

By: Senator(s) Robertson

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3156

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE TYPES OF PUBLIC OR GOVERNMENTAL SYSTEMS OR PRIVATE
3 RETIREMENT SYSTEMS OR PLANS THAT ARE NOT INCLUDED WITHIN THE
4 DEFINITION OF THE TERM "GROSS INCOME" UNDER MISSISSIPPI INCOME TAX
5 LAW; AND FOR RELATED PURPOSES.

6 WHEREAS, under current state law and regulations of the State
7 Tax Commission, only retirement income received by a retiree from
8 plans that are qualified retirement plans for federal income tax
9 purposes are excluded from the definition of "gross income" under
10 Mississippi's income tax law; and

11 WHEREAS, the current treatment of retirement income is
12 correct under existing law; and

13 WHEREAS, questions have been raised regarding the treatment
14 of retirement income from plans that are not qualified retirement
15 plans for federal income tax purposes; and

16 WHEREAS, the Legislature finds that it is beneficial to enact
17 legislation making it clear that the treatment of retirement
18 income under existing law is correct: NOW, THEREFORE,

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

20 **SECTION 1.** Section 27-7-15, Mississippi Code of 1972, as
21 amended by House Bill No. 1601, 2005 Regular Session, and Senate
22 Bill No. 2633, 2005 Regular Session, is amended as follows:

23 27-7-15. (1) For the purposes of this article, except as
24 otherwise provided, the term "gross income" means and includes the
25 income of a taxpayer derived from salaries, wages, fees or
26 compensation for service, of whatever kind and in whatever form
27 paid, including income from governmental agencies and subdivisions
28 thereof; or from professions, vocations, trades, businesses,

29 commerce or sales, or renting or dealing in property, or
30 reacquired property; also from annuities, interest, rents,
31 dividends, securities, insurance premiums, reinsurance premiums,
32 considerations for supplemental insurance contracts, or the
33 transaction of any business carried on for gain or profit, or
34 gains, or profits, and income derived from any source whatever and
35 in whatever form paid. The amount of all such items of income
36 shall be included in the gross income for the taxable year in
37 which received by the taxpayer. The amount by which an eligible
38 employee's salary is reduced pursuant to a salary reduction
39 agreement authorized under Section 25-17-5 shall be excluded from
40 the term "gross income" within the meaning of this article.

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

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

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

49 (i) Prior to January 1, 2001, federal rules,
50 regulations and revenue procedures shall be followed with respect
51 to installment sales except they shall be applied and administered
52 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
53 106th Congress, had not been enacted. This provision will
54 generally affect taxpayers, reporting on the accrual method of
55 accounting, entering into installment note agreements on or after
56 December 17, 1999. Any gain or profit resulting from the casual
57 sale of property will be recognized in the year of sale.

58 (ii) From and after January 1, 2001, federal
59 rules, regulations and revenue procedures shall be followed with
60 respect to installment sales except as provided in this
61 subparagraph (ii). Gain or profit from the casual sale of

62 property shall be recognized in the year of sale. When a taxpayer
63 recognizes gain on the casual sale of property in which the gain
64 is deferred for federal income tax purposes, a taxpayer may elect
65 to defer the payment of tax resulting from the gain as allowed and
66 to the extent provided under regulations prescribed by the
67 commissioner. If the payment of the tax is made on a deferred
68 basis, the tax shall be computed based on the applicable rate for
69 the income reported in the year the payment is made. Except as
70 otherwise provided in subparagraph (iii) of this paragraph (b),
71 deferring the payment of the tax shall not affect the liability
72 for the tax. If at any time the installment note is sold,
73 contributed, transferred or disposed of in any manner and for any
74 purpose by the original note holder, or the original note holder
75 is merged, liquidated, dissolved or withdrawn from this state,
76 then all deferred tax payments under this section shall
77 immediately become due and payable.

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

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

92 (d) **Affiliated companies or persons.** As regards sales,
93 exchanges or payments for services from one to another of
94 affiliated companies or persons or under other circumstances where

95 the relation between the buyer and seller is such that gross
96 proceeds from the sale or the value of the exchange or the payment
97 for services are not indicative of the true value of the subject
98 matter of the sale, exchange or payment for services, the
99 commissioner shall prescribe uniform and equitable rules for
100 determining the true value of the gross income, gross sales,
101 exchanges or payment for services, or require consolidated returns
102 of affiliates.

103 (e) **Alimony and separate maintenance payments.** The
104 federal rules, regulations and revenue procedures in determining
105 the deductibility and taxability of alimony payments shall be
106 followed in this state.

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

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

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

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

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

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

129 (d) Interest upon the obligations of the United States
130 or its possessions, or securities issued under the provisions of
131 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
132 War Finance Corporation, or obligations of the State of
133 Mississippi or political subdivisions thereof.

134 (e) The amounts received through accident or health
135 insurance as compensation for personal injuries or sickness, plus
136 the amount of any damages received for such injuries or such
137 sickness or injuries, or through the War Risk Insurance Act, or
138 any law for the benefit or relief of injured or disabled members
139 of the military or naval forces of the United States.

140 (f) Income received by any religious denomination or by
141 any institution or trust for moral or mental improvements,
142 religious, Bible, tract, charitable, benevolent, fraternal,
143 missionary, hospital, infirmary, educational, scientific,
144 literary, library, patriotic, historical or cemetery purposes or
145 for two (2) or more of such purposes, if such income be used
146 exclusively for carrying out one or more of such purposes.

147 (g) Income received by a domestic corporation which is
148 "taxable in another state" as this term is defined in this
149 article, derived from business activity conducted outside this
150 state. Domestic corporations taxable both within and without the
151 state shall determine Mississippi income on the same basis as
152 provided for foreign corporations under the provisions of this
153 article.

154 (h) In case of insurance companies, there shall be
155 excluded from gross income such portion of actual premiums
156 received from an individual policyholder as is paid back or
157 credited to or treated as an abatement of premiums of such
158 policyholder within the taxable year.

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

163 (j) Amounts paid by the United States to a person as
164 added compensation for hazardous duty pay as a member of the Armed
165 Forces of the United States in a combat zone designated by
166 Executive Order of the President of the United States.

167 (k) Amounts received as retirement allowances,
168 pensions, annuities or optional retirement allowances paid under
169 the federal Social Security Act, the Railroad Retirement Act, the
170 Federal Civil Service Retirement Act, or any other retirement
171 system of the United States government, retirement allowances paid
172 under the Mississippi Public Employees' Retirement System,
173 Mississippi Highway Safety Patrol Retirement System or any other
174 retirement system of the State of Mississippi or any political
175 subdivision thereof. The exemption allowed under this paragraph
176 (k) shall be available to the spouse or other beneficiary at the
177 death of the primary retiree.

178 (l) Amounts received as retirement allowances,
179 pensions, annuities or optional retirement allowances paid by any
180 public or governmental retirement system not designated in
181 paragraph (k) or any private retirement system or plan of which
182 the recipient was a member at any time during the period of his
183 employment if the governmental retirement system or private
184 retirement system or plan is a qualified retirement plan for
185 federal income tax purposes. Amounts received as a distribution
186 under a Roth Individual Retirement Account shall be treated in the
187 same manner as provided under the Internal Revenue Code of 1986,
188 as amended. The exemption allowed under this paragraph (l) shall
189 be available to the spouse or other beneficiary at the death of
190 the primary retiree.

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

196 (n) Compensation received for active service as a
197 member below the grade of commissioned officer and so much of the
198 compensation as does not exceed the maximum enlisted amount
199 received for active service as a commissioned officer in the Armed
200 Forces of the United States for any month during any part of which
201 such members of the Armed Forces (i) served in a combat zone as
202 designated by Executive Order of the President of the United
203 States or a qualified hazardous duty area as defined by federal
204 law, or both; or (ii) was hospitalized as a result of wounds,
205 disease or injury incurred while serving in such combat zone. For
206 the purposes of this paragraph (n), the term "maximum enlisted
207 amount" means and has the same definition as that term has in 26
208 USCS 112.

209 (o) The proceeds received from federal and state
210 forestry incentives programs.

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

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

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

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

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

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

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

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

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

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

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

269 (aa) The amount deposited in a health savings account,
270 and any interest accrued thereon, that is a part of a health
271 savings account program as specified in the Health Savings
272 Accounts Act created in Sections 1 through 5 of Senate Bill No.
273 2633, 2005 Regular Session; however, any amount withdrawn from
274 such account for purposes other than paying qualified medical
275 expenses or to procure health coverage shall be included in gross
276 income, except as otherwise provided by Sections 4 and 5 of Senate
277 Bill No. 2633, 2005 Regular Session.

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

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

285 (b) **Civilian employees.** Gross income does not include
286 compensation received for active service as an employee for any

287 month during any part of which such employee is in a missing
288 status during the Vietnam Conflict as a result of such conflict.

289 (c) **Period of conflict.** For the purpose of this
290 subsection, the Vietnam Conflict began February 28, 1961, and ends
291 on the date designated by the President by Executive Order as the
292 date of the termination of combatant activities in Vietnam. For
293 the purpose of this subsection, an individual is in a missing
294 status as a result of the Vietnam Conflict if immediately before
295 such status began he was performing service in Vietnam or was
296 performing service in Southeast Asia in direct support of military
297 operations in Vietnam. "Southeast Asia," as used in this
298 paragraph, is defined to include Cambodia, Laos, Thailand and
299 waters adjacent thereto.

300 (d) "Missing status" means the status of an employee or
301 member of the Armed Forces who is in active service and is
302 officially carried or determined to be absent in a status of (i)
303 missing; (ii) missing in action; (iii) interned in a foreign
304 country; (iv) captured, beleaguered or besieged by a hostile
305 force; or (v) detained in a foreign country against his will; but
306 does not include the status of an employee or member of the Armed
307 Forces for a period during which he is officially determined to be
308 absent from his post of duty without authority.

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

312 (f) "Employee" means one who is a citizen or national
313 of the United States or an alien admitted to the United States for
314 permanent residence and is a resident of the State of Mississippi
315 and is employed in or under a federal executive agency or
316 department of the Armed Forces.

317 (g) "Compensation" means (i) basic pay; (ii) special
318 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)

319 basic allowance for subsistence; and (vi) station per diem
320 allowances for not more than ninety (90) days.

321 (h) If refund or credit of any overpayment of tax for
322 any taxable year resulting from the application of subsection (5)
323 of this section is prevented by the operation of any law or rule
324 of law, such refund or credit of such overpayment of tax may,
325 nevertheless, be made or allowed if claim therefor is filed with
326 the State Tax Commission within three (3) years after the date of
327 the enactment of this subsection.

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

330 (6) A shareholder of an S corporation, as defined in Section
331 27-8-3(1)(g), shall take into account the income, loss, deduction
332 or credit of the S corporation only to the extent provided in
333 Section 27-8-7(2).

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