

By: Representative Howell

To: Ways and Means

## HOUSE BILL NO. 1128

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 Two Thousand 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 2004 shall not exceed the amount of the plan's high  
93 deductible, nor Two Thousand Six Hundred Dollars (\$2,600.00) for  
94 an individual policy and Five Thousand One Hundred Fifty Dollars  
95 (\$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 workers' 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 House Bill No.  
400 1128, 2005 Regular Session; however, any amount withdrawn from  
401 such account for purposes other than paying eligible medical  
402 expense or to procure health coverage shall be included in gross  
403 income.

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

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

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

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

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

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

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

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

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

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

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

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

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