

AMERICAN PAYROLL ASSOCIATION

February 7, 2019

The Honorable Bryant W. Clark
Mississippi House of Representatives
Room BSMNT-8
P.O. Box 1018
Jackson, MS 39215

The Honorable Jeffrey C. Smith
Chairman, Ways and Means Committee
Mississippi House of Representatives
Room: 201-F
P. O. Box 1018
Jackson, MS 39215

Via Email: bclark@house.ms.gov
jsmith@house.ms.gov

Re: In opposition to H.B. 301, An Act to Amend Section 27-7-15, Mississippi Code of 1972, to Exclude Overtime Compensation from the Definition of "Gross Income" for Purposes of the State Income Tax Law; and for Related Purposes

Dear Representatives Clark and Smith:

Thank you for the opportunity to comment on proposed bill H.B. 301 introduced by Rep. Bryant W. Clark and referred to the House Ways and Means Committee. H.B. 301 would add a new provision to Section 27-7-15 of the Mississippi Code to exclude overtime pay from gross income [see subsection (4)(II)]. On the surface, this would appear as a simple way to reduce state individual income taxes; however, payroll processes for calculating wages and overtime pay are complicated. Because of the burden on employers and payroll departments, the American Payroll Association (APA) opposes H.B. 301 as introduced, and recommends that the legislature seek alternative measures to effect the intended changes.

About APA

Established in 1982, APA is a not-for-profit association serving the interests of more than 20,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages and tax withholding for their employers.

Calculating Overtime Pay

The amount of gross pay for purposes of state income tax withholding is applied inconsistently in H.B. 301. Unless exempt, employees covered by the federal Fair Labor Standards Act (FLSA) must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. However, multiple methods for calculating amounts received as overtime compensation will potentially lead to different tax exemptions in H.B. 301. For example, an employer might determine overtime pay at 1.5 times the regular rate of pay or, in some instances, an employer might use a premium rate of 0.5 times the regular rate of pay.

Below is a sample calculation to explain the difference in calculation methods.

Premium Overtime Rate

Hours worked – 60 hours
 Wages – \$10 per hour
 Regular wages – 60 hours x \$10 = \$600
 Premium overtime – 20 hours x \$5 = \$100
Total gross wages = \$700

One-and-a-Half Times Regular Rate of Pay

Hours worked – 60 hours
 Wages – \$10 per hour
 Regular wages – 40 hours x \$10 = \$400
 1.5 times overtime – 20 hours x \$15 = \$300
Total gross wages = \$700

In both methods, the employee is working the same number of hours for the same hourly pay rate and are paid the same gross wages. However, under H.B. 301, the amount of gross wages subject to state income tax withholding would be significantly different. Under the premium overtime method, \$100 would be excluded from gross income as “overtime compensation.” Using the 1.5 times regular rate of pay method, \$300 would be excluded as “overtime compensation” under a broad interpretation of Section 27-7-15(4)(II). Thus, as written, the law could be applied differently by employers and employees may be confused about the different results.

Payroll Software Systems and Internal Procedures

Currently, overtime pay is not separately considered when calculating state taxes in any state. Therefore, overtime pay is not stored or processed separately. To comply with H.B. 301, payroll systems would need to be modified to separately store overtime pay and then calculate withholding based on non-overtime pay only.

In addition, the proposed bill would require changes to the annual Mississippi income tax forms, such as Form 80-105, *Resident Individual Income Tax Return*, to add a separate line for overtime pay. This also would require that overtime pay be separately displayed on the Internal Revenue Service’s Form W-2, *Wage and Tax Statement*. As is, there is very little capacity on the Form W-2 to add separate elements such as nontaxable overtime pay. Further, taxpayers may argue with employers if they believe that they received more overtime pay than is reported and, in some instances, employers may simply be unaware of or fail to comply with the requirement to separately identify all overtime pay on Forms W-2.

Generally, when a state changes the method for determining gross wages for withholding income taxes, payroll managers must adjust internal processes and procedures with potentially significant cost and administrative burdens. The new requirement in H.B. 301 will entail upgrades to software systems whether payroll is managed internally or outsourced to a third-party service provider. In turn, employers must upgrade tax filing software and procedures. In some instances, new interface systems will be needed to communicate between payroll systems, time and attendance programs, and tax filing software. Further, these changes will require payroll managers to retrain employees on the use of the software and how to respond to employees.

APA's position is neutral regarding state tax policy on tax rates or types of compensation that should be subject to state income taxes. However, in this case, a well-intentioned effort to reduce the tax burden would result in substantially complicating tax administration for employers and employees. We applaud the intent of H.B. 301, but urge the Mississippi legislature to consider other mechanisms to reduce taxes.

We would be pleased to discuss any questions about payroll management and income tax withholding with the Mississippi House of Representatives. Thank you.

Sincerely,



Pete Isberg
Cochair, State and Local
Topics Subcommittee



Bruce Phipps, CPP
Cochair, State and Local
Topics Subcommittee



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