

By: Representative Zuber

To: Ways and Means

HOUSE BILL NO. 538

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 EXCLUDE COMPENSATION RECEIVED BY A
 4 RESIDENT OF THIS STATE FOR ACTIVE FEDERAL SERVICE AS A MEMBER OF
 5 THE ARMED FORCES OF THE UNITED STATES IN AN ACTIVE DUTY STATUS
 6 WHILE SUCH PERSON IS STATIONED OUTSIDE THE STATE OF MISSISSIPPI;
 7 AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

269 (dd) Compensation received by a resident for active
270 federal service as a member of the Armed Forces of the United
271 States in an active duty status while such person is stationed
272 outside the State of Mississippi pursuant to military orders.

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

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

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

284 (c) **Period of conflict.** For the purpose of this
285 subsection, the Vietnam Conflict began February 28, 1961, and ends
286 on the date designated by the President by Executive Order as the
287 date of the termination of combatant activities in Vietnam. For
288 the purpose of this subsection, an individual is in a missing
289 status as a result of the Vietnam Conflict if immediately before
290 such status began he was performing service in Vietnam or was

291 performing service in Southeast Asia in direct support of military
292 operations in Vietnam. "Southeast Asia," as used in this
293 paragraph, is defined to include Cambodia, Laos, Thailand and
294 waters adjacent thereto.

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

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

307 (f) "Employee" means one who is a citizen or national
308 of the United States or an alien admitted to the United States for
309 permanent residence and is a resident of the State of Mississippi
310 and is employed in or under a federal executive agency or
311 department of the Armed Forces.

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

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

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

325 (6) A shareholder of an S corporation, as defined in Section
326 27-8-3(1)(g), shall take into account the income, loss, deduction
327 or credit of the S corporation only to the extent provided in
328 Section 27-8-7(2).

329 **SECTION 2.** Nothing in this act shall affect or defeat any
330 claim, assessment, appeal, suit, right or cause of action for
331 taxes due or accrued under the income tax laws before the date on
332 which this act becomes effective, whether such claims,
333 assessments, appeals, suits or actions have been begun before the
334 date on which this act becomes effective or are begun thereafter;
335 and the provisions of the income tax laws are expressly continued
336 in full force, effect and operation for the purpose of the
337 assessment, collection and enrollment of liens for any taxes due
338 or accrued and the execution of any warrant under such laws before
339 the date on which this act becomes effective, and for the
340 imposition of any penalties, forfeitures or claims for failure to
341 comply with such laws.

342 **SECTION 3.** This act shall take effect and be in force from
343 and after January 1, 2006.