

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 284

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 through the
176 2005 taxable year, and not to exceed the aggregate sum of Fifteen
177 Thousand Dollars (\$15,000.00) for any taxable year thereafter,
178 received by a member of the National Guard or Reserve Forces of
179 the United States as payment for inactive duty training, active
180 duty training and state active duty.

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

192 amount" means and has the same definition as that term has in 26
193 USCS 112.

194 (o) The proceeds received from federal and state
195 forestry incentives programs.

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

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

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

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

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

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

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

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

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

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

247 (z) Interest, dividends, gains or income of any kind on
248 any account in a qualified tuition program and amounts received as
249 distributions under a qualified tuition program shall be treated
250 in the same manner as provided under the United States Internal
251 Revenue Code, as amended. For the purposes of this paragraph (z),
252 the term "qualified tuition program" means and has the same
253 definition as that term has in 26 USCS 529.

254 (aa) The amount deposited in a health savings account,
255 and any interest accrued thereon, that is a part of a health
256 savings account program as specified in the Health Savings

257 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
258 any amount withdrawn from such account for purposes other than
259 paying qualified medical expenses or to procure health coverage
260 shall be included in gross income, except as otherwise provided by
261 Sections 83-62-7 and 83-62-9.

262 (bb) Amounts received as qualified disaster relief
263 payments shall be treated in the same manner as provided under the
264 United States Internal Revenue Code, as amended.

265 (cc) Amounts received as a "qualified Hurricane Katrina
266 distribution" as defined in the United States Internal Revenue
267 Code, as amended.

268 (dd) Amounts received as overtime compensation required
269 by the Fair Labor Standards Act of 1938 (29 USCS Section 201 et
270 seq.), as amended.

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

272 (a) **Members of the Armed Forces.** Gross income does not
273 include compensation received for active service as a member of
274 the Armed Forces of the United States for any month during any
275 part of which such member is in a missing status, as defined in
276 paragraph (d) of this subsection, during the Vietnam Conflict as a
277 result of such conflict.

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

282 (c) **Period of conflict.** For the purpose of this
283 subsection, the Vietnam Conflict began February 28, 1961, and ends
284 on the date designated by the President by Executive Order as the
285 date of the termination of combatant activities in Vietnam. For
286 the purpose of this subsection, an individual is in a missing
287 status as a result of the Vietnam Conflict if immediately before
288 such status began he was performing service in Vietnam or was
289 performing service in Southeast Asia in direct support of military

290 operations in Vietnam. "Southeast Asia," as used in this
291 paragraph, is defined to include Cambodia, Laos, Thailand and
292 waters adjacent thereto.

293 (d) "Missing status" means the status of an employee or
294 member of the Armed Forces who is in active service and is
295 officially carried or determined to be absent in a status of (i)
296 missing; (ii) missing in action; (iii) interned in a foreign
297 country; (iv) captured, beleaguered or besieged by a hostile
298 force; or (v) detained in a foreign country against his will; but
299 does not include the status of an employee or member of the Armed
300 Forces for a period during which he is officially determined to be
301 absent from his post of duty without authority.

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

305 (f) "Employee" means one who is a citizen or national
306 of the United States or an alien admitted to the United States for
307 permanent residence and is a resident of the State of Mississippi
308 and is employed in or under a federal executive agency or
309 department of the Armed Forces.

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

314 (h) If refund or credit of any overpayment of tax for
315 any taxable year resulting from the application of subsection (5)
316 of this section is prevented by the operation of any law or rule
317 of law, such refund or credit of such overpayment of tax may,
318 nevertheless, be made or allowed if claim therefor is filed with
319 the State Tax Commission within three (3) years after the date of
320 the enactment of this subsection.

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

323 (6) A shareholder of an S corporation, as defined in Section
324 27-8-3(1)(g), shall take into account the income, loss, deduction
325 or credit of the S corporation only to the extent provided in
326 Section 27-8-7(2).

327 **SECTION 2.** Nothing in this act shall affect or defeat any
328 claim, assessment, appeal, suit, right or cause of action for
329 taxes due or accrued under the income tax laws before the date on
330 which this act becomes effective, whether such claims,
331 assessments, appeals, suits or actions have been begun before the
332 date on which this act becomes effective or are begun thereafter;
333 and the provisions of the income tax laws are expressly continued
334 in full force, effect and operation for the purpose of the
335 assessment, collection and enrollment of liens for any taxes due
336 or accrued and the execution of any warrant under such laws before
337 the date on which this act becomes effective, and for the
338 imposition of any penalties, forfeitures or claims for failure to
339 comply with such laws.

340 **SECTION 3.** This act shall take effect and be in force from
341 and after January 1, 2007.