

By: Representatives Howell, Davis

To: Ways and Means

HOUSE BILL NO. 617

1 AN ACT TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PREMIUMS PAID BY AN INDIVIDUAL FOR HEALTH INSURANCE
3 THAT IS OFFERED BY OR THROUGH THE INDIVIDUAL'S EMPLOYER SHALL BE
4 EXCLUDED FROM GROSS INCOME FOR STATE INCOME TAX PURPOSES; TO AMEND
5 SECTION 27-7-18, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
6 PREMIUMS PAID BY AN INDIVIDUAL FOR HEALTH INSURANCE THAT IS NOT
7 OFFERED BY OR THROUGH THE INDIVIDUAL'S EMPLOYER SHALL BE
8 DEDUCTIBLE AS AN ADJUSTMENT TO GROSS INCOME FOR STATE INCOME TAX
9 PURPOSES; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 27-7-15, Mississippi Code of 1972, is
12 amended as follows:

13 27-7-15. (1) For the purposes of this article, except as
14 otherwise provided, the term "gross income" means and includes the
15 income of a taxpayer derived from salaries, wages, fees or
16 compensation for service, of whatever kind and in whatever form
17 paid, including income from governmental agencies and subdivisions
18 thereof; or from professions, vocations, trades, businesses,
19 commerce or sales, or renting or dealing in property, or
20 reacquired property; also from annuities, interest, rents,
21 dividends, securities, insurance premiums, reinsurance premiums,
22 considerations for supplemental insurance contracts, or the
23 transaction of any business carried on for gain or profit, or
24 gains, or profits, and income derived from any source whatever and
25 in whatever form paid. The amount of all such items of income
26 shall be included in the gross income for the taxable year in
27 which received by the taxpayer. The amount by which an eligible
28 employee's salary is reduced pursuant to a salary reduction
29 agreement authorized under Section 25-17-5 shall be excluded from
30 the term "gross income" within the meaning of this article.

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

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

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

39 (i) Prior to January 1, 2001, federal rules,
40 regulations and revenue procedures shall be followed with respect
41 to installment sales except they shall be applied and administered
42 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
43 106th Congress, had not been enacted. This provision will
44 generally affect taxpayers, reporting on the accrual method of
45 accounting, entering into installment note agreements on or after
46 December 17, 1999. Any gain or profit resulting from the casual
47 sale of property will be recognized in the year of sale.

48 (ii) From and after January 1, 2001, federal
49 rules, regulations and revenue procedures shall be followed with
50 respect to installment sales except as provided in this
51 subparagraph (ii). Gain or profit from the casual sale of
52 property shall be recognized in the year of sale. When a taxpayer
53 recognizes gain on the casual sale of property in which the gain
54 is deferred for federal income tax purposes, a taxpayer may elect
55 to defer the payment of tax resulting from the gain as allowed and
56 to the extent provided under regulations prescribed by the
57 commissioner. If the payment of the tax is made on a deferred
58 basis, the tax shall be computed based on the applicable rate for
59 the income reported in the year the payment is made. Except as
60 otherwise provided in subparagraph (iii) of this paragraph (b),
61 deferring the payment of the tax shall not affect the liability
62 for the tax. If at any time the installment note is sold,
63 contributed, transferred or disposed of in any manner and for any

64 purpose by the original note holder, or the original note holder
65 is merged, liquidated, dissolved or withdrawn from this state,
66 then all deferred tax payments under this section shall
67 immediately become due and payable.

68 (iii) If the selling price of the property is
69 reduced by any alteration in the terms of an installment note,
70 including default by the purchaser, the gain to be recognized is
71 recomputed based on the adjusted selling price in the same manner
72 as for federal income tax purposes. The tax on this amount, less
73 the previously paid tax on the recognized gain, is payable over
74 the period of the remaining installments. If the tax on the
75 previously recognized gain has been paid in full to this state,
76 the return on which the payment was made may be amended for this
77 purpose only. The statute of limitations in Section 27-7-49 shall
78 not bar an amended return for this purpose.

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

82 (d) **Affiliated companies or persons.** As regards sales,
83 exchanges or payments for services from one to another of
84 affiliated companies or persons or under other circumstances where
85 the relation between the buyer and seller is such that gross
86 proceeds from the sale or the value of the exchange or the payment
87 for services are not indicative of the true value of the subject
88 matter of the sale, exchange or payment for services, the
89 commissioner shall prescribe uniform and equitable rules for
90 determining the true value of the gross income, gross sales,
91 exchanges or payment for services, or require consolidated returns
92 of affiliates.

93 (e) **Alimony and separate maintenance payments.** The
94 federal rules, regulations and revenue procedures in determining
95 the deductibility and taxability of alimony payments shall be
96 followed in this state.

97 (f) **Reimbursement for expenses of moving.** There shall
98 be included in gross income (as compensation for services) any
99 amount received or accrued, directly or indirectly, by an
100 individual as a payment for or reimbursement of expenses of moving
101 from one residence to another residence which is attributable to
102 employment or self-employment.

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

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

108 (a) The proceeds of life insurance policies and
109 contracts paid upon the death of the insured. However, the income
110 from the proceeds of such policies or contracts shall be included
111 in the gross income.

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

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

119 (d) Interest upon the obligations of the United States
120 or its possessions, or securities issued under the provisions of
121 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
122 War Finance Corporation, or obligations of the State of
123 Mississippi or political subdivisions thereof.

124 (e) The amounts received through accident or health
125 insurance as compensation for personal injuries or sickness, plus
126 the amount of any damages received for such injuries or such
127 sickness or injuries, or through the War Risk Insurance Act, or
128 any law for the benefit or relief of injured or disabled members
129 of the military or naval forces of the United States.

130 (f) Income received by any religious denomination or by
131 any institution or trust for moral or mental improvements,
132 religious, Bible, tract, charitable, benevolent, fraternal,
133 missionary, hospital, infirmary, educational, scientific,
134 literary, library, patriotic, historical or cemetery purposes or
135 for two (2) or more of such purposes, if such income be used
136 exclusively for carrying out one or more of such purposes.

137 (g) Income received by a domestic corporation which is
138 "taxable in another state" as this term is defined in this
139 article, derived from business activity conducted outside this
140 state. Domestic corporations taxable both within and without the
141 state shall determine Mississippi income on the same basis as
142 provided for foreign corporations under the provisions of this
143 article.

144 (h) In case of insurance companies, there shall be
145 excluded from gross income such portion of actual premiums
146 received from an individual policyholder as is paid back or
147 credited to or treated as an abatement of premiums of such
148 policyholder within the taxable year.

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

153 (j) Amounts paid by the United States to a person as
154 added compensation for hazardous duty pay as a member of the Armed
155 Forces of the United States in a combat zone designated by
156 Executive Order of the President of the United States.

157 (k) Amounts received as retirement allowances,
158 pensions, annuities or optional retirement allowances paid under
159 the federal Social Security Act, the Railroad Retirement Act, the
160 Federal Civil Service Retirement Act, or any other retirement
161 system of the United States government, retirement allowances paid
162 under the Mississippi Public Employees' Retirement System,

163 Mississippi Highway Safety Patrol Retirement System or any other
164 retirement system of the State of Mississippi or any political
165 subdivision thereof. The exemption allowed under this paragraph
166 (k) shall be available to the spouse or other beneficiary at the
167 death of the primary retiree.

168 (1) Amounts received as retirement allowances,
169 pensions, annuities or optional retirement allowances paid by any
170 public or governmental retirement system not designated in
171 paragraph (k) or any private retirement system or plan of which
172 the recipient was a member at any time during the period of his
173 employment. Amounts received as a distribution under a Roth
174 Individual Retirement Account shall be treated in the same manner
175 as provided under the Internal Revenue Code of 1986, as amended.
176 The exemption allowed under this paragraph (1) shall be available
177 to the spouse or other beneficiary at the death of the primary
178 retiree.

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

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

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

197 (o) The proceeds received from federal and state
198 forestry incentives programs.

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

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

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

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

224 (t) Dividends received by a holding corporation, as
225 defined in Section 27-13-1, from a subsidiary corporation, as
226 defined in Section 27-13-1.

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

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

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

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

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

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

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

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

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

268 (cc) Amounts received as a "qualified Hurricane Katrina
269 distribution" as defined in the United States Internal Revenue
270 Code, as amended.

271 (dd) Amounts paid by an individual as premiums for
272 health insurance covering the individual and any dependents of the
273 individual that is offered by or through the individual's
274 employer, if those amounts are not already excluded from gross
275 income because they are covered under a cafeteria plan as defined
276 in Section 125 of the Internal Revenue Code and regulations
277 adopted under that section.

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

279 (a) **Members of the Armed Forces.** Gross income does not
280 include compensation received for active service as a member of
281 the Armed Forces of the United States for any month during any
282 part of which such member is in a missing status, as defined in
283 paragraph (d) of this subsection, during the Vietnam Conflict as a
284 result of such conflict.

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

289 (c) **Period of conflict.** For the purpose of this
290 subsection, the Vietnam Conflict began February 28, 1961, and ends
291 on the date designated by the President by Executive Order as the
292 date of the termination of combatant activities in Vietnam. For

293 the purpose of this subsection, an individual is in a missing
294 status as a result of the Vietnam Conflict if immediately before
295 such status began he was performing service in Vietnam or was
296 performing service in Southeast Asia in direct support of military
297 operations in Vietnam. "Southeast Asia," as used in this
298 paragraph, is defined to include Cambodia, Laos, Thailand and
299 waters adjacent thereto.

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

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

312 (f) "Employee" means one who is a citizen or national
313 of the United States or an alien admitted to the United States for
314 permanent residence and is a resident of the State of Mississippi
315 and is employed in or under a federal executive agency or
316 department of the Armed Forces.

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

321 (h) If refund or credit of any overpayment of tax for
322 any taxable year resulting from the application of subsection (5)
323 of this section is prevented by the operation of any law or rule
324 of law, such refund or credit of such overpayment of tax may,
325 nevertheless, be made or allowed if claim therefor is filed with

326 the State Tax Commission within three (3) years after the date of
327 the enactment of this subsection.

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

330 (6) A shareholder of an S corporation, as defined in Section
331 27-8-3(1)(g), shall take into account the income, loss, deduction
332 or credit of the S corporation only to the extent provided in
333 Section 27-8-7(2).

334 **SECTION 2.** Section 27-7-18, Mississippi Code of 1972, is
335 amended as follows:

336 27-7-18. (1) Alimony payments. In the case of a person
337 described in Section 27-7-15(2)(e), there shall be allowed as a
338 deduction from gross income amounts paid as periodic payments to
339 the extent of such amounts as are includible in the gross income
340 of the spouse as provided in Section 27-7-15(2)(e), payment of
341 which is made within the person's taxable year.

342 (2) Unreimbursed moving expenses incurred after December 31,
343 1994, are deductible as an adjustment to gross income in
344 accordance with provisions of the United States Internal Revenue
345 Code, and rules, regulations and revenue procedures thereunder
346 relating to moving expenses, not in direct conflict with the
347 provisions of the Mississippi Income Tax Law.

348 (3) Amounts paid after December 31, 1998, by a self-employed
349 individual for insurance which constitute medical care for the
350 taxpayer, his spouse and dependents, are deductible as an
351 adjustment to gross income in accordance with provisions of the
352 United States Internal Revenue Code, and rules, regulations and
353 revenue procedures thereunder relating to such payments, not in
354 direct conflict with the provisions of the Mississippi Income Tax
355 Law.

356 (4) Contributions or payments to a Mississippi Affordable
357 College Savings (MACS) Program account are deductible from gross
358 income as provided in Section 37-155-113. Payments made under a

359 prepaid tuition contract entered into under the Mississippi
360 Prepaid Affordable College Tuition Program are deductible as
361 provided in Section 37-155-17.

362 (5) Health insurance premiums. Amounts paid by an
363 individual as premiums for health insurance covering the
364 individual and any dependents of the individual that is not
365 offered by or through the individual's employer are deductible as
366 an adjustment to gross income.

367 **SECTION 3.** Nothing in this act shall affect or defeat any
368 claim, assessment, appeal, suit, right or cause of action for
369 taxes due or accrued under the income tax laws before the date on
370 which this act becomes effective, whether such claims,
371 assessments, appeals, suits or actions have been begun before the
372 date on which this act becomes effective or are begun thereafter;
373 and the provisions of the income tax laws are expressly continued
374 in full force, effect and operation for the purpose of the
375 assessment, collection and enrollment of liens for any taxes due
376 or accrued and the execution of any warrant under such laws before
377 the date on which this act becomes effective, and for the
378 imposition of any penalties, forfeitures or claims for failure to
379 comply with such laws.

380 **SECTION 4.** This act shall take effect and be in force from
381 and after January 1, 2006.