

By: Representative Chism

To: Ways and Means

HOUSE BILL NO. 928

1 AN ACT TO CREATE THE QUALIFIED SMALL EMPLOYER HEALTH
2 REIMBURSEMENT ARRANGEMENT ACT; TO BRING FORWARD SECTION 27-7-15,
3 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND
4 FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 1 of this act shall be known as the
7 Qualified Small Employer Health Reimbursement Arrangement Act to
8 respond to federal law allowing for such arrangements.

9 **SECTION 2.** Section 27-7-15, Mississippi Code of 1972, is
10 brought forward 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 1916, or bonds issued by the War
120 Finance Corporation, or obligations of the State of Mississippi or
121 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 (1) 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 (1) shall be available
175 to the spouse or other beneficiary at the death of the primary
176 retiree.

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

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

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

277 (i) "Qualified individual" means any individual
278 whose household income does not exceed one hundred twenty percent
279 (120%) of the area median gross income (as defined by the United
280 States Department of Housing and Urban Development), adjusted for
281 household size, for the area in which the housing is located.

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

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



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

296 (iv) "Qualified housing expenses" means:

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

301 2. With respect to homeownership assistance,
302 an amount not to exceed the lesser of Ten Thousand Dollars
303 (\$10,000.00) or six percent (6%) of the purchase price of the
304 employee's principal residence that is paid for the purpose of
305 assisting employees with down payments, payment of closing costs,
306 reduced interest mortgages, mortgage guarantee programs, mortgage
307 forgiveness programs, equity contribution programs, or
308 contributions to home buyer education and/or homeownership
309 counseling of eligible employees.

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



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

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

319 (hh) The amount deposited in a catastrophe savings
320 account established under Sections 27-7-1001 through 27-7-1007,
321 interest income earned on the catastrophe savings account, and
322 distributions from the catastrophe savings account; however, any
323 amount withdrawn from a catastrophe savings account for purposes
324 other than paying qualified catastrophe expenses shall be included
325 in gross income, except as otherwise provided by Sections
326 27-7-1001 through 27-7-1007.

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

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

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

338 (c) **Period of conflict.** For the purpose of this
339 subsection, the Vietnam Conflict began February 28, 1961, and ends



340 on the date designated by the President by Executive Order as the
341 date of the termination of combatant activities in Vietnam. For
342 the purpose of this subsection, an individual is in a missing
343 status as a result of the Vietnam Conflict if immediately before
344 such status began he was performing service in Vietnam or was
345 performing service in Southeast Asia in direct support of military
346 operations in Vietnam. "Southeast Asia," as used in this
347 paragraph, is defined to include Cambodia, Laos, Thailand and
348 waters adjacent thereto.

349 (d) "Missing status" means the status of an employee or
350 member of the Armed Forces who is in active service and is
351 officially carried or determined to be absent in a status of (i)
352 missing; (ii) missing in action; (iii) interned in a foreign
353 country; (iv) captured, beleaguered or besieged by a hostile
354 force; or (v) detained in a foreign country against his will; but
355 does not include the status of an employee or member of the Armed
356 Forces for a period during which he is officially determined to be
357 absent from his post of duty without authority.

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

361 (f) "Employee" means one who is a citizen or national
362 of the United States or an alien admitted to the United States for
363 permanent residence and is a resident of the State of Mississippi



364 and is employed in or under a federal executive agency or
365 department of the Armed Forces.

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

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

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

379 (6) A shareholder of an S corporation, as defined in Section
380 27-8-3(1)(g), shall take into account the income, loss, deduction
381 or credit of the S corporation only to the extent provided in
382 Section 27-8-7(2).

383 **SECTION 3.** This act shall take effect and be in force from
384 and after July 1, 2017.

