

By: Representatives Dedeaux, Bondurant

To: Public Health and Human Services

HOUSE BILL NO. 1452

1 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF HEALTH ACCESS  
2 ACCOUNTS IN THE STATE OF MISSISSIPPI; TO DEFINE CERTAIN TERMS; TO  
3 PROVIDE FOR THE ADMINISTRATION OF THOSE ACCOUNTS; TO AMEND SECTION  
4 27-7-17, MISSISSIPPI CODE OF 1972, TO ALLOW ELIGIBLE EMPLOYERS TO  
5 DEDUCT CONTRIBUTIONS TO A HEALTH ACCESS ACCOUNT FROM INCOME TAXES;  
6 TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO EXCLUDE  
7 FROM AN ELIGIBLE EMPLOYEE'S GROSS INCOME EMPLOYER CONTRIBUTIONS TO  
8 A HEALTH ACCESS ACCOUNT; TO AMEND SECTION 71-9-3, MISSISSIPPI CODE  
9 OF 1972, TO LOWER THE MINIMUM DEDUCTIBLE FOR INSURANCE COVERAGE TO  
10 MEDICAL SAVINGS ACCOUNT HOLDERS TO \$1,000.00; AND FOR RELATED  
11 PURPOSES.

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

13 **SECTION 1.** This act shall be known as the Health Access  
14 Account Act of 2005.

15 **SECTION 2.** The purpose of this act is to provide a means by  
16 which employers and lower income employees may jointly participate  
17 in the funding of health care service for those lower income  
18 persons, thereby assisting them in becoming independent of public  
19 medical assistance programs and uncompensated care.

20 **SECTION 3.** For purposes of this act, the following terms  
21 shall have the meanings ascribed to them in this section:

22 (a) "Health access account" means an account managed by  
23 an administrator created by an eligible employer for the benefit  
24 of an eligible employee.

25 (b) "Eligible employee" means:

26 (i) Any person who is employed for more than  
27 twenty (20) hours per week, who is compensated on an hourly basis  
28 per week, whose annual compensation is less than one hundred fifty  
29 percent (150%) of the federal poverty level for a family of two  
30 (2), and who has been employed in his job for three (3)  
31 consecutive months; or

32 (ii) Any salaried employee or self-employed person  
33 whose annual compensation is less than one hundred fifty percent  
34 (150%) of the federal poverty level for a family of two (2), who  
35 has been employed in his job for three (3) consecutive months.

36 (c) "Eligible employer" means any employer who employs  
37 fewer than fifty (50) employees.

38 (d) "Eligible expenses" means any medical expenses of  
39 an eligible employee, his spouse or other dependents. These  
40 expenses shall be limited to costs associated with visits to  
41 physicians, dentists, optometrists, physical therapists,  
42 chiropractors, hospitals, clinics, prescription drugs and premium  
43 payments for health insurance.

44 (e) "Administrator" means any person, firm,  
45 corporation, partnership or other entity with which an eligible  
46 employer enters into a contract to administer a health access  
47 account program.

48 **SECTION 4.** (1) Any eligible employer may establish a health  
49 access program for eligible employees by complying with the  
50 requirements of this act.

51 (2) Health access accounts shall include monthly  
52 contributions from eligible employers and may include  
53 contributions from eligible employees that may be expended for the  
54 eligible expenses. However, any eligible employee who is salaried  
55 as defined in paragraph (b)(ii) of Section 3 of this act shall be  
56 eligible to contribute more than ten percent (10%) of his annual  
57 income to the account. No eligible employer shall be limited in  
58 the amount that he or she may contribute to those accounts, but  
59 shall insure that each eligible employee receives an equal amount  
60 for each hour worked each month. Employers shall not be required  
61 to provide any other form of health care insurance coverage for  
62 those employees.

63 (3) Each eligible employer choosing to establish health  
64 access accounts for employees shall contract with an administrator

65 to receive and disburse funds in accordance with the requirements  
66 of this act. To be eligible to serve as an administrator, a  
67 person, firm, corporation, partnership or other entity, domestic  
68 or foreign, must be authorized to do business in Mississippi or a  
69 health insurer authorized to do business in the State of  
70 Mississippi.

71 (4) An administrator shall be responsible for collecting and  
72 disbursing funds to eligible employees, and shall have the  
73 authority to establish criteria for documenting eligible expenses,  
74 and rules for administering those accounts. Administrators shall  
75 pay directly to eligible employees funds from accounts to  
76 reimburse them for their eligible expenses, or may establish other  
77 methods for paying providers. Only eligible expenses shall be  
78 reimbursed. Administrators may contract with eligible employers  
79 for reasonable fees necessary to administer accounts.

80 (5) Eligible employees may make contributions to those  
81 accounts in an amount that they deem appropriate, and shall retain  
82 rights to any balances in their accounts for so long as the  
83 eligible employer who creates the account employs them. Eligible  
84 employees shall have no rights to any interest earned on their  
85 accounts.

86 (6) Following termination of employment, an eligible  
87 employee may continue to draw down on his account balances until  
88 they are exhausted, but no new contributions may be made to the  
89 account.

90 (7) If an eligible employee ceases to be eligible in any  
91 year because of an increase in income above the level established  
92 in Section 3 of this act, the eligible employee may continue to  
93 draw on any amounts already deposited to the account until the  
94 balance has been exhausted.

95 **SECTION 5.** Section 27-7-17, Mississippi Code of 1972, is  
96 amended as follows:

97           27-7-17. In computing taxable income, there shall be allowed  
98 as deductions:

99           (1) **Business deductions.**

100           (a) **Business expenses.** All the ordinary and necessary  
101 expenses paid or incurred during the taxable year in carrying on  
102 any trade or business, including a reasonable allowance for  
103 salaries or other compensation for personal services actually  
104 rendered; nonreimbursable traveling expenses incident to current  
105 employment, including a reasonable amount expended for meals and  
106 lodging while away from home in the pursuit of a trade or  
107 business; and rentals or other payments required to be made as a  
108 condition of the continued use or possession, for purposes of the  
109 trade or business of property to which the taxpayer has not taken  
110 or is not taking title or in which he had no equity. Expense  
111 incurred in connection with earning and distributing nontaxable  
112 income is not an allowable deduction. Limitations on  
113 entertainment expenses shall conform to the provisions of the  
114 Internal Revenue Code of 1986.

115           (b) **Interest.** All interest paid or accrued during the  
116 taxable year on business indebtedness, except interest upon the  
117 indebtedness for the purchase of tax-free bonds, or any stocks,  
118 the dividends from which are nontaxable under the provisions of  
119 this article; provided, however, in the case of securities  
120 dealers, interest payments or accruals on loans, the proceeds of  
121 which are used to purchase tax-exempt securities, shall be  
122 deductible if income from otherwise tax-free securities is  
123 reported as income. Investment interest expense shall be limited  
124 to investment income. Interest expense incurred for the purchase  
125 of treasury stock, to pay dividends, or incurred as a result of an  
126 undercapitalized affiliated corporation may not be deducted unless  
127 an ordinary and necessary business purpose can be established to  
128 the satisfaction of the commissioner. For the purposes of this  
129 paragraph, the phrase "interest upon the indebtedness for the

130 purchase of tax-free bonds" applies only to the indebtedness  
131 incurred for the purpose of directly purchasing tax-free bonds and  
132 does not apply to any other indebtedness incurred in the regular  
133 course of the taxpayer's business. Any corporation, association,  
134 organization or other entity taxable under Section 27-7-23(c)  
135 shall allocate interest expense as provided in Section  
136 27-7-23(c)(3)(I).

137 (c) **Taxes.** Taxes paid or accrued within the taxable  
138 year, except state and federal income taxes, excise taxes based on  
139 or measured by net income, estate and inheritance taxes, gift  
140 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
141 use taxes unless incurred as an item of expense in a trade or  
142 business or in the production of taxable income. In the case of  
143 an individual, taxes permitted as an itemized deduction under the  
144 provisions of subsection (3)(a) of this section are to be claimed  
145 thereunder.

146 (d) **Business losses.**

147 (i) Losses sustained during the taxable year not  
148 compensated for by insurance or otherwise, if incurred in trade or  
149 business, or nonbusiness transactions entered into for profit.

150 (ii) Limitations on losses from passive activities  
151 and rental real estate shall conform to the provisions of the  
152 Internal Revenue Code of 1986.

153 (e) **Bad debts.** Losses from debts ascertained to be  
154 worthless and charged off during the taxable year, if sustained in  
155 the conduct of the regular trade or business of the taxpayer;  
156 provided, that such losses shall be allowed only when the taxpayer  
157 has reported as income, on the accrual basis, the amount of such  
158 debt or account.

159 (f) **Depreciation.** A reasonable allowance for  
160 exhaustion, wear and tear of property used in the trade or  
161 business, or rental property, and depreciation upon buildings  
162 based upon their reasonable value as of March 16, 1912, if

163 acquired prior thereto, and upon cost if acquired subsequent to  
164 that date.

165 (g) **Depletion.** In the case of mines, oil and gas  
166 wells, other natural deposits and timber, a reasonable allowance  
167 for depletion and for depreciation of improvements, based upon  
168 cost, including cost of development, not otherwise deducted, or  
169 fair market value as of March 16, 1912, if acquired prior to that  
170 date, such allowance to be made upon regulations prescribed by the  
171 commissioner, with the approval of the Governor.

172 (h) **Contributions or gifts.** Except as otherwise  
173 provided in subsection (3)(a) of this section for individuals,  
174 contributions or gifts made by corporations within the taxable  
175 year to corporations, organizations, associations or institutions,  
176 including Community Chest funds, foundations and trusts created  
177 solely and exclusively for religious, charitable, scientific or  
178 educational purposes, or for the prevention of cruelty to children  
179 or animals, no part of the net earnings of which inure to the  
180 benefit of any private stockholder or individual. This deduction  
181 shall be allowed in an amount not to exceed twenty percent (20%)  
182 of the net income. Such contributions or gifts shall be allowable  
183 as deductions only if verified under rules and regulations  
184 prescribed by the commissioner, with the approval of the Governor.  
185 Contributions made in any form other than cash shall be allowed as  
186 a deduction, subject to the limitations herein provided, in an  
187 amount equal to the actual market value of the contributions at  
188 the time the contribution is actually made and consummated.

189 (i) **Reserve funds - insurance companies.** In the case  
190 of insurance companies the net additions required by law to be  
191 made within the taxable year to reserve funds when such reserve  
192 funds are maintained for the purpose of liquidating policies at  
193 maturity.

194           (j) **Annuity income.** The sums, other than dividends,  
195 paid within the taxpayer year on policy or annuity contracts when  
196 such income has been included in gross income.

197           (k) **Contributions to employee pension plans.**

198 Contributions made by an employer to a plan or a trust forming  
199 part of a pension plan, stock bonus plan, disability or  
200 death-benefit plan, or profit-sharing plan of such employer for  
201 the exclusive benefit of some or all of his, their, or its  
202 employees, or their beneficiaries, shall be deductible from his,  
203 their, or its income only to the extent that, and for the taxable  
204 year in which, the contribution is deductible for federal income  
205 tax purposes under the Internal Revenue Code of 1986 and any other  
206 provisions of similar purport in the Internal Revenue Laws of the  
207 United States, and the rules, regulations, rulings and  
208 determinations promulgated thereunder, provided that:

209                   (i) The plan or trust be irrevocable.

210                   (ii) The plan or trust constitute a part of a  
211 pension plan, stock bonus plan, disability or death-benefit plan,  
212 or profit-sharing plan for the exclusive benefit of some or all of  
213 the employer's employees and/or officers, or their beneficiaries,  
214 for the purpose of distributing the corpus and income of the plan  
215 or trust to such employees and/or officers, or their  
216 beneficiaries.

217                   (iii) No part of the corpus or income of the plan  
218 or trust can be used for purposes other than for the exclusive  
219 benefit of employees and/or officers, or their beneficiaries.

220 Contributions to all plans or to all trusts of real or  
221 personal property (or real and personal property combined) or to  
222 insured plans created under a retirement plan for which provision  
223 has been made under the laws of the United States of America,  
224 making such contributions deductible from income for federal  
225 income tax purposes, shall be deductible only to the same extent  
226 under the Income Tax Laws of the State of Mississippi.

227           (1) **Net operating loss carrybacks and carryovers.** A  
228 net operating loss for any taxable year ending after December 31,  
229 1993, and taxable years thereafter, shall be a net operating loss  
230 carryback to each of the three (3) taxable years preceding the  
231 taxable year of the loss. If the net operating loss for any  
232 taxable year is not exhausted by carrybacks to the three (3)  
233 taxable years preceding the taxable year of the loss, then there  
234 shall be a net operating loss carryover to each of the fifteen  
235 (15) taxable years following the taxable year of the loss  
236 beginning with any taxable year after December 31, 1991.

237           For any taxable year ending after December 31, 1997, the  
238 period for net operating loss carrybacks and net operating loss  
239 carryovers shall be the same as those established by the Internal  
240 Revenue Code and the rules, regulations, rulings and  
241 determinations promulgated thereunder as in effect at the taxable  
242 year end or on December 31, 2000, whichever is earlier.

243           A net operating loss for any taxable year ending after  
244 December 31, 2001, and taxable years thereafter, shall be a net  
245 operating loss carryback to each of the two (2) taxable years  
246 preceding the taxable year of the loss. If the net operating loss  
247 for any taxable year is not exhausted by carrybacks to the two (2)  
248 taxable years preceding the taxable year of the loss, then there  
249 shall be a net operating loss carryover to each of the twenty (20)  
250 taxable years following the taxable year of the loss beginning  
251 with any taxable year after the taxable year of the loss.

252           The term "net operating loss," for the purposes of this  
253 paragraph, shall be the excess of the deductions allowed over the  
254 gross income; provided, however, the following deductions shall  
255 not be allowed in computing same:

256                   (i) No net operating loss deduction shall be  
257 allowed.

258                   (ii) No personal exemption deduction shall be  
259 allowed.



260 (iii) Allowable deductions which are not  
261 attributable to taxpayer's trade or business shall be allowed only  
262 to the extent of the amount of gross income not derived from such  
263 trade or business.

264 Any taxpayer entitled to a carryback period as provided by  
265 this paragraph may elect to relinquish the entire carryback period  
266 with respect to a net operating loss for any taxable year ending  
267 after December 31, 1991. The election shall be made in the manner  
268 prescribed by the State Tax Commission and shall be made by the  
269 due date, including extensions of time, for filing the taxpayer's  
270 return for the taxable year of the net operating loss for which  
271 the election is to be in effect. The election, once made for any  
272 taxable year, shall be irrevocable for that taxable year.

273 (m) **Amortization of pollution or environmental control**  
274 **facilities.** Allowance of deduction. Every taxpayer, at his  
275 election, shall be entitled to a deduction for pollution or  
276 environmental control facilities to the same extent as that  
277 allowed under the Internal Revenue Code and the rules,  
278 regulations, rulings and determinations promulgated thereunder.

279 (n) **Dividend distributions - real estate investment**  
280 **trusts.** "Real estate investment trust" (hereinafter referred to  
281 as REIT) shall have the meaning ascribed to such term in Section  
282 856 of the federal Internal Revenue Code of 1986, as amended. A  
283 REIT is allowed a dividend distributed deduction if the dividend  
284 distributions meet the requirements of Section 857 or are  
285 otherwise deductible under Section 858 or 860, federal Internal  
286 Revenue Code of 1986, as amended. In addition:

287 (i) A dividend distributed deduction shall only be  
288 allowed for dividends paid by a publicly traded REIT. A qualified  
289 REIT subsidiary shall be allowed a dividend distributed deduction  
290 if its owner is a publicly traded REIT.

291 (ii) Income generated from real estate contributed  
292 or sold to a REIT by a shareholder or related party shall not give

293 rise to a dividend distributed deduction, unless the shareholder  
294 or related party would have received the dividend distributed  
295 deduction under this chapter.

296 (iii) A holding corporation receiving a dividend  
297 from a REIT shall not be allowed the deduction in Section  
298 27-7-15(4)(t).

299 (iv) Any REIT not allowed the dividend distributed  
300 deduction in the federal Internal Revenue Code of 1986, as  
301 amended, shall not be allowed a dividend distributed deduction  
302 under this chapter.

303 The commissioner is authorized to promulgate rules and  
304 regulations consistent with the provisions in Section 269 of the  
305 federal Internal Revenue Code of 1986, as amended, so as to  
306 prevent the evasion or avoidance of state income tax.

307 (o) **Contributions to college savings trust fund**  
308 **accounts.** Contributions or payments to a Mississippi Affordable  
309 College Savings Program account are deductible as provided under  
310 Section 37-155-113. Payments made under a prepaid tuition  
311 contract entered into under the Mississippi Prepaid Affordable  
312 College Tuition Program are deductible as provided under Section  
313 37-155-17.

314 (p) **Employer contributions to health access accounts.**  
315 Eligible employers as defined in Section 3 of this act may deduct  
316 all contributions made to health access accounts for the benefit  
317 of eligible employees.

318 (2) **Restrictions on the deductibility of certain intangible**  
319 **expenses and interest expenses with a related member.**

320 (a) As used in this subsection (2):

321 (i) "Intangible expenses and costs" include:

322 1. Expenses, losses and costs for, related  
323 to, or in connection directly or indirectly with the direct or  
324 indirect acquisition, use, maintenance or management, ownership,  
325 sale, exchange or any other disposition of intangible property to

326 the extent such amounts are allowed as deductions or costs in  
327 determining taxable income under this chapter;

328                   2. Expenses or losses related to or incurred  
329 in connection directly or indirectly with factoring transactions  
330 or discounting transactions;

331                   3. Royalty, patent, technical and copyright  
332 fees;

333                   4. Licensing fees; and

334                   5. Other similar expenses and costs.

335                   (ii) "Intangible property" means patents, patent  
336 applications, trade names, trademarks, service marks, copyrights  
337 and similar types of intangible assets.

338                   (iii) "Interest expenses and cost" means amounts  
339 directly or indirectly allowed as deductions for purposes of  
340 determining taxable income under this chapter to the extent such  
341 interest expenses and costs are directly or indirectly for,  
342 related to, or in connection with the direct or indirect  
343 acquisition, maintenance, management, ownership, sale, exchange or  
344 disposition of intangible property.

345                   (iv) "Related member" means an entity or person  
346 that, with respect to the taxpayer during all or any portion of  
347 the taxable year, is a related entity, a component member as  
348 defined in the Internal Revenue Code, or is an entity or a person  
349 to or from whom there is attribution of stock ownership in  
350 accordance with Section 1563(e) of the Internal Revenue Code.

351                   (v) "Related entity" means:

352                   1. A stockholder who is an individual or a  
353 member of the stockholder's family, as defined in regulations  
354 prescribed by the commissioner, if the stockholder and the members  
355 of the stockholder's family own, directly, indirectly,  
356 beneficially or constructively, in the aggregate, at least fifty  
357 percent (50%) of the value of the taxpayer's outstanding stock;

358                   2. A stockholder, or a stockholder's  
359 partnership, limited liability company, estate, trust or  
360 corporation, if the stockholder and the stockholder's  
361 partnerships, limited liability companies, estates, trusts and  
362 corporations own, directly, indirectly, beneficially or  
363 constructively, in the aggregate, at least fifty percent (50%) of  
364 the value of the taxpayer's outstanding stock;

365                   3. A corporation, or a party related to the  
366 corporation in a manner that would require an attribution of stock  
367 from the corporation to the party or from the party to the  
368 corporation, if the taxpayer owns, directly, indirectly,  
369 beneficially or constructively, at least fifty percent (50%) of  
370 the value of the corporation's outstanding stock under regulation  
371 prescribed by the commissioner;

372                   4. Any entity or person which would be a  
373 related member under this section if the taxpayer were considered  
374 a corporation for purposes of this section.

375                   (b) In computing net income, a taxpayer shall add back  
376 otherwise deductible interest expenses and costs and intangible  
377 expenses and costs directly or indirectly paid, accrued to or  
378 incurred, in connection directly or indirectly with one or more  
379 direct or indirect transactions with one or more related members.

380                   (c) The adjustments required by this subsection shall  
381 not apply to such portion of interest expenses and costs and  
382 intangible expenses and costs that the taxpayer can establish  
383 meets one (1) of the following:

384                   (i) The related member directly or indirectly  
385 paid, accrued or incurred such portion to a person during the same  
386 income year who is not a related member; or

387                   (ii) The transaction giving rise to the interest  
388 expenses and costs or intangible expenses and costs between the  
389 taxpayer and related member was done primarily for a valid  
390 business purpose other than the avoidance of taxes, and the

391 related member is not primarily engaged in the acquisition, use,  
392 maintenance or management, ownership, sale, exchange or any other  
393 disposition of intangible property.

394 (d) Nothing in this subsection shall require a taxpayer  
395 to add to its net income more than once any amount of interest  
396 expenses and costs or intangible expenses and costs that the  
397 taxpayer pays, accrues or incurs to a related member.

398 (e) The commissioner may prescribe such regulations as  
399 necessary or appropriate to carry out the purposes of this  
400 subsection, including, but not limited to, clarifying definitions  
401 of terms, rules of stock attribution, factoring and discount  
402 transactions.

403 (3) **Individual nonbusiness deductions.**

404 (a) The amount allowable for individual nonbusiness  
405 itemized deductions for federal income tax purposes where the  
406 individual is eligible to elect, for the taxable year, to itemize  
407 deductions on his federal return except the following:

408 (i) The deduction for state income taxes paid;

409 (ii) The deduction for gaming losses from gaming  
410 establishments;

411 (iii) The deduction for taxes collected by  
412 licensed gaming establishments pursuant to Section 27-7-901;

413 (iv) The deduction for taxes collected by gaming  
414 establishments pursuant to Section 27-7-903.

415 (b) In lieu of the individual nonbusiness itemized  
416 deductions authorized in paragraph (a), for all purposes other  
417 than ordinary and necessary expenses paid or incurred during the  
418 taxable year in carrying on any trade or business, an optional  
419 standard deduction of:

420 (i) Three Thousand Four Hundred Dollars

421 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
422 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
423 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter

424 in the case of married individuals filing a joint or combined  
425 return;

426 (ii) One Thousand Seven Hundred Dollars  
427 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
428 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
429 Three Hundred Dollars (\$2,300.00) for each calendar year  
430 thereafter in the case of married individuals filing separate  
431 returns;

432 (iii) Three Thousand Four Hundred Dollars  
433 (\$3,400.00) in the case of a head of family; or

434 (iv) Two Thousand Three Hundred Dollars  
435 (\$2,300.00) in the case of an individual who is not married.

436 In the case of a husband and wife living together, having  
437 separate incomes, and filing combined returns, the standard  
438 deduction authorized may be divided in any manner they choose. In  
439 the case of separate returns by a husband and wife, the standard  
440 deduction shall not be allowed to either if the taxable income of  
441 one of the spouses is determined without regard to the standard  
442 deduction.

443 (c) A nonresident individual shall be allowed the same  
444 individual nonbusiness deductions as are authorized for resident  
445 individuals in paragraph (a) or (b) of this subsection; however,  
446 the nonresident individual is entitled only to that proportion of  
447 the individual nonbusiness deductions as his net income from  
448 sources within the State of Mississippi bears to his total or  
449 entire net income from all sources.

450 (4) Nothing in this section shall permit the same item to be  
451 deducted more than once, either in fact or in effect.

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

454 27-7-15. (1) For the purposes of this article, except as  
455 otherwise provided, the term "gross income" means and includes the  
456 income of a taxpayer derived from salaries, wages, fees or

457 compensation for service, of whatever kind and in whatever form  
458 paid, including income from governmental agencies and subdivisions  
459 thereof; or from professions, vocations, trades, businesses,  
460 commerce or sales, or renting or dealing in property, or  
461 reacquired property; also from annuities, interest, rents,  
462 dividends, securities, insurance premiums, reinsurance premiums,  
463 considerations for supplemental insurance contracts, or the  
464 transaction of any business carried on for gain or profit, or  
465 gains, or profits, and income derived from any source whatever and  
466 in whatever form paid. The amount of all such items of income  
467 shall be included in the gross income for the taxable year in  
468 which received by the taxpayer. The amount by which an eligible  
469 employee's salary is reduced pursuant to a salary reduction  
470 agreement authorized under Section 25-17-5 shall be excluded from  
471 the term "gross income" within the meaning of this article.

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

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

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

480 (i) Prior to January 1, 2001, federal rules,  
481 regulations and revenue procedures shall be followed with respect  
482 to installment sales except they shall be applied and administered  
483 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
484 106th Congress, had not been enacted. This provision will  
485 generally affect taxpayers, reporting on the accrual method of  
486 accounting, entering into installment note agreements on or after  
487 December 17, 1999. Any gain or profit resulting from the casual  
488 sale of property will be recognized in the year of sale.

489                   (ii) From and after January 1, 2001, federal  
490 rules, regulations and revenue procedures shall be followed with  
491 respect to installment sales except as provided in this  
492 subparagraph (ii). Gain or profit from the casual sale of  
493 property shall be recognized in the year of sale. When a taxpayer  
494 recognizes gain on the casual sale of property in which the gain  
495 is deferred for federal income tax purposes, a taxpayer may elect  
496 to defer the payment of tax resulting from the gain as allowed and  
497 to the extent provided under regulations prescribed by the  
498 commissioner. If the payment of the tax is made on a deferred  
499 basis, the tax shall be computed based on the applicable rate for  
500 the income reported in the year the payment is made. Except as  
501 otherwise provided in subparagraph (iii) of this paragraph (b),  
502 deferring the payment of the tax shall not affect the liability  
503 for the tax. If at any time the installment note is sold,  
504 contributed, transferred or disposed of in any manner and for any  
505 purpose by the original note holder, or the original note holder  
506 is merged, liquidated, dissolved or withdrawn from this state,  
507 then all deferred tax payments under this section shall  
508 immediately become due and payable.

509                   (iii) If the selling price of the property is  
510 reduced by any alteration in the terms of an installment note,  
511 including default by the purchaser, the gain to be recognized is  
512 recomputed based on the adjusted selling price in the same manner  
513 as for federal income tax purposes. The tax on this amount, less  
514 the previously paid tax on the recognized gain, is payable over  
515 the period of the remaining installments. If the tax on the  
516 previously recognized gain has been paid in full to this state,  
517 the return on which the payment was made may be amended for this  
518 purpose only. The statute of limitations in Section 27-7-49 shall  
519 not bar an amended return for this purpose.



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

523           (d) **Affiliated companies or persons.** As regards sales,  
524 exchanges or payments for services from one to another of  
525 affiliated companies or persons or under other circumstances where  
526 the relation between the buyer and seller is such that gross  
527 proceeds from the sale or the value of the exchange or the payment  
528 for services are not indicative of the true value of the subject  
529 matter of the sale, exchange or payment for services, the  
530 commissioner shall prescribe uniform and equitable rules for  
531 determining the true value of the gross income, gross sales,  
532 exchanges or payment for services, or require consolidated returns  
533 of affiliates.

534           (e) **Alimony and separate maintenance payments.** The  
535 federal rules, regulations and revenue procedures in determining  
536 the deductibility and taxability of alimony payments shall be  
537 followed in this state.

538           (f) **Reimbursement for expenses of moving.** There shall  
539 be included in gross income (as compensation for services) any  
540 amount received or accrued, directly or indirectly, by an  
541 individual as a payment for or reimbursement of expenses of moving  
542 from one residence to another residence which is attributable to  
543 employment or self-employment.

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

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

549           (a) The proceeds of life insurance policies and  
550 contracts paid upon the death of the insured. However, the income  
551 from the proceeds of such policies or contracts shall be included  
552 in the gross income.

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

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

560           (d) Interest upon the obligations of the United States  
561 or its possessions, or securities issued under the provisions of  
562 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the  
563 War Finance Corporation, or obligations of the State of  
564 Mississippi or political subdivisions thereof.

565           (e) The amounts received through accident or health  
566 insurance as compensation for personal injuries or sickness, plus  
567 the amount of any damages received for such injuries or such  
568 sickness or injuries, or through the War Risk Insurance Act, or  
569 any law for the benefit or relief of injured or disabled members  
570 of the military or naval forces of the United States.

571           (f) Income received by any religious denomination or by  
572 any institution or trust for moral or mental improvements,  
573 religious, Bible, tract, charitable, benevolent, fraternal,  
574 missionary, hospital, infirmary, educational, scientific,  
575 literary, library, patriotic, historical or cemetery purposes or  
576 for two (2) or more of such purposes, if such income be used  
577 exclusively for carrying out one or more of such purposes.

578           (g) Income received by a domestic corporation which is  
579 "taxable in another state" as this term is defined in this  
580 article, derived from business activity conducted outside this  
581 state. Domestic corporations taxable both within and without the  
582 state shall determine Mississippi income on the same basis as  
583 provided for foreign corporations under the provisions of this  
584 article.

585           (h) In case of insurance companies, there shall be  
586 excluded from gross income such portion of actual premiums  
587 received from an individual policyholder as is paid back or  
588 credited to or treated as an abatement of premiums of such  
589 policyholder within the taxable year.

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

594           (j) Amounts paid by the United States to a person as  
595 added compensation for hazardous duty pay as a member of the Armed  
596 Forces of the United States in a combat zone designated by  
597 Executive Order of the President of the United States.

598           (k) Amounts received as retirement allowances,  
599 pensions, annuities or optional retirement allowances paid under  
600 the federal Social Security Act, the Railroad Retirement Act, the  
601 Federal Civil Service Retirement Act, or any other retirement  
602 system of the United States government, retirement allowances paid  
603 under the Mississippi Public Employees' Retirement System,  
604 Mississippi Highway Safety Patrol Retirement System or any other  
605 retirement system of the State of Mississippi or any political  
606 subdivision thereof. The exemption allowed under this paragraph  
607 (k) shall be available to the spouse or other beneficiary at the  
608 death of the primary retiree.

609           (l) Amounts received as retirement allowances,  
610 pensions, annuities or optional retirement allowances paid by any  
611 public or governmental retirement system not designated in  
612 paragraph (k) or any private retirement system or plan of which  
613 the recipient was a member at any time during the period of his  
614 employment. Amounts received as a distribution under a Roth  
615 Individual Retirement Account shall be treated in the same manner  
616 as provided under the Internal Revenue Code of 1986, as amended.  
617 The exemption allowed under this paragraph (l) shall be available

618 to the spouse or other beneficiary at the death of the primary  
619 retiree.

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

625 (n) Compensation received for active service as a  
626 member below the grade of commissioned officer and so much of the  
627 compensation as does not exceed the maximum enlisted amount  
628 received for active service as a commissioned officer in the Armed  
629 Forces of the United States for any month during any part of which  
630 such members of the Armed Forces (i) served in a combat zone as  
631 designated by Executive Order of the President of the United  
632 States or a qualified hazardous duty area as defined by federal  
633 law, or both; or (ii) was hospitalized as a result of wounds,  
634 disease or injury incurred while serving in such combat zone. For  
635 the purposes of this paragraph (n), the term "maximum enlisted  
636 amount" means and has the same definition as that term has in 26  
637 USCS 112.

638 (o) The proceeds received from federal and state  
639 forestry incentives programs.

640 (p) The amount representing the difference between the  
641 increase of gross income derived from sales for export outside the  
642 United States as compared to the preceding tax year wherein gross  
643 income from export sales was highest, and the net increase in  
644 expenses attributable to such increased exports. In the absence  
645 of direct accounting the ratio of net profits to total sales may  
646 be applied to the increase in export sales. This paragraph (p)  
647 shall only apply to businesses located in this state engaging in  
648 the international export of Mississippi goods and services. Such  
649 goods or services shall have at least fifty percent (50%) of value  
650 added at a location in Mississippi.

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

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

661           (s) Amounts paid by the Mississippi Soil and Water  
662 Conservation Commission from the Mississippi Soil and Water  
663 Cost-Share Program for the installation of water quality best  
664 management practices.

665           (t) Dividends received by a holding corporation, as  
666 defined in Section 27-13-1, from a subsidiary corporation, as  
667 defined in Section 27-13-1.

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

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

677           (w) Income resulting from transactions with a related  
678 member where the related member subject to tax under this chapter  
679 was required to, and did in fact, add back the expense of such  
680 transactions as required by Section 27-7-17(2). Under no  
681 circumstances may the exclusion from income exceed the deduction  
682 add-back of the related member, nor shall the exclusion apply to  
683 any income otherwise excluded under this chapter.

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

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

691 (z) Employer contributions made to an eligible  
692 employee's health access account established under Section 1  
693 through 4 of this act shall be excludable from the employee's  
694 gross income.

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

696 (a) **Members of the Armed Forces.** Gross income does not  
697 include compensation received for active service as a member of  
698 the Armed Forces of the United States for any month during any  
699 part of which such member is in a missing status, as defined in  
700 paragraph (d) of this subsection, during the Vietnam Conflict as a  
701 result of such conflict.

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

706 (c) **Period of conflict.** For the purpose of this  
707 subsection, the Vietnam Conflict began February 28, 1961, and ends  
708 on the date designated by the President by Executive Order as the  
709 date of the termination of combatant activities in Vietnam. For  
710 the purpose of this subsection, an individual is in a missing  
711 status as a result of the Vietnam Conflict if immediately before  
712 such status began he was performing service in Vietnam or was  
713 performing service in Southeast Asia in direct support of military  
714 operations in Vietnam. "Southeast Asia," as used in this  
715 paragraph, is defined to include Cambodia, Laos, Thailand and  
716 waters adjacent thereto.

717           (d) "Missing status" means the status of an employee or  
718 member of the Armed Forces who is in active service and is  
719 officially carried or determined to be absent in a status of (i)  
720 missing; (ii) missing in action; (iii) interned in a foreign  
721 country; (iv) captured, beleaguered or besieged by a hostile  
722 force; or (v) detained in a foreign country against his will; but  
723 does not include the status of an employee or member of the Armed  
724 Forces for a period during which he is officially determined to be  
725 absent from his post of duty without authority.

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

729           (f) "Employee" means one who is a citizen or national  
730 of the United States or an alien admitted to the United States for  
731 permanent residence and is a resident of the State of Mississippi  
732 and is employed in or under a federal executive agency or  
733 department of the Armed Forces.

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

738           (h) If refund or credit of any overpayment of tax for  
739 any taxable year resulting from the application of subsection (5)  
740 of this section is prevented by the operation of any law or rule  
741 of law, such refund or credit of such overpayment of tax may,  
742 nevertheless, be made or allowed if claim therefor is filed with  
743 the State Tax Commission within three (3) years after the date of  
744 the enactment of this subsection.

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

747           (6) A shareholder of an S corporation, as defined in Section  
748 27-8-3(1)(g), shall take into account the income, loss, deduction

749 or credit of the S corporation only to the extent provided in  
750 Section 27-8-7(2).

751 **SECTION 7.** Section 71-9-3, Mississippi Code of 1972, is  
752 amended as follows:

753 71-9-3. As used in this chapter:

754 (a) "Account administrator" means a state chartered  
755 bank, savings and loan association, credit union or trust company  
756 authorized to act as a fiduciary and under the supervision of the  
757 Department of Banking and Consumer Finance or the Department of  
758 Savings Associations, as appropriate; a national bank, national  
759 lending association or federal savings and loan association or  
760 credit union authorized to act as a fiduciary in this state; an  
761 insurer licensed and admitted to do business in this state; a  
762 third party administrator licensed by the Mississippi Commissioner  
763 of Insurance; or an employer, if the employer has a self-insured  
764 health plan meeting federal ERISA requirements.

765 (b) "Account holder" means a resident individual or an  
766 employee for whose benefit a medical savings account is  
767 established.

768 (c) "Dependent" means the spouse of an account holder  
769 or the child of an account holder if the child is:

770 (i) Legally entitled to the provision of proper or  
771 necessary subsistence, education, medical care, or other care  
772 necessary for his or her health, guidance or well-being and not  
773 otherwise emancipated, self-supporting, married or a member of the  
774 Armed Forces of the United States; or

775 (ii) Mentally or physically incapacitated to the  
776 extent that he or she is not self-sufficient.

777 (d) "Domicile" means a place where an individual has  
778 his or her true, fixed and permanent home and principal  
779 establishment, to which, whenever absent, he or she intends to  
780 return.



781           (e) "Eligible medical expense" means an expense paid by  
782 a taxpayer for medical care described in Section 213(d) of the  
783 Internal Revenue Code.

784           (f) "Higher deductible" means a deductible of not less  
785 than One Thousand Dollars (\$1,000.00) but not more than Two  
786 Thousand Two Hundred Fifty Dollars (\$2,250.00) for individual  
787 health coverage, and not less than Three Thousand Dollars  
788 (\$3,000.00) but not more than Four Thousand Five Hundred Dollars  
789 (\$4,500.00) for health coverage provided to an individual and his  
790 or her dependents, in tax year 1994. Beginning after 1998, such  
791 deductible limits thereafter shall be adjusted annually in  
792 fifty-dollar increments for increases in the cost of living, as  
793 measured by the medical costs component of the Consumer Price  
794 Index.

795           (g) "Medical savings account" means an account  
796 established to pay eligible medical expense of the account holder  
797 and his or her dependents.

798           (h) "Medical savings account program" means a program  
799 that includes all of the following:

800           (i) The purchase by an employer of a qualified  
801 higher deductible health plan for the benefit of an employee and  
802 his or her dependents or the purchase by a resident individual of  
803 a qualified higher deductible health plan for his or her benefit  
804 or for the benefit of his or her dependents, or both;

805           (ii) The payment on behalf of an employee into a  
806 medical savings account by his or her employer or payment into a  
807 medical savings account by a resident individual on his or her  
808 behalf of at least sixty-six and two-thirds percent (66-2/3%) of  
809 the premium reduction realized by the purchase of a qualified  
810 higher deductible health plan; and

811           (iii) An account administrator to administer the  
812 medical savings account and the reimbursement of eligible medical  
813 expenses therefrom.

814                   (i) "Qualified higher deductible health plan" means an  
815 accident and health insurance policy, certificate or contract  
816 that:

817                   (i) Is purchased by an employer for the benefit of  
818 an employee or by a resident individual for his or her benefit;  
819 and

820                   (ii) Provides for payment of covered expenses that  
821 exceed the higher deductible, but shall not exceed the maximum  
822 out-of-pocket expenses of Three Thousand Dollars (\$3,000.00) for  
823 individual coverage and Five Thousand Five Hundred Dollars  
824 (\$5,500.00) for family coverage.

825                   (j) "Resident individual" means an individual who has a  
826 domicile in this state.

827                   **SECTION 8.** This act shall take effect and be in force from  
828 and after January 1, 2006.