

By: Representative Clark

To: Ways and Means

HOUSE BILL NO. 216

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 (1) residence to another residence which is attributable
97 to 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 1916, or bonds issued by the War
117 Finance Corporation, or obligations of the State of Mississippi or
118 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) National Guard or Reserve Forces of the United
175 States compensation not to exceed the aggregate sum of Five
176 Thousand Dollars (\$5,000.00) for any taxable year through the 2005
177 taxable year, and not to exceed the aggregate sum of Fifteen
178 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

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

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



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

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

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

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



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

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

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

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

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

241 (y) Amounts that are subject to the tax levied pursuant
242 to Section 27-7-903, and are paid to patrons by gaming



243 establishments not licensed under the Mississippi Gaming Control
244 Act.

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

252 (aa) The amount deposited in a health savings account,
253 and any interest accrued thereon, that is a part of a health
254 savings account program as specified in the Health Savings
255 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
256 any amount withdrawn from such account for purposes other than
257 paying qualified medical expenses or to procure health coverage
258 shall be included in gross income, except as otherwise provided by
259 Sections 83-62-7 and 83-62-9.

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

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



266 (dd) Amounts received by an individual which may be
267 excluded from income as foreign earned income for federal income
268 tax purposes.

269 (ee) Amounts received by a qualified individual,
270 directly or indirectly, from an employer or nonprofit housing
271 organization that are qualified housing expenses associated with
272 an employer-assisted housing program. For purposes of this
273 paragraph (ee):

274 (i) "Qualified individual" means any individual
275 whose household income does not exceed one hundred twenty percent
276 (120%) of the area median gross income (as defined by the United
277 States Department of Housing and Urban Development), adjusted for
278 household size, for the area in which the housing is located.

279 (ii) "Nonprofit housing organization" means an
280 organization that is organized as a not-for-profit organization
281 under the laws of this state or another state and has as one of
282 its purposes:

283 1. Homeownership education or counseling;
284 2. The development of affordable housing; or
285 3. The development or administration of
286 employer-assisted housing programs.

287 (iii) "Employer-assisted housing program" means a
288 separate written plan of any employer (including, without
289 limitation, tax-exempt organizations and public employers) for the
290 exclusive benefit of the employer's employees to pay qualified



291 housing expenses to assist the employer's employees in securing
292 affordable housing.

293 (iv) "Qualified housing expenses" means:

294 1. With respect to rental assistance, an
295 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the
296 purpose of assisting employees with security deposits and rental
297 subsidies; and

298 2. With respect to homeownership assistance,
299 an amount not to exceed the lesser of Ten Thousand Dollars
300 (\$10,000.00) or six percent (6%) of the purchase price of the
301 employee's principal residence that is paid for the purpose of
302 assisting employees with down payments, payment of closing costs,
303 reduced interest mortgages, mortgage guarantee programs, mortgage
304 forgiveness programs, equity contribution programs, or
305 contributions to homebuyer education and/or homeownership
306 counseling of eligible employees.

307 (ff) For the 2010 taxable year and any taxable year
308 thereafter, amounts converted in accordance with the United States
309 Internal Revenue Code, as amended, from a traditional Individual
310 Retirement Account to a Roth Individual Retirement Account. The
311 exemption allowed under this paragraph (ff) shall be available to
312 the spouse or other beneficiary at the death of the primary
313 retiree.

314 (gg) Amounts received for the performance of disaster
315 or emergency-related work as defined in Section 27-113-5.



316 (hh) The amount deposited in a catastrophe savings
317 account established under Sections 27-7-1001 through 27-7-1007,
318 interest income earned on the catastrophe savings account, and
319 distributions from the catastrophe savings account; however, any
320 amount withdrawn from a catastrophe savings account for purposes
321 other than paying qualified catastrophe expenses shall be included
322 in gross income, except as otherwise provided by Sections
323 27-7-1001 through 27-7-1007.

324 (ii) Interest, dividends, gains or income of any kind
325 on any account in the Mississippi Achieving a Better Life
326 Experience (ABLE) Trust Fund, as established in Chapter 28, Title
327 43, to the extent that such amounts remain on deposit in the ABLE
328 Trust Fund or are withdrawn pursuant to a qualified withdrawal, as
329 defined in Section 43-28-11.

330 (jj) Subject to the limitations provided under Section
331 27-7-1103, amounts deposited into a first-time homebuyer savings
332 account and any interest or other income earned attributable to an
333 account and monies or funds withdrawn or distributed from an
334 account for the payment of eligible costs by or on behalf of a
335 qualified beneficiary; however, any monies or funds withdrawn or
336 distributed from a first-time homebuyer savings account for any
337 purpose other than the payment of eligible costs by or on behalf
338 of a qualified beneficiary shall be included in gross income. For
339 the purpose of this paragraph (jj), the terms "first-time
340 homebuyer savings account," "eligible costs" and "qualified



341 beneficiary" mean and have the same definitions as such terms have
342 in Section 27-7-1101.

343 (kk) Amounts received as overtime compensation required
344 by the Fair Labor Standards Act of 1938 (29 USCS Section 201 et
345 seq.), as amended.

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

347 (a) **Members of the Armed Forces.** Gross income does not
348 include compensation received for active service as a member of
349 the Armed Forces of the United States for any month during any
350 part of which such member is in a missing status, as defined in
351 paragraph (d) of this subsection, during the Vietnam Conflict as a
352 result of such conflict.

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

357 (c) **Period of conflict.** For the purpose of this
358 subsection, the Vietnam Conflict began February 28, 1961, and ends
359 on the date designated by the President by Executive Order as the
360 date of the termination of combatant activities in Vietnam. For
361 the purpose of this subsection, an individual is in a missing
362 status as a result of the Vietnam Conflict if immediately before
363 such status began he was performing service in Vietnam or was
364 performing service in Southeast Asia in direct support of military
365 operations in Vietnam. "Southeast Asia," as used in this



366 paragraph, is defined to include Cambodia, Laos, Thailand and
367 waters adjacent thereto.

368 (d) "Missing status" means the status of an employee or
369 member of the Armed Forces who is in active service and is
370 officially carried or determined to be absent in a status of (i)
371 missing; (ii) missing in action; (iii) interned in a foreign
372 country; (iv) captured, beleaguered or besieged by a hostile
373 force; or (v) detained in a foreign country against his will; but
374 does not include the status of an employee or member of the Armed
375 Forces for a period during which he is officially determined to be
376 absent from his post of duty without authority.

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

380 (f) "Employee" means one who is a citizen or national
381 of the United States or an alien admitted to the United States for
382 permanent residence and is a resident of the State of Mississippi
383 and is employed in or under a federal executive agency or
384 department of the Armed Forces.

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

389 (h) If refund or credit of any overpayment of tax for
390 any taxable year resulting from the application of this subsection



391 (5) is prevented by the operation of any law or rule of law, such
392 refund or credit of such overpayment of tax may, nevertheless, be
393 made or allowed if claim therefor is filed with the Department of
394 Revenue within three (3) years after the date of the enactment of
395 this subsection.

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

398 (6) A shareholder of an S corporation, as defined in Section
399 27-8-3(1)(g), shall take into account the income, loss, deduction
400 or credit of the S corporation only to the extent provided in
401 Section 27-8-7(2).

402 **SECTION 2.** Nothing in this act shall affect or defeat any
403 claim, assessment, appeal, suit, right or cause of action for
404 taxes due or accrued under the income tax laws before the date on
405 which this act becomes effective, whether such claims,
406 assessments, appeals, suits or actions have been begun before the
407 date on which this act becomes effective or are begun thereafter;
408 and the provisions of the income tax laws are expressly continued
409 in full force, effect and operation for the purpose of the
410 assessment, collection and enrollment of liens for any taxes due
411 or accrued and the execution of any warrant under such laws before
412 the date on which this act becomes effective, and for the
413 imposition of any penalties, forfeitures or claims for failure to
414 comply with such laws.



415 **SECTION 3.** This act shall take effect and be in force from
416 and after January 1, 2018.

