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Income/Franchise Taxes

Legislative Developments

1. Extension of Time for Growth and Prosperity Act Exemptions. The Growth and Prosperity Act provides a ten year exemption from state and local taxes to those businesses that locate in a county that has been designated as a "growth and prosperity" county by the Mississippi Development Authority. This bill extends the time for using state tax exemptions provided under the Growth and Prosperity Act for those businesses located in a disaster area that have been unable to utilize the exemptions as a direct result of the disaster. The Mississippi Development Authority is authorized to extend the time for using the exemption for up to two years or until December 31, 2020, whichever occurs first. In addition, any business that has purchased property or equipment using the state tax exemption that is damaged or destroyed in the disaster may purchase replacement equipment and component building materials exempt from

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sales and use tax. (House Bill 1024, effective July 1, 2007).

2. Extension of Time for use of Jobs Tax Credit by Integrated Suppliers. Miss. Code Section 27-7-22.19 allows integrated suppliers to claim a jobs tax credit of \$1,000 annually for each new full-time employee for a period of five years from the date the credit commences. This bill provides a two-year extension of time to carry forward the jobs tax credit for integrated suppliers located in a disaster area that are unable to maintain the employees because of the disaster. The bill also allows for the minimum employee requirement associated with the credit to be waived for up to two years if the employer is unable to meet the minimum due to the disaster. (House Bill 1044, effective July 1, 2007).

3. Extension of Time for use of Jobs Tax Credit by Permanent Business Enterprises. Miss. Code Section 27-7-22.17 allows a "permanent business enterprise" to claim a jobs tax credit of \$5,000 annually for each new full-time employee for a period of 20 years from the date the credit commences. Unused credits may be carried forward for up to five years. This bill authorizes the Mississippi State Tax Commission to extend, by not more than two years, the period of time within which the jobs tax credit may be utilized by those permanent business enterprises that are located in a disaster area. It also authorizes the Commission to waive the requirement that a certain number of jobs be maintained by such enterprises for a period of time not in excess of two years and to extend the five year carry forward period by up to two years. (House Bill 1045, effective July 1, 2007).

4. Extension of Time for Mississippi Advantage Jobs Act. A qualified business or industry meeting the requirements of the Mississippi Advantage Jobs Act may receive quarterly incentive payments for a period not to exceed 10 years. This bill allows the State Tax Commission to provide an extension of time not to exceed two years for qualified businesses located in a disaster area to receive incentive payments under the Act. The Commission also may waive the minimum job number requirement under the act for a period of time not to exceed two years. The Mississippi Development Authority may extend the time within which jobs must be created for a period of up to two years. (House Bill 1047, effective July 1, 2007).

5. Tourism Project Sales Tax Incentive Fund. This bill creates incentives for entities to locate certain tourism projects in Mississippi. The bill creates a Tourism Project Sales Tax Incentive Fund and authorizes the Mississippi Development Authority to disburse incentive payments from that fund to entities that make capital investments in

Mississippi tourism projects. The Fund will be funded by sales tax revenue collected from the operation of tourism projects, 80% of which will be deposited into the fund. Incentive payments may be made in an amount up to 30% of the approved project costs and will cease when such amount has been paid or ten years after the date the project opens for commercial operation, whichever is earlier. This bill also amends Miss. Code Section 27-65-75 to incorporate pro shops, souvenir shops, gift shops, concessions and similar retail activities as tourism projects. (House Bill 1142, effective July 1, 2007).

For purposes of the incentive program, the term "tourism project" includes any of the following as approved by MDA:

(a) Theme parks, water parks, entertainment parks or outdoor adventure parks, cultural or historical interpretive educational centers or museums, motor speedways, indoor or outdoor entertainment centers or complexes, attractions created around a natural phenomenon or scenic landscape and marinas open to the public with a minimum private investment of not less than \$10,000,000;

(b) A hotel with a minimum private investment of \$40,000,000 in land, buildings, architecture, engineering, fixtures, equipment, furnishings, amenities and other related soft costs approved by the MDA, and having a minimum private investment of \$150,000 per guest room which amount shall be included within the minimum private investment of \$40,000,000; and

(c) A public golf course with a minimum private investment of \$10,000,000.

The term "tourism project" does not include any business, corporation or entity having a gaming license issued under Section 75-76-1 et seq., or any project in which a business corporation or entity having a gaming license has a direct or indirect financial interest. Additionally, the term "tourism project" does not include any facility within the project whose primary business is retail sales or any expansion of existing projects; however, pro shops, souvenir shops, gift shops, concessions and similar retail activities may be included within the definition of the term.

6. Small Enterprise Development Finance Act. The Mississippi Small Enterprise Development Finance Act was enacted to promote business and economic development in the State of Mississippi through job producing programs; to assist in securing investment in small communities by private companies locating or expanding in the state; and to authorize the issuance of state bonds or notes for funding such programs. This bill amends the definition of "private company" under the Act to include

any commercial enterprise approved by the Mississippi Business Finance Corporation. (House Bill 1390, effective March 23, 2007).

7. Casualty Loss Deductions. This bill amends Miss. Code Section 27-7-20 to allow net casualty loss deductions to be carried back more than three years if otherwise allowed under the Internal Revenue Code. The bill also amends Miss. Code Section 27-7-49 to eliminate the applicability of the three-year examination period for state income tax returns where the Mississippi taxable income of a taxpayer has been decreased by the carrying back of net casualty loss deductions or net operating loss deductions. (House Bill 1563, effective January 1, 2007).

8. New Markets Tax Credits. This bill provides an income tax and insurance premium tax credit for taxpayers that pay a qualified community development entity for equity investments that qualify for the federal income tax New Markets Tax Credit. The Mississippi Development Authority is charged with allocating the credit. The bill also amends Miss. Code Section 27-15-129 to provide that investments that reduce a taxpayer's insurance premium tax liability under that section may not include any investment for which the insurance premium tax credit is allocated. (House Bill 1727, effective January 1, 2007).

The amount of the credit will be equal to a certain percentage of the purchase price paid to the community development entity for the qualified investment. The applicable percentage is 4% for six years for purposes of the income tax credit and 1% for six years for purposes of the insurance premium tax credit. The amount of the credit that may be used in any one tax year is limited to an amount not greater than the total tax liability of the taxpayer, and any unused portion of the credit may be carried forth for seven taxable years beyond the last credit allowance date. The maximum aggregate amount of such credits that may be allocated in any one year may not exceed \$15,000,000.

A qualified community development entity must apply for credits with the Mississippi Development Authority ("MDA"). In its application, the qualified community development entity will certify to the MDA the anticipated dollar amount of the qualified equity investments to be made in the state during the first 12-month period following the initial credit allowance date.

The MDA will allocate credits based on the anticipated dollar amount of qualified equity investments as certified in the application. Once the MDA has allocated credits to a qualified community development entity, the entity will have 15 days from the date of the allocation to issue the

corresponding qualified equity investments.

The bill also amends Miss. Code Section 27-15-129 to provide that investments that reduce a taxpayer's insurance premium tax liability under that section may not include any investment for which the insurance premium tax credit is allocated.

A taxpayer that holds a qualified equity investment on the credit allowance date of a qualified equity investment will be entitled to an income tax credit and an insurance premium tax credit for the taxable year that includes the credit allowance date. The MDA will not allocate any credits after January 1, 2014.

9. Estimated Payments of Withholding Tax. In 2002, the Mississippi income tax, sales tax and use tax withholding laws were amended to require a 13th deposit of taxes to be paid to the State Tax Commission by June 25 of each year. Businesses subject to this obligation are required to remit 75% of the taxes they expect to collect during June on June 25 rather than waiting until July to remit such amounts. This accelerated withholding payment currently only affects businesses with average monthly tax payment obligations of at least \$20,000 for the preceding calendar year. Pursuant to this bill, an employer will not be subject to this accelerated withholding payment unless it has an average monthly withholding tax liability of at least \$50,000 in the previous year. (Senate Bill 2404, effective July 1, 2008).

10. Extension of Time for use of Jobs Tax Credit by Permanent Business Enterprises. Miss. Code Section 57-73-21 allows a "permanent business enterprise" in certain industries designated by the Mississippi Development Authority to claim a jobs tax credit of up to \$2,000 annually for each new full-time employee for a period of 5 years after the creation of the job. This bill authorizes the Mississippi State Tax Commission to extend, by not more than two years, the period of time within which the jobs tax credit may be utilized by those permanent business enterprises that are located in a disaster area. It also authorizes the Commission to waive the requirement that a certain number of jobs be maintained by such enterprises for a period of time not in excess of two years. (Senate Bill 2521, effective July 1, 2007).

11. Jobs Tax Credit Extension for Alternative Energy Producers. Miss. Code Section 27-7-22.29 allows producers of alternative energy to claim a job tax credit against their income tax liability equal to \$1,000 annually for each net new full-time employee job for a period of twenty (20) years from the date the credit begins. This bill authorizes the State Tax Commission to extend by not

more than two years the time period within which the jobs tax credit may be utilized by producers of alternative energy that are unable to maintain the required number of jobs as a direct result of a disaster. It also authorizes the Commission to waive the minimum number of jobs requirement for a period of two years and extends the period that the credit may be carried forward for a period of two years. (Senate Bill 2522, effective July 1, 2007).

12. Motion Picture Production Company Rebate. This bill amends the Mississippi Motion Picture Incentive Act to provide that a motion picture production company shall be entitled to a rebate of a portion of the base investment made by the motion picture production company. The amount of the rebate is equal to:

(a) 20% of the first \$1,000,000.00 of the base investment made by the motion picture production company;

(b) 25% of the next \$4,000,000.00 of the base investment made by the motion picture production company; and

(c) 30% of the base investment made by the motion picture production company that is greater than \$5,000,000.00.

For purposes of this rebate "base investment" means the actual investment made and expended in Mississippi by a motion picture production company in connection with the production of a state-certified production in the state. The term "base investment" shall include payroll; however, for the purpose of determining the rebate authorized under Section 57-89-7(1)(a), the term "base investment" shall not include payroll paid for persons who are not residents of Mississippi.

In addition to the rebate above, a motion picture production company may receive a rebate equal to 10% of the portion of the base investment for payroll paid for any employee of the producer who is not a resident and whose wages are:

(a) subject to the Mississippi Income Tax Withholding Law; and


(b) less than \$1,000,000.00

The total amount of the rebates authorized for a motion picture project shall not exceed \$5,000,000.00 in the aggregate.

A motion picture production company desiring a rebate under this section must submit an application to the State Tax Commission before completion of the project. The application must include a detailed accounting of the base investment made by the motion picture production company and any other information required by the State Tax Commission. Rebates made by the State Tax

Commission under this section shall be made from current income tax allocations. The State Tax Commission may not approve any application for a rebate under subsection (1)(6) (payroll rebate) of this section after July 1, 2012. (Senate Bill 2997, effective March 13, 2007).

13. Extension of Repeal on Exports. Miss. Code Sections 27-7-22.25 and 27-7-22.26 provide an income tax credit for taxpayers that use airport export facilities. The credit is equal to the charges paid by such taxpayers on the export or import of cargo. Mississippi Development Authority is required to report annually the impact of this tax credit. These sections were set to be repealed on July 1, 2007. This bill extends the date of repeal of these sections until July 1, 2009. (Senate Bill 3023, effective July 1, 2007).

14. Major Economic Impact Act. This bill was passed to offer certain tax incentives to Toyota Motor Company to entice it to locate a manufacturing plant in North Mississippi. It includes certain automotive manufacturing and assembly plants as eligible Major Economic Impact Projects under the Act. Such plants must create at least 1,500 jobs and include an initial private source capital investment of at least \$500 million. Income arising from such plants will be exempt from corporate income tax. The exemption will be for 20 years, beginning at the discretion of the taxpayer, but not more than 60 months after production begins. The exemption will be phased out if the required number of jobs is not created and/or maintained. A taxpayer accepting this exemption may become ineligible for certain other tax credits. (Senate Bill 3215, effective March 2, 2007). [back to top](#) 

Judicial Developments

1. **Barton v. Blount**¹ - Income Tax On September 4, 2007, the Mississippi Court of Appeals reversed an income tax assessment resulting from an excessive calculation of depreciation recapture in connection with the sale of all assets by a corporation followed by a complete liquidation. The husband and wife taxpayers owned all of the stock of a corporation that operated a franchise restaurant business in Mississippi. In 2000, the corporation sold all of its assets and liquidated.

Mississippi law generally imposes an income tax on gain resulting from the sale of assets. During the year in question, however, an exemption from the gain recognition requirement applied if a corporation sold all or substantially all of its assets, the assets had been held for more than one year and the corporation was completely liquidated within one year from the date of sale. The exemption in question was repealed for transactions occurring after March 29, 2005.

The applicable gain exclusion statute did not apply to depreciation recapture "computed in the same manner as provided for in Section 1245 of the Internal Revenue Code." Upon audit of the taxpayers' 2000 return, the taxpayers and the Tax Commission could not agree on the proper method of computing the taxable amount of depreciation recapture from the sale.

The taxpayer first contended that the reference in the statute to computing depreciation recapture "in the same manner as provided for in Section 1245" meant that depreciation had to be recaptured only on Section 1245 property and not for other types of depreciable property. The court noted that the plain language of the statute unambiguously indicates that all depreciable assets of the corporation are subject to recapture, not just Section 1245 assets.

The taxpayers then objected to the method used by the Tax Commission to compute the depreciation recapture. The taxpayers and the buyer of the assets had agreed to an allocation of the total consideration among the assets in the transaction for purposes of calculating gain for the seller and basis for the buyer for each asset. The taxpayers asserted that they were required to recapture depreciation only to the extent of the lesser of the depreciation claimed on a given asset or the gain from the sale of that asset based on the agreed allocation.

The State Tax Commission took the position the allocation of the sales price among the assets that was agreed to by the taxpayers and the buyer was irrelevant to the depreciation recapture computation. It asserted that the proper method for computing the depreciation recapture was to include all prior depreciation on all assets sold so long as that amount did not exceed the total amount of sales proceeds.

The court held that because the statute required the depreciation recapture to be computed "in the same manner as provided for in Section 1245," and because Section 1245 requires depreciation recapture to be determined on an asset-by-asset basis, the Tax Commission's computation of the depreciation recapture on an aggregate basis was erroneous. The Court of Appeals reversed and remanded the case and instructed the Tax Commission to recalculate the proper amount of depreciation recapture in a manner that was consistent with its opinion.

This decision creates an income tax refund opportunity (subject to the applicable statute of limitations) for those taxpayers who filed returns prior to the repeal of this exemption that reported excessive depreciation recapture from a liquidating sale of assets. [back to top](#) 📄

Administrative Developments

No substantive changes. [back to top](#) 

Transactional Taxes

Legislative Developments

1. Avoidance of Sales Tax. This bill amends Miss. Code Section 27-65-85 to make it unlawful for a purchaser of tangible personal property to represent to a retailer that purchases of merchandise are for resale, causing the retailer to not collect sales tax, if the purchase is being made for use by the purchaser. The bill also makes it unlawful to engage in business using another's sales tax permit for the purpose of avoiding the payment of sales tax, and makes it unlawful to avoid a payment required under the Sales Tax Law by using an exemption authorized under the Sales Tax Law. (House Bill 1028, effective July 1, 2007).

2. Refund of Gasoline and Motor Fuel Taxes. This bill amends Miss. Code Section 27-55-45 to authorize a refund of gasoline and motor fuel taxes that were erroneously or illegally collected from gasoline distributors. The Commission erroneously collected taxes from certain distributors between December 2002 and June 2003. This bill allows the Commission to authorize a refund to such distributors for the amount of taxes erroneously collected regardless of whether the claim for refund is filed within three years from the date of payment of such taxes. Total refunds of up to \$160,000 in the aggregate may be refunded pursuant to this amendment. The amendment provided under this bill will be repealed on October 1, 2007. (House Bill 1056, effective April 18, 2007).

3. Construction on Cruise Vessels. This bill amends Miss. Code Section 27-65-18 to conform the sales tax rate imposed on sales related to construction work on certain cruise vessels to the rate imposed for the same work on certain floating structures, such as casinos, floating restaurants, floating hotels and similar property. The tax does not apply to tangible personal property that is not a component part of the structure. (House Bill 1737, effective March 26, 2007).


4. Contractors' Tax. This bill amends Miss. Code Section 27-65-21 to provide that contractors performing construction work on apartment buildings and condominiums will be subject to the contractors' tax for such work. Previously, such buildings were considered residences and construction work on them was excluded from the contractors' tax. Pursuant to this bill, entities who contract or perform a contract to construct, repair, or improve apartment buildings or condominiums are subject to the contractors' tax. (Senate Bill 2387, effective July 1, 2007).

5. Time Limit for Failure to File Sales Tax Return. This bill

amends Miss. Code Sections 27-65-35 and 27-65-37 to increase the period of time within which the State Tax Commission must demand payment of sales taxes and damages for failure to file a sales tax return and to increase the period of time in which the taxpayer may pay the tax in lieu of such assessment. Both time periods are increased from 10 days to 30 days from the date of the assessment. The longer period conforms to 2005 legislation that made uniform notice, payment and appeal times for all areas of taxation. (Senate Bill 2414, effective July 1, 2007).

6. Sales Tax on Telecommunication Services. This bill amends Miss. Code Section 27-69-19 to incorporate definitions adopted by the Streamlined Sales and Use Tax Agreement project for purposes of the sales tax on telecommunication services covering intrastate, interstate, and international telecommunications services including ancillary services; and the sales tax on products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones. The bill adopts the sourcing rules of the SSUT Agreement as it pertains to telecommunications, radio and television programming, and data and information services. (Senate Bill 2810, effective July 1, 2007).

7. Exemption for Special Fuel Sales. This bill amends Miss. Code Section 27-55-527 to exempt from excise tax special fuels sold or delivered at an airport located in a foreign trade zone and placed directly into the fuel supply tanks of an aircraft whose immediate destination is outside of the United States or its territories. (Senate Bill 3109, effective March 30, 2007).

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Judicial Developments

1. Pursue Energy v. Tax Comm'n² - Use Tax On September 20, 2007, the Mississippi Supreme Court held that the corporate owner of natural gas wells and a gas processing plant in Mississippi was subject to use tax on gas that it used and consumed in its operations. The taxpayer owned and operated a number of sour gas wells in Mississippi. Sour gas requires processing to remove hydrogen sulfide before it can be sold. The taxpayer also owned the plant that removed the hydrogen sulfide from the gas. Most of the processed or clean gas was sold by the taxpayer in the wholesale market. A portion of the processed gas, however, was used by the taxpayer to run the gas processing plant and to run its equipment at well sites.

Upon audit, the Tax Commission imposed use tax at the rate of 1.5% (the rate applicable to manufacturers) on the value of the gas used to run the processing plant and use tax at the rate of 7% (the rate applicable to retail sales) on the value of the gas used to run its well site equipment. This assessment was affirmed at both administrative review hearings. The taxpayer subsequently paid the full assessment and filed suit for a refund of the use tax. In response to a summary judgment motion, the trial court affirmed the assessment, and the taxpayer appealed to the Mississippi Supreme Court.

The taxpayer first argued that the fuel used in its operations was neither sold, nor placed in the market for sale, and therefore there is no transaction upon which to impose the tax. The court found that the only necessary requirement for the imposition of the use tax is a use or consumption of personal property in Mississippi.

The taxpayer then argued that because it was a wholesaler, the gas used at the plant was exempt from use tax under the wholesaler exemption. The court found that the wholesaler exemption did not apply to the gas used at the plant because it was not sold to other parties for resale.

Finally, the taxpayer argued that the use tax only applies to tangible personal property that is purchased outside of Mississippi and later used or consumed in Mississippi. The court rejected that argument finding that it was irrelevant whether the taxpayer's gas came from within Mississippi borders or was brought into the state. [back to top](#) 

Administrative Developments

No substantive changes. [back to top](#) 

Property Taxes

Legislative Developments

No substantive changes. [back to top](#) 

Judicial Developments

No substantive changes. [back to top](#) 

Administrative Developments


1. Assessor's Authority to Determine True Value.

According to a Mississippi Attorney General opinion, a property tax assessor may investigate and verify a taxpayer's actual net operating income statement as part of the assessment process in determining a parcel's true value. Additionally, because the Legislature removed language from the regulations stating otherwise (see Miss. Code Section 27-35-50), assessors are permitted to consider tax credits and federal subsidies in making determinations of true value. Finally, if an assessor determines that using the capitalization rate prescribed by the Tax Commission would result in an inaccurate value, the assessor may determine a rate in accordance with the law or place less reliance on the income capitalization approach. Miss. A.G. Op. 2006-00578.

2. Compromise Payments of Unpaid Prop. Taxes. The Mississippi Attorney General issued an opinion addressing

the issue of whether a county board of supervisors may accept a compromise payment of unpaid personal property taxes of a taxpayer in bankruptcy. In the claim at issue, the County was never formally notified of the bankruptcy filing and did not file a proof of claim. The taxpayer offered to pay 75% of its tax liability, and the County inquired of the Attorney General whether it could accept such a compromise. The opinion holds that the County has no authority to compromise and settle a tax claim, but that the County may compromise such a claim when the compromise is ordered by a bankruptcy court. Such procedure may be accomplished by reopening the bankruptcy, by the County filing a proof of claim therein, and by the parties obtaining judicial approval of the compromise settlement. (Miss. A.G. Op. 2006-00676).

3. Performance Standards of Prop. Tax Assessments.

The Mississippi State Tax Commission amended performance standards and acceptable parameters for evaluating the accuracy of property tax assessments for counties whose next update year is tax year 2007, 2008 or 2009. The changes will provide equalization of property values by class throughout the state that will be used by the Commission in determining the acceptability of property tax rolls. (Miss. Property Tax Rule 6). [back to top](#) 

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¹ Docket No. 2006-CA-00698-COA.

² Docket No. 2006-CA-01390-SCT.