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To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2633

1 AN ACT TO PERMIT THE ESTABLISHMENT AND MAINTENANCE OF HEALTH
2 SAVINGS ACCOUNTS; TO EXEMPT CONTRIBUTIONS FROM GROSS INCOME UNDER
3 THE STATE INCOME TAX LAW; TO PRESCRIBE THE REQUIREMENTS OF AND
4 RESTRICTIONS ON HEALTH SAVINGS ACCOUNTS; TO AMEND SECTION 27-7-15,
5 MISSISSIPPI CODE OF 1972, TO EXCLUDE THE AMOUNT DEPOSITED IN A
6 HEALTH SAVINGS ACCOUNT FROM GROSS INCOME UNDER THE STATE INCOME
7 TAX LAW; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and may be cited as the
10 "Health Savings Accounts Act."

11 **SECTION 2.** As used in this act:

12 (a) "Eligible individual" means the individual
13 taxpayer, including employees of an employer who contributes to
14 health savings accounts on the employees' behalf, who:

15 (i) Is not covered by a high deductible health
16 plan individually or with dependents;

17 (ii) Is not covered under any health plan that is
18 not a high deductible health plan, except for coverage for
19 accidents, workers compensation insurance, insurance for a
20 specified disease or illness, insurance paying a fixed amount per
21 day per hospitalization and tort liabilities; and

22 (iii) Establishes, or on whose behalf is
23 established, a health savings account.

24 (b) "Deductible" means the total deductible for an
25 eligible individual and all the dependents of that eligible
26 individual for a calendar year.

27 (c) "Dependent" means the spouse or child of the
28 eligible individual as defined in Section 152 of the Internal
29 Revenue Code.

30 (d) "Qualified medical expense" means an expense paid
31 by the taxpayer for medical care described in Section 213(d) of
32 the Internal Revenue Code.

33 (e) "High deductible" means:

34 (i) In the case of self-only coverage, an annual
35 deductible (increased each year by a cost-of-living adjustment)
36 which is not less than One Thousand Dollars (\$1,000.00) and the
37 sum of the annual deductible and other annual out-of-pocket
38 expenses required to be paid under the plan for covered benefits
39 does not exceed Five Thousand Dollars (\$5,000.00).

40 (ii) In the case of family coverage, an annual
41 deductible (increased each year by a cost-of-living adjustment) of
42 not less than Two Thousand Dollars (\$2,000.00) and the sum of the
43 annual deductible and other annual out-of-pocket expenses required
44 to be paid under the plan for covered benefits does not exceed Ten
45 Thousand Dollars (\$10,000.00). A plan shall not fail to be
46 treated as a high deductible plan by reason of failing to have a
47 deductible for preventive care or, in the case of network plans,
48 for having out-of-pocket expenses which exceed these limits on an
49 annual deductible for services provided outside the network.

50 (f) "Health savings account" or "account" means a trust
51 or custodian established in this state pursuant to a health
52 savings account program exclusively to pay the qualified medical
53 expenses of an eligible individual or his or her dependents, but
54 only if the written governing instrument creating the account
55 meets the following requirements:

56 (i) Except in the case of a rollover contribution,
57 no contribution will be accepted unless it is in cash; or, to the
58 extent such contribution, when added to the previous contributions
59 to the account for the calendar year, exceeds one hundred percent
60 (100%) of the eligible individual's deductible or Twenty-six
61 Hundred Dollars (\$2,600.00) for an individual or Five Thousand One
62 Hundred Fifty Dollars (\$5,150.00) per family, whichever is lower;

63 (ii) The trustee or custodian is a bank, an
64 insurance company or another person approved by the Commissioner
65 of Insurance;

66 (iii) No part of the trust assets will be invested
67 in life insurance contracts;

68 (iv) The assets of the account will not be
69 commingled with other property except as allowed for under
70 Individual Retirement Accounts; and

71 (v) Eligible individual's interest in the account
72 is nonforfeitable.

73 (g) "Health savings account program" or "program" means
74 a program that includes all of the following:

75 (i) The purchase by an eligible individual or by
76 an employer of a high deductible health plan; and

77 (ii) The contribution into a health savings
78 account by an eligible individual or on behalf of an employee or
79 by his or her employer. The total annual contribution may not
80 exceed the amount of the plan's higher deductible or the amounts
81 listed herein.

82 (h) "High deductible health plan" means a health
83 coverage policy, certificate or contract that provides for
84 payments for covered benefits that exceed the higher deductible.

85 **SECTION 3.** (1) The provisions of this act shall apply also
86 to taxpayers who are not receiving preferred federal tax treatment
87 for a health savings account under Internal Revenue Code Section
88 223.

89 (2) For taxable years beginning after January 1, 2005, a
90 resident of Mississippi or an employer shall be allowed to deposit
91 contributions to a health savings account. The amount of deposit
92 for calendar year 2005 shall not exceed the amount of the plan's
93 high deductible, nor Two Thousand Six Hundred Dollars (\$2,600.00)
94 for an individual policy and Five Thousand One Hundred Fifty
95 Dollars (\$5,150.00) for a family policy.

96 (3) Except as provided in Section 5 of this act, or except
97 as otherwise provided by law, the principal contributed to and the
98 interest earned on a health savings account and money reimbursed
99 to an eligible individual or an employee for qualified medical
100 expenses shall be excluded from the taxable gross income of the
101 account holder under Section 27-7-15.

102 **SECTION 4.** The trustee or custodian shall utilize the funds
103 held in a health savings account solely for the purpose of:

104 (a) Paying the qualified medical expenses of the
105 eligible individual or his or her dependents;

106 (b) Purchasing a health coverage policy certificate, or
107 contract, for an eligible individual who is receiving unemployment
108 compensation, is exercising continuation privileges under federal
109 law or is purchasing a long-term care insurance contract; or

110 (c) Paying for health insurance other than a Medicare
111 supplemental policy for those who are Medicare eligible. Funds
112 held in a health savings account shall not be used to cover
113 expenses of the eligible individual or his or her dependents that
114 are otherwise covered, including, but not limited to, medical
115 expense covered pursuant to an automobile insurance policy,
116 worker's compensation insurance policy or self-insured plan or
117 another employer-funded health coverage policy, certificate or
118 contract.

119 **SECTION 5.** (1) Notwithstanding subsections (3), (4), (5) or
120 (6) of this section, an eligible individual may withdraw money
121 from his or her health savings account for any purpose other than
122 a purpose described in Section 4.

123 (2) Subject to subsection (3) of this section, if the
124 eligible individual withdraws money for any purpose other than a
125 purpose described in Section 4 at any other time, all of the
126 following apply:

127 (a) The amount of the withdrawal is considered taxable
128 gross income of the account holder under Section 27-7-15 in the
129 tax year of the withdrawal.

130 (b) Interest earned on the account during the tax year
131 in which a withdrawal under this subsection is made is considered
132 taxable gross income of the account holder under Section 27-7-15.

133 (3) The amount of disbursement of any assets of a health
134 savings account pursuant to a filing for protection under Title 11
135 of the United States Code, 11 USCS 101 et seq. by an eligible
136 individual or person for whose benefit the account was established
137 is not considered a withdrawal for purposes of this section. The
138 amount of a disbursement is not considered taxable gross income of
139 the account holder under Section 27-7-15 and subsection (2) of
140 this section does not apply.

141 (4) The transfer of an eligible individual's interest in a
142 health savings account to an eligible individual's spouse or
143 former spouse under a divorce or separation instrument shall not
144 be considered a taxable transfer made by such eligible individual,
145 and such interest shall, after such transfer, be treated as a
146 health savings account with respect to which such spouse is the
147 eligible individual.

148 (5) Upon the death of the eligible individual, the trustee
149 or custodian shall distribute the principle and accumulated
150 interest of the health savings account to the estate of the
151 deceased.

152 (6) If an employee becomes employed with a different
153 employer that participates in a health savings account program,
154 the employee may transfer his or her health savings account to
155 that new employer's trustee or custodian or to an individually
156 purchased account program.

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

159 27-7-15. (1) For the purposes of this article, except as
160 otherwise provided, the term "gross income" means and includes the
161 income of a taxpayer derived from salaries, wages, fees or
162 compensation for service, of whatever kind and in whatever form
163 paid, including income from governmental agencies and subdivisions
164 thereof; or from professions, vocations, trades, businesses,
165 commerce or sales, or renting or dealing in property, or
166 reacquired property; also from annuities, interest, rents,
167 dividends, securities, insurance premiums, reinsurance premiums,
168 considerations for supplemental insurance contracts, or the
169 transaction of any business carried on for gain or profit, or
170 gains, or profits, and income derived from any source whatever and
171 in whatever form paid. The amount of all such items of income
172 shall be included in the gross income for the taxable year in
173 which received by the taxpayer. The amount by which an eligible
174 employee's salary is reduced pursuant to a salary reduction
175 agreement authorized under Section 25-17-5 shall be excluded from
176 the term "gross income" within the meaning of this article.

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

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

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

185 (i) Prior to January 1, 2001, federal rules,
186 regulations and revenue procedures shall be followed with respect
187 to installment sales except they shall be applied and administered
188 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
189 106th Congress, had not been enacted. This provision will
190 generally affect taxpayers, reporting on the accrual method of
191 accounting, entering into installment note agreements on or after

192 December 17, 1999. Any gain or profit resulting from the casual
193 sale of property will be recognized in the year of sale.

194 (ii) From and after January 1, 2001, federal
195 rules, regulations and revenue procedures shall be followed with
196 respect to installment sales except as provided in this
197 subparagraph (ii). Gain or profit from the casual sale of
198 property shall be recognized in the year of sale. When a taxpayer
199 recognizes gain on the casual sale of property in which the gain
200 is deferred for federal income tax purposes, a taxpayer may elect
201 to defer the payment of tax resulting from the gain as allowed and
202 to the extent provided under regulations prescribed by the
203 commissioner. If the payment of the tax is made on a deferred
204 basis, the tax shall be computed based on the applicable rate for
205 the income reported in the year the payment is made. Except as
206 otherwise provided in subparagraph (iii) of this paragraph (b),
207 deferring the payment of the tax shall not affect the liability
208 for the tax. If at any time the installment note is sold,
209 contributed, transferred or disposed of in any manner and for any
210 purpose by the original note holder, or the original note holder
211 is merged, liquidated, dissolved or withdrawn from this state,
212 then all deferred tax payments under this section shall
213 immediately become due and payable.

214 (iii) If the selling price of the property is
215 reduced by any alteration in the terms of an installment note,
216 including default by the purchaser, the gain to be recognized is
217 recomputed based on the adjusted selling price in the same manner
218 as for federal income tax purposes. The tax on this amount, less
219 the previously paid tax on the recognized gain, is payable over
220 the period of the remaining installments. If the tax on the
221 previously recognized gain has been paid in full to this state,
222 the return on which the payment was made may be amended for this
223 purpose only. The statute of limitations in Section 27-7-49 shall
224 not bar an amended return for this purpose.

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

228 (d) **Affiliated companies or persons.** As regards sales,
229 exchanges or payments for services from one to another of
230 affiliated companies or persons or under other circumstances where
231 the relation between the buyer and seller is such that gross
232 proceeds from the sale or the value of the exchange or the payment
233 for services are not indicative of the true value of the subject
234 matter of the sale, exchange or payment for services, the
235 commissioner shall prescribe uniform and equitable rules for
236 determining the true value of the gross income, gross sales,
237 exchanges or payment for services, or require consolidated returns
238 of affiliates.

239 (e) **Alimony and separate maintenance payments.** The
240 federal rules, regulations and revenue procedures in determining
241 the deductibility and taxability of alimony payments shall be
242 followed in this state.

243 (f) **Reimbursement for expenses of moving.** There shall
244 be included in gross income (as compensation for services) any
245 amount received or accrued, directly or indirectly, by an
246 individual as a payment for or reimbursement of expenses of moving
247 from one residence to another residence which is attributable to
248 employment or self-employment.

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

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

254 (a) The proceeds of life insurance policies and
255 contracts paid upon the death of the insured. However, the income
256 from the proceeds of such policies or contracts shall be included
257 in the gross income.

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

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

265 (d) Interest upon the obligations of the United States
266 or its possessions, or securities issued under the provisions of
267 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
268 War Finance Corporation, or obligations of the State of
269 Mississippi or political subdivisions thereof.

270 (e) The amounts received through accident or health
271 insurance as compensation for personal injuries or sickness, plus
272 the amount of any damages received for such injuries or such
273 sickness or injuries, or through the War Risk Insurance Act, or
274 any law for the benefit or relief of injured or disabled members
275 of the military or naval forces of the United States.

276 (f) Income received by any religious denomination or by
277 any institution or trust for moral or mental improvements,
278 religious, Bible, tract, charitable, benevolent, fraternal,
279 missionary, hospital, infirmary, educational, scientific,
280 literary, library, patriotic, historical or cemetery purposes or
281 for two (2) or more of such purposes, if such income be used
282 exclusively for carrying out one or more of such purposes.

283 (g) Income received by a domestic corporation which is
284 "taxable in another state" as this term is defined in this
285 article, derived from business activity conducted outside this
286 state. Domestic corporations taxable both within and without the
287 state shall determine Mississippi income on the same basis as
288 provided for foreign corporations under the provisions of this
289 article.

290 (h) In case of insurance companies, there shall be
291 excluded from gross income such portion of actual premiums
292 received from an individual policyholder as is paid back or
293 credited to or treated as an abatement of premiums of such
294 policyholder within the taxable year.

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

299 (j) Amounts paid by the United States to a person as
300 added compensation for hazardous duty pay as a member of the Armed
301 Forces of the United States in a combat zone designated by
302 Executive Order of the President of the United States.

303 (k) Amounts received as retirement allowances,
304 pensions, annuities or optional retirement allowances paid under
305 the federal Social Security Act, the Railroad Retirement Act, the
306 Federal Civil Service Retirement Act, or any other retirement
307 system of the United States government, retirement allowances paid
308 under the Mississippi Public Employees' Retirement System,
309 Mississippi Highway Safety Patrol Retirement System or any other
310 retirement system of the State of Mississippi or any political
311 subdivision thereof. The exemption allowed under this paragraph
312 (k) shall be available to the spouse or other beneficiary at the
313 death of the primary retiree.

314 (l) Amounts received as retirement allowances,
315 pensions, annuities or optional retirement allowances paid by any
316 public or governmental retirement system not designated in
317 paragraph (k) or any private retirement system or plan of which
318 the recipient was a member at any time during the period of his
319 employment. Amounts received as a distribution under a Roth
320 Individual Retirement Account shall be treated in the same manner
321 as provided under the Internal Revenue Code of 1986, as amended.
322 The exemption allowed under this paragraph (l) shall be available

323 to the spouse or other beneficiary at the death of the primary
324 retiree.

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

330 (n) Compensation received for active service as a
331 member below the grade of commissioned officer and so much of the
332 compensation as does not exceed the maximum enlisted amount
333 received for active service as a commissioned officer in the Armed
334 Forces of the United States for any month during any part of which
335 such members of the Armed Forces (i) served in a combat zone as
336 designated by Executive Order of the President of the United
337 States or a qualified hazardous duty area as defined by federal
338 law, or both; or (ii) was hospitalized as a result of wounds,
339 disease or injury incurred while serving in such combat zone. For
340 the purposes of this paragraph (n), the term "maximum enlisted
341 amount" means and has the same definition as that term has in 26
342 USCS 112.

343 (o) The proceeds received from federal and state
344 forestry incentives programs.

345 (p) The amount representing the difference between the
346 increase of gross income derived from sales for export outside the
347 United States as compared to the preceding tax year wherein gross
348 income from export sales was highest, and the net increase in
349 expenses attributable to such increased exports. In the absence
350 of direct accounting the ratio of net profits to total sales may
351 be applied to the increase in export sales. This paragraph (p)
352 shall only apply to businesses located in this state engaging in
353 the international export of Mississippi goods and services. Such
354 goods or services shall have at least fifty percent (50%) of value
355 added at a location in Mississippi.

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

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

366 (s) Amounts paid by the Mississippi Soil and Water
367 Conservation Commission from the Mississippi Soil and Water
368 Cost-Share Program for the installation of water quality best
369 management practices.

370 (t) Dividends received by a holding corporation, as
371 defined in Section 27-13-1, from a subsidiary corporation, as
372 defined in Section 27-13-1.

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

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

382 (w) Income resulting from transactions with a related
383 member where the related member subject to tax under this chapter
384 was required to, and did in fact, add back the expense of such
385 transactions as required by Section 27-7-17(2). Under no
386 circumstances may the exclusion from income exceed the deduction
387 add-back of the related member, nor shall the exclusion apply to
388 any income otherwise excluded under this chapter.

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

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

396 (z) The amount deposited in a health savings account,
397 and any interest accrued thereon, that is a part of a health
398 savings account program as specified in the Health Savings
399 Accounts Act created in Sections 1 through 5 of Senate Bill No.
400 2633, 2005 Regular Session; however, any amount withdrawn from
401 such account for purposes other than paying qualified medical
402 expenses or to procure health coverage shall be included in gross
403 income, except as otherwise provided by Section 5 of Senate Bill
404 No. 2633, 2005 Regular Session.

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

406 (a) **Members of the Armed Forces.** Gross income does not
407 include compensation received for active service as a member of
408 the Armed Forces of the United States for any month during any
409 part of which such member is in a missing status, as defined in
410 paragraph (d) of this subsection, during the Vietnam Conflict as a
411 result of such conflict.

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

416 (c) **Period of conflict.** For the purpose of this
417 subsection, the Vietnam Conflict began February 28, 1961, and ends
418 on the date designated by the President by Executive Order as the
419 date of the termination of combatant activities in Vietnam. For
420 the purpose of this subsection, an individual is in a missing
421 status as a result of the Vietnam Conflict if immediately before

422 such status began he was performing service in Vietnam or was
423 performing service in Southeast Asia in direct support of military
424 operations in Vietnam. "Southeast Asia," as used in this
425 paragraph, is defined to include Cambodia, Laos, Thailand and
426 waters adjacent thereto.

427 (d) "Missing status" means the status of an employee or
428 member of the Armed Forces who is in active service and is
429 officially carried or determined to be absent in a status of (i)
430 missing; (ii) missing in action; (iii) interned in a foreign
431 country; (iv) captured, beleaguered or besieged by a hostile
432 force; or (v) detained in a foreign country against his will; but
433 does not include the status of an employee or member of the Armed
434 Forces for a period during which he is officially determined to be
435 absent from his post of duty without authority.

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

439 (f) "Employee" means one who is a citizen or national
440 of the United States or an alien admitted to the United States for
441 permanent residence and is a resident of the State of Mississippi
442 and is employed in or under a federal executive agency or
443 department of the Armed Forces.

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

448 (h) If refund or credit of any overpayment of tax for
449 any taxable year resulting from the application of subsection (5)
450 of this section is prevented by the operation of any law or rule
451 of law, such refund or credit of such overpayment of tax may,
452 nevertheless, be made or allowed if claim therefor is filed with
453 the State Tax Commission within three (3) years after the date of
454 the enactment of this subsection.

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

457 (6) A shareholder of an S corporation, as defined in Section
458 27-8-3(1)(g), shall take into account the income, loss, deduction
459 or credit of the S corporation only to the extent provided in
460 Section 27-8-7(2).

461 **SECTION 7.** This act shall take effect and be in force from
462 and after January 1, 2005.