

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 167

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 unless a transaction results in the shifting of  
32 income from inside the state to outside the state.

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

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

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60 is merged, liquidated, dissolved or withdrawn from this state,

61 then all deferred tax payments under this section shall  
62 immediately become due and payable.

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

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

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

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

92 (f) **Reimbursement for expenses of moving.** There shall  
93 be included in gross income (as compensation for services) any

94 amount received or accrued, directly or indirectly, by an  
95 individual as a payment for or reimbursement of expenses of moving  
96 from one residence to another residence which is attributable to  
97 employment or self-employment.

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

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

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

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

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

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

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

125 (f) Income received by any religious denomination or by  
126 any institution or trust for moral or mental improvements,

127 religious, Bible, tract, charitable, benevolent, fraternal,  
128 missionary, hospital, infirmary, educational, scientific,  
129 literary, library, patriotic, historical or cemetery purposes or  
130 for two (2) or more of such purposes, if such income be used  
131 exclusively for carrying out one or more of such purposes.

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

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

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

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

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

160 subdivision thereof. The exemption allowed under this paragraph  
161 (k) shall be available to the spouse or other beneficiary at the  
162 death of the primary retiree.

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

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

179 (n) Compensation received for active service as a  
180 member below the grade of commissioned officer and so much of the  
181 compensation as does not exceed the maximum enlisted amount  
182 received for active service as a commissioned officer in the Armed  
183 Forces of the United States for any month during any part of which  
184 such members of the Armed Forces (i) served in a combat zone as  
185 designated by Executive Order of the President of the United  
186 States or a qualified hazardous duty area as defined by federal  
187 law, or both; or (ii) was hospitalized as a result of wounds,  
188 disease or injury incurred while serving in such combat zone. For  
189 the purposes of this paragraph (n), the term "maximum enlisted  
190 amount" means and has the same definition as that term has in 26  
191 USCS 112.

192           (o) The proceeds received from federal and state  
193 forestry incentives programs.

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

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

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

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

219           (t) Dividends received by a holding corporation, as  
220 defined in Section 27-13-1, from a subsidiary corporation, as  
221 defined in Section 27-13-1.

222           (u) Interest, dividends, gains or income of any kind on  
223 any account in the Mississippi Affordable College Savings Trust  
224 Fund, as established in Sections 37-155-101 through 37-155-125, to

225 the extent that such amounts remain on deposit in the MACS Trust  
226 Fund or are withdrawn pursuant to a qualified withdrawal, as  
227 defined in Section 37-155-105.

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

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

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

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

245 (z) Amounts received as overtime compensation required  
246 by the Fair Labor Standards Act of 1938 (29 USCS Section 201 et  
247 seq.), as amended.

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

249 (a) **Members of the Armed Forces.** Gross income does not  
250 include compensation received for active service as a member of  
251 the Armed Forces of the United States for any month during any  
252 part of which such member is in a missing status, as defined in  
253 paragraph (d) of this subsection, during the Vietnam Conflict as a  
254 result of such conflict.

255 (b) **Civilian employees.** Gross income does not include  
256 compensation received for active service as an employee for any



257 month during any part of which such employee is in a missing  
258 status during the Vietnam Conflict as a result of such conflict.

259 (c) **Period of conflict.** For the purpose of this  
260 subsection, the Vietnam Conflict began February 28, 1961, and ends  
261 on the date designated by the President by Executive Order as the  
262 date of the termination of combatant activities in Vietnam. For  
263 the purpose of this subsection, an individual is in a missing  
264 status as a result of the Vietnam Conflict if immediately before  
265 such status began he was performing service in Vietnam or was  
266 performing service in Southeast Asia in direct support of military  
267 operations in Vietnam. "Southeast Asia," as used in this  
268 paragraph, is defined to include Cambodia, Laos, Thailand and  
269 waters adjacent thereto.

270 (d) "Missing status" means the status of an employee or  
271 member of the Armed Forces who is in active service and is  
272 officially carried or determined to be absent in a status of (i)  
273 missing; (ii) missing in action; (iii) interned in a foreign  
274 country; (iv) captured, beleaguered or besieged by a hostile  
275 force; or (v) detained in a foreign country against his will; but  
276 does not include the status of an employee or member of the Armed  
277 Forces for a period during which he is officially determined to be  
278 absent from his post of duty without authority.

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

282 (f) "Employee" means one who is a citizen or national  
283 of the United States or an alien admitted to the United States for  
284 permanent residence and is a resident of the State of Mississippi  
285 and is employed in or under a federal executive agency or  
286 department of the Armed Forces.

287 (g) "Compensation" means (i) basic pay; (ii) special  
288 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)

289 basic allowance for subsistence; and (vi) station per diem  
290 allowances for not more than ninety (90) days.

291 (h) If refund or credit of any overpayment of tax for  
292 any taxable year resulting from the application of subsection (5)  
293 of this section is prevented by the operation of any law or rule  
294 of law, such refund or credit of such overpayment of tax may,  
295 nevertheless, be made or allowed if claim therefor is filed with  
296 the State Tax Commission within three (3) years after the date of  
297 the enactment of this subsection.

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

300 (6) A shareholder of an S corporation, as defined in Section  
301 27-8-3(1)(g), shall take into account the income, loss, deduction  
302 or credit of the S corporation only to the extent provided in  
303 Section 27-8-7(2).

304 **SECTION 2.** Nothing in this act shall affect or defeat any  
305 claim, assessment, appeal, suit, right or cause of action for  
306 taxes due or accrued under the income tax laws before the date on  
307 which this act becomes effective, whether such claims,  
308 assessments, appeals, suits or actions have been begun before the  
309 date on which this act becomes effective or are begun thereafter;  
310 and the provisions of the income tax laws are expressly continued  
311 in full force, effect and operation for the purpose of the  
312 assessment, collection and enrollment of liens for any taxes due  
313 or accrued and the execution of any warrant under such laws before  
314 the date on which this act becomes effective, and for the  
315 imposition of any penalties, forfeitures or claims for failure to  
316 comply with such laws.

317 **SECTION 3.** This act shall take effect and be in force from  
318 and after January 1, 2005.