83-62-9.

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

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

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

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

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

284 (d) "Missing status" means the status of an employee or
285 member of the Armed Forces who is in active service and is
286 officially carried or determined to be absent in a status of (i)
287 missing; (ii) missing in action; (iii) interned in a foreign
288 country; (iv) captured, beleaguered or besieged by a hostile
289 force; or (v) detained in a foreign country against his will; but

290 does not include the status of an employee or member of the Armed
291 Forces for a period during which he is officially determined to be
292 absent from his post of duty without authority.

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

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

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

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

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

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

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