

By: Senator(s) Robertson

To: Finance

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 THE INCOME TAX LAWS;  
5 AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

61 purpose by the original note holder, or the original note holder  
62 is merged, liquidated, dissolved or withdrawn from this state,  
63 then all deferred tax payments under this section shall  
64 immediately become due and payable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 Mississippi Highway Safety Patrol Retirement System or any other  
161 retirement system of the State of Mississippi or any political  
162 subdivision thereof. The exemption allowed under this paragraph  
163 (k) shall be available to the spouse or other beneficiary at the  
164 death of the primary retiree.

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

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

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

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

196 (o) The proceeds received from federal and state  
197 forestry incentives programs.

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

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

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

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

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

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

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

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

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

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

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

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



259 Accounts Act created in Sections 1 through 5 of Senate Bill No.  
260 2633, 2005 Regular Session; however, any amount withdrawn from  
261 such account for purposes other than paying qualified medical  
262 expenses or to procure health coverage shall be included in gross  
263 income, except as otherwise provided by Sections 4 and 5 of Senate  
264 Bill No. 2633, 2005 Regular Session.

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

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

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

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

287 (d) "Missing status" means the status of an employee or  
288 member of the Armed Forces who is in active service and is  
289 officially carried or determined to be absent in a status of (i)  
290 missing; (ii) missing in action; (iii) interned in a foreign  
291 country; (iv) captured, beleaguered or besieged by a hostile

292 force; or (v) detained in a foreign country against his will; but  
293 does not include the status of an employee or member of the Armed  
294 Forces for a period during which he is officially determined to be  
295 absent from his post of duty without authority.

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

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

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

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

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

317 (6) A shareholder of an S corporation, as defined in Section  
318 27-8-3(1)(g), shall take into account the income, loss, deduction  
319 or credit of the S corporation only to the extent provided in  
320 Section 27-8-7(2).

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