

# HB407 INTRODUCED



1 HB407  
2 LLPLAYW-1  
3 By Representative Pettus  
4 RFD: Ways and Means Education  
5 First Read: 02-Apr-24



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SYNOPSIS:

Under existing law, gross income is defined for the purpose of state income tax. Also under existing law, compensation received by full-time hourly waged paid employees for work performed in excess of 40 hours in any given week is excluded from the calculation of gross income.

This bill would revise this exemption to exempt amounts paid as overtime compensation in accordance with the U.S. Fair Labor Standards Act from state income tax.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to income taxes; to amend Section 40-18-14, Code of Alabama 1975, as last amended by Act 2023-421; to amend the definition of gross income; to exempt from state income tax amounts paid as overtime compensation in accordance with the U.S. Fair Labor Standards Act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-18-14, Code of Alabama 1975, as last amended by Act 2023-421, is amended to read as follows:



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29           "§40-18-14

30           (a) The term "gross income" as used herein:

31           (1) Includes gains, profits and income derived from  
32 salaries, wages, or compensation for personal services of  
33 whatever kind, or in whatever form paid, including the  
34 salaries, income, fees, and other compensation of state,  
35 county, and municipal officers and employees, or from  
36 professions, vocations, trades, business, commerce or sales,  
37 or dealings in property whether real or personal, growing out  
38 of ownership or use of or interest in such property; also from  
39 interest, royalties, rents, dividends, securities, or  
40 transactions of any business carried on for gain or profit and  
41 the income derived from any source whatever, including any  
42 income not exempted under this chapter and against which  
43 income there is no provision for a tax. The term "gross  
44 income" as used herein also includes alimony and separate  
45 maintenance payments to the extent they are includable in  
46 gross income for federal income tax purposes under 26 U.S.C. §  
47 71, relating to alimony and separate maintenance payments. The  
48 term "gross income" as used herein also includes any amount  
49 included in gross income under 26 U.S.C. § 83 at the time it  
50 is so included under 26 U.S.C. § 83.

51           (2) For purposes of this chapter, the reductions in tax  
52 attributes required by 26 U.S.C. § 108 shall be applied only  
53 to the net operating losses determined under this chapter and  
54 the basis of depreciable property. The basis reductions of  
55 depreciable property shall not exceed the basis reductions for  
56 federal income tax purposes. All other tax attribute



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57 reductions required by 26 U.S.C. § 108 shall not be  
58 recognized.

59 (3) Gross income does not include the following items  
60 which shall be exempt from income tax under this chapter:

61 a. Amounts received under life insurance policies and  
62 contracts paid by reason of the death of the insured in  
63 accordance with 26 U.S.C. § 101;

64 b. Amounts received, other than amounts paid by reason  
65 of the death of the insured, under life insurance, endowment  
66 or annuity contracts, determined in accordance with 26 U.S.C.  
67 § 72;

68 c. The value of property acquired by gift, bequest,  
69 devise, or descent, but the income from such property shall be  
70 included in the gross income, in accordance with 26 U.S.C. §  
71 102;

72 d. Interest upon obligations of the United States or  
73 its possessions; or securities issued under provisions of the  
74 Federal Farm Loan Act of July 18, 1916;

75 e. Any amounts received by an individual which are  
76 excludable from gross income under 26 U.S.C. § 104, relating  
77 to compensation for injuries or sickness, or 26 U.S.C. § 105,  
78 relating to amounts received under accident or health plans;

79 f. Interest on obligations of the State of Alabama and  
80 any county, municipality, or other political subdivision  
81 thereof;

82 g. The rental value of a parsonage provided to a  
83 minister of the gospel to the extent excludable under 26  
84 U.S.C. § 107;



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85 h. Income from discharge of indebtedness to the extent  
86 allowed by 26 U.S.C. § 108;

87 i. For each individual resident taxpayer, or each  
88 husband and wife filing a joint income tax return, as the case  
89 may be, any gain realized from the sale of a personal  
90 residence of the taxpayer shall be excluded to the extent  
91 excludable for federal income tax purposes under 26 U.S.C. §  
92 121;

93 j. Contributions made by an employer on behalf of an  
94 employee to a trust which is part of a qualified cash or  
95 deferred arrangement, as defined in 26 U.S.C. § 401(k)(2) or 5  
96 U.S.C. § 8437, under which the employee has an election  
97 whether the contribution will be made to the trust or received  
98 by the employee in cash and contributions made by an employer  
99 for an employee for an annuity contract, which contributions  
100 would be excludable from the gross income, for federal income  
101 tax purposes, of the employee in accordance with the  
102 provisions of 26 U.S.C. § 403(b). The limitations imposed by  
103 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

104 k. Amounts that an employee is allowed to exclude from  
105 gross income for federal income tax purposes pursuant to 26  
106 U.S.C. § 125, relating to cafeteria plans, and 26 U.S.C. §  
107 132, relating to certain fringe benefits; and

108 l. Amounts paid or incurred by an employer on behalf of  
109 an employee if the amounts may be excluded from gross income  
110 for federal income tax purposes by an employee pursuant to 26  
111 U.S.C. § 129, relating to dependent care expenses.

112 m.1. Amounts ~~received by a full-time hourly waged paid~~



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113 ~~employee~~paid as overtime compensation in accordance with the  
114 U.S. Fair Labor Standards Act~~compensation for work performed~~  
115 ~~in excess of 40 hours in a week.~~

116 2. The exemption provided pursuant to this paragraph  
117 shall be available for tax years that begin after December 31,  
118 2023, and end prior to June 30, 2025.

119 3. Each employer shall submit to the Department of  
120 Revenue, on forms prescribed by the department, all of the  
121 following:

122 (i) For the tax year beginning January 1, 2023, the  
123 total amount received by full-time hourly wage-paid employees  
124 as compensation for work performed in excess of 40 hours in a  
125 week and the total number of employees for which it was paid.  
126 The data shall be due no later than January 31, 2024.

127 (ii) For the tax year beginning on or after January 1,  
128 2024, and each tax year thereafter, the total amount ~~received~~  
129 ~~by full-time hourly wage-paid employees~~paid as ~~compensation~~  
130 ~~for work performed in excess of 40 hours in a week~~ overtime  
131 compensation in accordance with the U.S. Fair Labor Standards  
132 Act and the total number of employees for which it was paid.  
133 The data shall be provided monthly or quarterly and shall be  
134 due no later than the due date for the corresponding monthly  
135 or quarterly withholding tax returns.

136 (iii) Additional information as may be required by the  
137 department.

138 4. The department shall report to the Legislative  
139 Services Agency - Fiscal Division and the Department of  
140 Finance the data collected and compiled pursuant to



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141 subparagraph 3. no later than 30 days after the due date of  
142 such data.

143 (4) The term "gross income," in the case of a resident  
144 individual, includes income from sources within and outside  
145 Alabama, including without limitation, the resident's  
146 proportionate share of any income arising from a Subchapter K  
147 entity, Alabama S corporation, or estate or trust, regardless  
148 of the geographic source of the income. The term gross income,  
149 in the case of a nonresident individual, includes only income  
150 from property owned or business transacted in Alabama. For  
151 purposes of this article, "proportionate share" shall be  
152 defined by reference to (i) the status of the individual owner  
153 as a partner or member of a Subchapter K entity, shareholder  
154 of an Alabama S corporation, or beneficiary of an estate or  
155 trust, and (ii) the allocable interest in that entity owned by  
156 the individual.

157 (b) The Department of Revenue may adopt rules to  
158 provide for the administration of this section."

159 Section 2. This act shall become effective on June 1, 2024.