

By: Representative Henley

To: Ways and Means

HOUSE BILL NO. 274

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "GROSS INCOME" FOR PURPOSES OF
3 THE STATE INCOME TAX LAW TO PARTIALLY EXCLUDE COMPENSATION
4 RECEIVED BY A RESIDENT OF THIS STATE FOR ACTIVE FEDERAL SERVICE AS
5 A MEMBER OF THE ARMED FORCES OF THE UNITED STATES IN AN ACTIVE
6 DUTY STATUS WHILE SUCH PERSON IS STATIONED OUTSIDE THE STATE OF
7 MISSISSIPPI; TO REVISE THE DEFINITION OF THE TERM "GROSS INCOME"
8 FOR PURPOSES OF THE STATE INCOME TAX LAW TO PARTIALLY EXCLUDE
9 COMPENSATION RECEIVED BY A NONRESIDENT OF THIS STATE FOR ACTIVE
10 FEDERAL SERVICE AS A MEMBER OF THE ARMED FORCES OF THE UNITED
11 STATES IN AN ACTIVE DUTY STATUS WHILE SUCH PERSON IS STATIONED IN
12 THE STATE OF MISSISSIPPI; 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,



dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

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

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

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

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after



December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and to the extent provided under regulations prescribed by the commissioner. If the payment of the tax is made on a deferred basis, the tax shall be computed based on the applicable rate for the income reported in the year the payment is made. Except as otherwise provided in subparagraph (iii) of this paragraph (b), deferring the payment of the tax shall not affect the liability for the tax. If at any time the installment note is sold, contributed, transferred or disposed of in any manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

(iii) If the selling price of the property is reduced by any alteration in the terms of an installment note, 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



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

(f) **Reimbursement for expenses of moving.** There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one (1) residence to another residence which is attributable to employment or self-employment.

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

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

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

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

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be 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 1916, or bonds issued by the War
125 Finance Corporation, or obligations of the State of Mississippi or
126 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.



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

(m) National Guard or Reserve Forces of the United States compensation not to exceed the aggregate sum of Five Thousand Dollars (\$5,000.00) for any taxable year through the 2005 taxable year, and not to exceed the aggregate sum of Fifteen Thousand Dollars (\$15,000.00) for any taxable year thereafter.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States or a qualified hazardous duty area as defined by federal law, or both; or (ii) was hospitalized as a result of wounds,



disease or injury incurred while serving in such combat zone. For the purposes of this paragraph (n), the term "maximum enlisted amount" means and has the same definition as that term has in 26 USCS 112.

(o) The proceeds received from federal and state forestry incentive programs.

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

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

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical savings account program as specified in the Medical Savings Account Act under Sections 71-9-1 through 71-9-9; provided, however, that any amount withdrawn from such account for purposes



other than paying eligible medical expense or to procure health coverage shall be included in gross income.

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

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

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

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

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



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

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

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

(aa) The amount deposited in a health savings account, and any interest accrued thereon, that is a part of a health savings account program as specified in the Health Savings Accounts Act created in Sections 83-62-1 through 83-62-9; however, any amount withdrawn from such account for purposes other than paying qualified medical expenses or to procure health coverage shall be included in gross income, except as otherwise provided by Sections 83-62-7 and 83-62-9.

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



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

(dd) Amounts received by an individual which may be excluded from income as foreign earned income for federal income tax purposes.

(ee) Amounts received by a qualified individual, directly or indirectly, from an employer or nonprofit housing organization that are qualified housing expenses associated with an employer-assisted housing program. For purposes of this paragraph (ee):

(i) "Qualified individual" means any individual whose household income does not exceed one hundred twenty percent (120%) of the area median gross income (as defined by the United States Department of Housing and Urban Development), adjusted for household size, for the area in which the housing is located.

(ii) "Nonprofit housing organization" means an organization that is organized as a not-for-profit organization under the laws of this state or another state and has as one of its purposes:

1. Homeownership education or counseling;
2. The development of affordable housing; or
3. The development or administration of employer-assisted housing programs.



(iii) "Employer-assisted housing program" means a separate written plan of any employer (including, without limitation, tax-exempt organizations and public employers) for the exclusive benefit of the employer's employees to pay qualified housing expenses to assist the employer's employees in securing affordable housing.

(iv) "Qualified housing expenses" means:

1. With respect to rental assistance, an amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the purpose of assisting employees with security deposits and rental subsidies; and

2. With respect to homeownership assistance, an amount not to exceed the lesser of Ten Thousand Dollars (\$10,000.00) or six percent (6%) of the purchase price of the employee's principal residence that is paid for the purpose of assisting employees with down payments, payment of closing costs, reduced interest mortgages, mortgage guarantee programs, mortgage forgiveness programs, equity contribution programs, or contributions to homebuyer education and/or homeownership counseling of eligible employees.

(ff) For the 2010 taxable year and any taxable year thereafter, amounts converted in accordance with the United States Internal Revenue Code, as amended, from a traditional Individual Retirement Account to a Roth Individual Retirement Account. The exemption allowed under this paragraph (ff) shall be available to



the spouse or other beneficiary at the death of the primary retiree.

(gg) Amounts received for the performance of disaster or emergency-related work as defined in Section 27-113-5.

(hh) The amount deposited in a catastrophe savings account established under Sections 27-7-1001 through 27-7-1007, interest income earned on the catastrophe savings account, and distributions from the catastrophe savings account; however, any amount withdrawn from a catastrophe savings account for purposes other than paying qualified catastrophe expenses shall be included in gross income, except as otherwise provided by Sections 27-7-1001 through 27-7-1007.

(ii) Interest, dividends, gains or income of any kind on any account in the Mississippi Achieving a Better Life Experience (ABLE) Trust Fund, as established in Chapter 28, Title 43, to the extent that such amounts remain on deposit in the ABLE Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 43-28-11.

(jj) Subject to the limitations provided under Section 27-7-1103, amounts deposited into a first-time homebuyer savings account and any interest or other income earned attributable to an account and monies or funds withdrawn or distributed from an account for the payment of eligible costs by or on behalf of a qualified beneficiary; however, any monies or funds withdrawn or distributed from a first-time homebuyer savings account for any



purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary shall be included in gross income. For the purpose of this paragraph (jj), the terms "first-time homebuyer savings account," "eligible costs" and "qualified beneficiary" mean and have the same definitions as such terms have in Section 27-7-1101.

(kk) Amounts paid by an agricultural disaster program as compensation to an agricultural producer, cattle farmer or cattle rancher who has suffered a loss as the result of a disaster or emergency, including, but not limited to, the following United States Department of Agriculture programs:

- (i) Livestock Forage Disaster Program;
- (ii) Livestock Indemnity Program;
- (iii) Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program;
- (iv) Emergency Conservation Program;
- (v) Noninsured Crop Disaster Assistance Program;
- (vi) Pasture, Rangeland, Forage Pilot Insurance Program;
- (vii) Annual Forage Pilot Program;
- (viii) Livestock Risk Protection Insurance Program; and
- (ix) Livestock Gross Margin Insurance Plan.

(ll) Compensation received by a resident for active federal service as a member of the Armed Forces of the United



States in an active duty status while such person is stationed
outside the State of Mississippi pursuant to military orders shall
be excluded from gross income in the same amount as provided in
paragraph (m) of this subsection (4) for compensation received by
a member of the National Guard or Reserve Forces of the United
States.

(mm) Compensation received by a nonresident for active
federal service as a member of the Armed Forces of the United
States in an active duty status while such person is stationed in
the State of Mississippi pursuant to military orders shall be
excluded from gross income in the same amount as provided in
paragraph (m) of this subsection (4) for compensation received by
a member of the National Guard or Reserve Forces of the United
States.

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

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

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



395 (c) **Period of conflict.** For the purpose of this
396 subsection, the Vietnam Conflict began February 28, 1961, and ends
397 on the date designated by the President by Executive Order as the
398 date of the termination of combatant activities in Vietnam. For
399 the purpose of this subsection, an individual is in a missing
400 status as a result of the Vietnam Conflict if immediately before
401 such status began he was performing service in Vietnam or was
402 performing service in Southeast Asia in direct support of military
403 operations in Vietnam. "Southeast Asia," as used in this
404 paragraph, is defined to include Cambodia, Laos, Thailand and
405 waters adjacent thereto.

406 (d) "Missing status" means the status of an employee or
407 member of the Armed Forces who is in active service and is
408 officially carried or determined to be absent in a status of (i)
409 missing; (ii) missing in action; (iii) interned in a foreign
410 country; (iv) captured, beleaguered or besieged by a hostile
411 force; or (v) detained in a foreign country against his will; but
412 does not include the status of an employee or member of the Armed
413 Forces for a period during which he is officially determined to be
414 absent from his post of duty without authority.

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

418 (f) "Employee" means one who is a citizen or national
419 of the United States or an alien admitted to the United States for



permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

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

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of this subsection (5) is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the Department of Revenue within three (3) years after the date of the enactment of this subsection.

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

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

SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the



445 date on which this act becomes effective or are begun thereafter;
446 and the provisions of the income tax laws are expressly continued
447 in full force, effect and operation for the purpose of the
448 assessment, collection and enrollment of liens for any taxes due
449 or accrued and the execution of any warrant under such laws before
450 the date on which this act becomes effective, and for the
451 imposition of any penalties, forfeitures or claims for failure to
452 comply with such laws.

453 **SECTION 3.** This act shall take effect and be in force from
454 and after January 1, 2019.

