HB407

LLPLAYW-1

By Representative Pettus

RFD: Ways and Means Education

First Read: 02-Apr-24

SYNOPSIS:

Under existing law, gross income is defined for the purpose of state income tax. Also under existing law, compensation received by full-time hourly waged paid employees for work performed in excess of 40 hours in any given week is excluded from the calculation of gross income.

This bill would revise this exemption to exempt amounts paid as overtime compensation in accordance with the U.S. Fair Labor Standards Act from state income tax.

A BILL

TO BE ENTITLED

AN ACT

Relating to income taxes; to amend Section 40-18-14, Code of Alabama 1975, as last amended by Act 2023-421; to amend the definition of gross income; to exempt from state income tax amounts paid as overtime compensation in accordance with the U.S. Fair Labor Standards Act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-18-14, Code of Alabama 1975, as last amended by Act 2023-421, is amended to read as follows:

"§40-18-14

(a) The term "gross income" as used herein:

(1) Includes gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, income, fees, and other compensation of state, county, and municipal officers and employees, or from professions, vocations, trades, business, commerce or sales, or dealings in property whether real or personal, growing out of ownership or use of or interest in such property; also from interest, royalties, rents, dividends, securities, or transactions of any business carried on for gain or profit and the income derived from any source whatever, including any income not exempted under this chapter and against which income there is no provision for a tax. The term "gross income" as used herein also includes alimony and separate maintenance payments to the extent they are includable in gross income for federal income tax purposes under 26 U.S.C. § 71, relating to alimony and separate maintenance payments. The term "gross income" as used herein also includes any amount included in gross income under 26 U.S.C. § 83 at the time it is so included under 26 U.S.C. § 83.

(2) For purposes of this chapter, the reductions in tax attributes required by 26 U.S.C. § 108 shall be applied only to the net operating losses determined under this chapter and the basis of depreciable property. The basis reductions of depreciable property shall not exceed the basis reductions for federal income tax purposes. All other tax attribute

reductions required by 26 U.S.C. § 108 shall not be recognized.

(3) Gross income does not include the following items which shall be exempt from income tax under this chapter:

a. Amounts received under life insurance policies and contracts paid by reason of the death of the insured in accordance with 26 U.S.C. § 101;

b. Amounts received, other than amounts paid by reason of the death of the insured, under life insurance, endowment or annuity contracts, determined in accordance with 26 U.S.C. § 72;

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, in accordance with 26 U.S.C. § 102;

d. Interest upon obligations of the United States or its possessions; or securities issued under provisions of the Federal Farm Loan Act of July 18, 1916;

e. Any amounts received by an individual which are excludable from gross income under 26 U.S.C. § 104, relating to compensation for injuries or sickness, or 26 U.S.C. § 105, relating to amounts received under accident or health plans;

f. Interest on obligations of the State of Alabama and any county, municipality, or other political subdivision thereof;

g. The rental value of a parsonage provided to a minister of the gospel to the extent excludable under 26 U.S.C. § 107;

h. Income from discharge of indebtedness to the extent allowed by 26 U.S.C. § 108;

i. For each individual resident taxpayer, or each husband and wife filing a joint income tax return, as the case may be, any gain realized from the sale of a personal residence of the taxpayer shall be excluded to the extent excludable for federal income tax purposes under 26 U.S.C. § 121;

j. Contributions made by an employer on behalf of an employee to a trust which is part of a qualified cash or deferred arrangement, as defined in 26 U.S.C. § 401(k)(2) or 5 U.S.C. § 8437, under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash and contributions made by an employer for an employee for an annuity contract, which contributions would be excludable from the gross income, for federal income tax purposes, of the employee in accordance with the provisions of 26 U.S.C. § 403(b). The limitations imposed by 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

k. Amounts that an employee is allowed to exclude from gross income for federal income tax purposes pursuant to 26 U.S.C. § 125, relating to cafeteria plans, and 26 U.S.C. § 132, relating to certain fringe benefits; and

l. Amounts paid or incurred by an employer on behalf of an employee if the amounts may be excluded from gross income for federal income tax purposes by an employee pursuant to 26 U.S.C. § 129, relating to dependent care expenses.

m.1. Amounts ~~received by a full-time hourly waged paid~~

~~employee~~paid as overtime compensation in accordance with the U.S. Fair Labor Standards Act~~compensation for work performed in excess of 40 hours in a week~~.

2. The exemption provided pursuant to this paragraph shall be available for tax years that begin after December 31, 2023, and end prior to June 30, 2025.

3. Each employer shall submit to the Department of Revenue, on forms prescribed by the department, all of the following:

(i) For the tax year beginning January 1, 2023, the total amount received by full-time hourly wage-paid employees as compensation for work performed in excess of 40 hours in a week and the total number of employees for which it was paid. The data shall be due no later than January 31, 2024.

(ii) For the tax year beginning on or after January 1, 2024, and each tax year thereafter, the total amount ~~received by full-time hourly wage-paid employees~~paid as ~~compensation for work performed in excess of 40 hours in a week~~ overtime compensation in accordance with the U.S. Fair Labor Standards Act and the total number of employees for which it was paid. The data shall be provided monthly or quarterly and shall be due no later than the due date for the corresponding monthly or quarterly withholding tax returns.

(iii) Additional information as may be required by the department.

4. The department shall report to the Legislative Services Agency - Fiscal Division and the Department of Finance the data collected and compiled pursuant to

subparagraph 3. no later than 30 days after the due date of such data.

(4) The term "gross income," in the case of a resident individual, includes income from sources within and outside Alabama, including without limitation, the resident's proportionate share of any income arising from a Subchapter K entity, Alabama S corporation, or estate or trust, regardless of the geographic source of the income. The term gross income, in the case of a nonresident individual, includes only income from property owned or business transacted in Alabama. For purposes of this article, "proportionate share" shall be defined by reference to (i) the status of the individual owner as a partner or member of a Subchapter K entity, shareholder of an Alabama S corporation, or beneficiary of an estate or trust, and (ii) the allocable interest in that entity owned by the individual.

(b) The Department of Revenue may adopt rules to provide for the administration of this section."

Section 2. This act shall become effective on June 1, 2024.