

By: Fleming

To: Ways and Means

HOUSE BILL NO. 5

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 EXCLUDE OVERTIME COMPENSATION FROM THE DEFINITION OF "GROSS
3 INCOME" FOR PURPOSES OF THE STATE INCOME TAX LAW; AND FOR RELATED
4 PURPOSES.

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

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

8 27-7-15. (1) For the purposes of this article, except as
9 otherwise provided, the term "gross income" means and includes the
10 income of a taxpayer derived from salaries, wages, fees or
11 compensation for service, of whatever kind and in whatever form
12 paid, including income from governmental agencies and subdivisions
13 thereof; or from professions, vocations, trades, businesses,
14 commerce or sales, or renting or dealing in property, or
15 reacquired property; also from annuities, interest, rents,
16 dividends, securities, insurance premiums, reinsurance premiums,
17 considerations for supplemental insurance contracts, or the
18 transaction of any business carried on for gain or profit, or
19 gains, or profits, and income derived from any source whatever and
20 in whatever form paid. The amount of all such items of income
21 shall be included in the gross income for the taxable year in
22 which received by the taxpayer. The amount by which an eligible

23 employee's salary is reduced pursuant to a salary reduction
24 agreement authorized under Section 25-17-5 shall be excluded from
25 the term "gross income" within the meaning of this article.

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

29 (a) Dealers in property. Federal rules, regulations
30 and revenue procedures shall be followed with respect to
31 installment sales.

32 (b) Casual sales of property. Federal rules,
33 regulations and revenue procedures shall be followed with respect
34 to installment sales.

35 (i) The term "installment sale" means a
36 disposition of property where at least one (1) payment is to be
37 received after the close of the taxable year in which the
38 disposition occurs.

39 (ii) The term "installment method" means a method
40 under which the income recognized for any taxable year from the
41 disposition is that proportion of the payments received in that
42 year which the gross profit (realized or to be realized when
43 payment is completed) bears to the total contract price.

44 (c) Reserves of insurance companies. In the case of
45 insurance companies, any amounts in excess of the legally required
46 reserves shall be included as gross income.

47 (d) Affiliated companies or persons. As regards sales,
48 exchanges or payments for services from one to another of
49 affiliated companies or persons or under other circumstances where
50 the relation between the buyer and seller is such that gross
51 proceeds from the sale or the value of the exchange or the payment
52 for services are not indicative of the true value of the subject
53 matter of the sale, exchange or payment for services, the

54 commissioner shall prescribe uniform and equitable rules for
55 determining the true value of the gross income, gross sales,
56 exchanges or payment for services, or require consolidated returns
57 of affiliates.

58 (e) Alimony and separate maintenance payments. The
59 federal rules, regulations and revenue procedures in determining
60 the deductibility and taxability of alimony payments shall be
61 followed in this state.

62 (f) Reimbursement for expenses of moving. There shall
63 be included in gross income (as compensation for services) any
64 amount received or accrued, directly or indirectly, by an
65 individual as a payment for or reimbursement of expenses of moving
66 from one residence to another residence which is attributable to
67 employment or self-employment.

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

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

73 (a) The proceeds of life insurance policies and
74 contracts paid upon the death of the insured. However, the income
75 from the proceeds of such policies or contracts shall be included
76 in the gross income.

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

81 (c) The value of property acquired by gift, bequest,

82 devise or descent, but the income from such property shall be
83 included in the gross income.

84 (d) Interest upon the obligations of the United States
85 or its possessions, or securities issued under the provisions of
86 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
87 War Finance Corporation, or obligations of the State of
88 Mississippi or political subdivisions thereof.

89 (e) The amounts received through accident or health
90 insurance as compensation for personal injuries or sickness, plus
91 the amount of any damages received for such injuries or such
92 sickness or injuries, or through the War Risk Insurance Act, or
93 any law for the benefit or relief of injured or disabled members
94 of the military or naval forces of the United States.

95 (f) Income received by any religious denomination or by
96 any institution or trust for moral or mental improvements,
97 religious, Bible, tract, charitable, benevolent, fraternal,
98 missionary, hospital, infirmary, educational, scientific,
99 literary, library, patriotic, historical or cemetery purposes or
100 for two (2) or more of such purposes, if such income be used
101 exclusively for carrying out one or more of such purposes.

102 (g) Income received by a domestic corporation which is
103 "taxable in another state" as this term is defined in this
104 article, derived from business activity conducted outside this
105 state. Domestic corporations taxable both within and without the
106 state shall determine Mississippi income on the same basis as
107 provided for foreign corporations under the provisions of this
108 article.

109 (h) In case of insurance companies, there shall be

110 excluded from gross income such portion of actual premiums
111 received from an individual policyholder as is paid back or
112 credited to or treated as an abatement of premiums of such
113 policyholder within the taxable year.

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

118 (j) Amounts paid by the United States to a person as
119 added compensation for hazardous duty pay as a member of the Armed
120 Forces of the United States in a combat zone designated by
121 Executive Order of the President of the United States.

122 (k) Amounts received as retirement allowances,
123 pensions, annuities or optional retirement allowances paid under
124 the federal Social Security Act, the Railroad Retirement Act, the
125 Federal Civil Service Retirement Act, or any other retirement
126 system of the United States government, retirement allowances paid
127 under the Mississippi Public Employees' Retirement System,
128 Mississippi Highway Safety Patrol Retirement System or any other
129 retirement system of the State of Mississippi or any political
130 subdivision thereof. The exemption allowed under this paragraph
131 (k) shall be available to the spouse or other beneficiary at the
132 death of the primary retiree.

133 (l) Amounts received as retirement allowances,
134 pensions, annuities or optional retirement allowances paid by any
135 public or governmental retirement system not designated in
136 subsection (k) or any private retirement system or plan of which
137 the recipient was a member at any time during the period of his

138 employment. Amounts received as a distribution under a Roth
139 individual retirement account shall be treated in the same manner
140 as provided under the Internal Revenue Code of 1986, as amended.
141 The exemption allowed under this paragraph (l) shall be available
142 to the spouse or other beneficiary at the death of the primary
143 retiree.

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

149 (n) Compensation received for active service as a
150 member below the grade of commissioned officer and so much of the
151 compensation as does not exceed the aggregate sum of Five Hundred
152 Dollars (\$500.00) per month received for active service as a
153 commissioned officer in the Armed Forces of the United States for
154 any month during any part of which such members of the Armed
155 Forces (i) served in a combat zone as designated by Executive
156 Order of the President of the United States; or (ii) was
157 hospitalized as a result of wounds, disease or injury incurred
158 while serving in such combat zone.

159 (o) The proceeds received from federal and state
160 forestry incentives programs.

161 (p) The amount representing the difference between the
162 increase of gross income derived from sales for export outside the
163 United States as compared to the preceding tax year wherein gross
164 income from export sales was highest, and the net increase in
165 expenses attributable to such increased exports. In the absence

166 of direct accounting the ratio of net profits to total sales may
167 be applied to the increase in export sales. This item (p) shall
168 only apply to businesses located in this state engaging in the
169 international export of Mississippi goods and services. Such
170 goods or services shall have at least fifty percent (50%) of value
171 added at a location in Mississippi.

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

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

182 (s) Amounts paid by the Mississippi Soil and Water
183 Conservation Commission from the Mississippi Soil and Water
184 Cost-Share Program for the installation of water quality best
185 management practices.

186 (t) Dividends received by a holding corporation, as
187 defined in Section 27-13-1, from a subsidiary corporation, as
188 defined in Section 27-13-1.

189 (u) Amounts received as overtime compensation required
190 by the Fair Labor Standards Act of 1938 (29 USCS Section 201 et
191 seq.), as amended.

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

193 (a) Members of the Armed Forces. Gross income does not

194 include compensation received for active service as a member of
195 the Armed Forces of the United States for any month during any
196 part of which such member is in a missing status, as defined in
197 paragraph (d) of this subsection, during the Vietnam Conflict as a
198 result of such conflict.

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

203 (c) Period of conflict. For the purpose of this
204 subsection, the Vietnam Conflict began February 28, 1961, and ends
205 on the date designated by the President by Executive Order as the
206 date of the termination of combatant activities in Vietnam. For
207 the purpose of this subsection, an individual is in a missing
208 status as a result of the Vietnam Conflict if immediately before
209 such status began he was performing service in Vietnam or was
210 performing service in Southeast Asia in direct support of military
211 operations in Vietnam. "Southeast Asia" as used in this paragraph
212 is defined to include Cambodia, Laos, Thailand and waters adjacent
213 thereto.

214 (d) "Missing status" means the status of an employee or
215 member of the Armed Forces who is in active service and is
216 officially carried or determined to be absent in a status of (i)
217 missing; (ii) missing in action; (iii) interned in a foreign
218 country; (iv) captured, beleaguered or besieged by a hostile
219 force; or (v) detained in a foreign country against his will; but
220 does not include the status of an employee or member of the Armed
221 Forces for a period during which he is officially determined to be

222 absent from his post of duty without authority.

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

226 (f) "Employee" means one who is a citizen or national
227 of the United States or an alien admitted to the United States for
228 permanent residence and is a resident of the State of Mississippi
229 and is employed in or under a federal executive agency or
230 department of the Armed Forces.

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

235 (h) If refund or credit of any overpayment of tax for
236 any taxable year resulting from the application of subsection (5)
237 of this section is prevented by the operation of any law or rule
238 of law, such refund or credit of such overpayment of tax may,
239 nevertheless, be made or allowed if claim therefor is filed with
240 the State Tax Commission within three (3) years after the date of
241 the enactment of this subsection.

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

244 (6) A shareholder of an S corporation, as defined in Section
245 27-8-3(1)(g), shall take into account the income, loss, deduction
246 or credit of the S corporation only to the extent provided in
247 Section 27-8-7(2).

248 SECTION 2. Nothing in this act shall affect or defeat any
249 claim, assessment, appeal, suit, right or cause of action for

250 taxes due or accrued under the income tax laws before the date on
251 which this act becomes effective, whether such claims,
252 assessments, appeals, suits or actions have been begun before the
253 date on which this act becomes effective or are begun thereafter;
254 and the provisions of the income tax laws are expressly continued
255 in full force, effect and operation for the purpose of the
256 assessment, collection and enrollment of liens for any taxes due
257 or accrued and the execution of any warrant under such laws before
258 the date on which this act becomes effective, and for the
259 imposition of any penalties, forfeitures or claims for failure to
260 comply with such laws.

261 SECTION 3. This act shall take effect and be in force from
262 and after January 1, 2000.