



Inside This Issue

This issue of *Mississippi Tax Bulletin* summarizes developments thus far in 2008 in the following areas of Mississippi tax law:

- **[Income/Franchise Taxes](#)**
 - [Legislative Developments](#)
 - [Judicial Developments](#)
 - [Administrative Developments](#)
- **[Transactional Taxes](#)**
 - [Legislative Developments](#)
 - [Judicial Developments](#)
 - [Administrative Developments](#)
- **[Property Taxes](#)**
 - [Legislative Developments](#)
 - [Judicial Developments](#)
 - [Administrative Developments](#)
- **[Other Notes of Interest](#)**



- ▶ [Our Firm](#)
- ▶ [Our Attorneys](#)
- ▶ [Our Tax Group](#)
- ▶ [Latest News](#)
- ▶ [Contact Us](#)

Butler Snow has been a leading presence in the legal community for 50 years. With more than 150 attorneys, the firm provides a broad range of services to clients on a regional and national basis from its offices in Jackson and Gulfport, Mississippi, Memphis, Tennessee, and Bethlehem, Pennsylvania.

© 2008 MISSISSIPPI TAX BULLETIN is published by Butler, Snow, O'Mara, Stevens & Cannada, PLLC. MISSISSIPPI TAX BULLETIN is intended for general informational purposes only and is not intended to be comprehensive with respect to the subject matter. MISSISSIPPI TAX BULLETIN is not intended to create an attorney-client relationship with any user. MISSISSIPPI TAX BULLETIN is not designed or intended to provide legal or other professional advice, as any such advice requires the consideration of the facts of the specific situation.

If you no longer wish to receive this publication, please respond to this e-mail and type "Remove from Mailing List" in the subject line.

FREE BACKGROUND INFORMATION IS AVAILABLE UPON REQUEST.

Income/Franchise Taxes

Legislative Developments

1. New Markets Tax Credit. Mississippi law currently allows a credit against income tax and insurance premium tax liability for a qualified equity investment in a qualified community development entity or CDE. This credit, which is the Mississippi equivalent of the federal "new markets" tax credit, is to encourage investments in entities involved in developments in low- and moderate-income areas throughout the United States. Under current law, the income tax credit is 4%, and the insurance premium tax credit is 1-1/3%, of the amount of the investment in a CDE in each of the second through seventh years of the investment. A bill was enacted to amend Mississippi Code Section 57-105-1 to make various changes to this credit. It accelerates the benefit by allowing a credit equal to 8% of the investment in a CDE for each of the first through third years of the investment for both income tax and

insurance premium tax purposes. The bill also makes it clear that tax credits earned by a partnership or other pass through entity may be allocated to the entity owners as they may agree pursuant to the terms of the operating agreement for such entity. The bill imposes a fee of \$1,000 on the CDE for the privilege of applying for the credit. The fee is payable to the Mississippi Development Authority, which is the state agency that must allocate the credit. The maximum amount of an investment in a CDE that may qualify for the credit remains capped at \$10 Million. (House Bill 1662, effective July 1, 2008).

2. Credit for Jobs Skills Training Costs. Mississippi law allows an income tax credit equal to 50% of the costs incurred by certain employers for providing basic skills training programs to its employees. A bill was passed to postpone the date of repeal of such credit from July 1, 2008 until July 1, 2012. (Senate Bill 2534, effective July 1, 2008).

3. Disregarded Entities; Reportable Transactions. A bill was passed to clarify the Mississippi income tax treatment of disregarded entities and to give the Chairman of the Tax Commission the authority to monitor reportable transactions. Various income tax statutes were amended to provide that trusts, partnerships and corporations that are required to include the financial activity of a disregarded entity on its tax return for federal income tax purposes are also required to do so for Mississippi income tax purposes. The bill also authorizes the Chairman of the Tax Commission to require taxpayers and their advisors, who are required to notify the IRS of certain "reportable transactions," to also notify the State Tax Commission of such transactions. The bill further authorizes the Chairman of the Tax Commission to require tax advisors, who are required by federal income tax law to keep lists of certain "reportable transactions," to also maintain such lists for Mississippi income tax purposes. (Senate Bill 2562, effective July 1, 2008). [back to top](#) 📄

Judicial Developments

1. Barton v. Blount¹ - Income Tax - On September 4, 2007, the Mississippi Court of Appeals issued its opinion addressing the proper method to calculate 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 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 (i) a corporation sold all or substantially all of its assets, (ii) the assets had been held for more than one year and (iii) 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 depreciation recapture from the sale.

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. **Sales Tax on Rebates Received by Retailers.** It is a common practice for manufacturers of consumable products to pay rebates to retailers as an incentive for the retailer to offer the product for sale at a lower price. The Mississippi sales tax treatment of rebate payments received by retailers has been unclear. A bill was enacted to modify the definition of "gross proceeds of sales" for sales tax purposes to clarify this uncertainty. Pursuant to this change, a retailer will not be required to pay sales tax on a rebate payment unless (i) the payment is directly related to a discount on the product sold, (ii) the retailer is obligated to pass the discount through to the purchaser, (iii) the amount of the rebate that is attributable to the sale of each item of the product is fixed and determinable at the time of the sale, and (iv) the discount is either identified on the invoice received by the purchaser or on a coupon presented by the purchaser. (House Bill 1663, effective July 1, 2008).

2. **Contractors' Tax.** Under Mississippi law, contractors are required to pay a 3.5% tax on the contract price for all non-residential construction projects in excess of \$10,000. The tax must be paid to the Tax Commission prior to the commencement of work when the contractor applies for a Material Purchase Certificate ("MPC"). The MPC allows the contractor to purchase materials that are to become a component part of the structure free of sales tax. A bill was passed to amend Miss. Code Section 27-65-21 to provide that contractors who pay sales tax on the purchase of component materials may, after obtaining a MPC from the Tax Commission, claim a credit for any sales tax paid on such purchases. (House Bill 1663, effective July 1, 2008).

3. **Software Sold Via the Internet.** Mississippi law imposes sales tax on the revenue earned from certain specified services including "computer software sales and services." Legislation was enacted to clarify that sales of software or software services transmitted by the internet to a destination outside of Mississippi where the first use by the purchaser occurs outside of Mississippi are exempt from sales tax. (Senate Bill 3173, effective July 1, 2008). [back to top](#) 

Judicial Developments

1. **Blount v. ECO Resources, Inc.² - Contractor's Tax.** On November 20, 2007, the Mississippi Court of Appeals issued its opinion addressing whether a management company that operated water and sewer systems for municipalities was subject to contractor's tax

for its repairs to the water and sewer systems. The taxpayer contracted with municipalities to operate, manage and repair their water and sewer systems for a flat fee. The flat fee only covered repair work that did not exceed \$2,000 per repair project.

Upon audit, the Tax Commission imposed the 3.5% contractor's tax on that portion of the flat fee that was attributable to the repair work. Under Mississippi law, the contractor's tax applies to the fee paid to contractors for the construction or repair of non-residential real property improvement projects in excess of \$10,000.

The taxpayer claimed it was exempt from the contractor's tax because all repairs it performed were to portions of the water and sewer system that were personal property. The Tax Commission argued that the personal property exemption from the contractor's tax does not apply to repairs made to water and sewer systems.

The court recognized that underground water and sewer pipes lost their identity as personal property, but it held that other component parts of the system that could be easily removed retained their identity as personal property. After determining that 99.5% of the repair work was performed on the personal property components of the system, the court held that only .5% of the fee attributable to repair work was subject to the contractor's tax.


2. Pursue Energy v. Tax Comm'n³ - Use Tax. On September 20, 2007, the Mississippi Supreme Court issued its opinion addressing whether 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.

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

1. Assessor's Authority to Determine True Value. In the third special legislative session of 2000, Mississippi Code Section 57-75-35 was enacted to allow a city or county to agree in advance to provide certain ad valorem exemptions to attract enterprises that would have a major economic impact as part of the Mississippi Major Economic Impact Act. A bill was passed to broaden the types of enterprises that may qualify for this exemption so that it will now cover certain major manufacturers that have recently been attracted to Mississippi for economic development purposes. (Senate Bill 2532, effective March 31, 2008).

2. Mineral Documentary Tax. Mississippi law has long provided an ad valorem exemption for non-producing oil, gas and mineral interests that are severed from the surface interest. However, the law required a "mineral documentary tax" to be paid upon the transfer of any non-producing mineral interests. The chancery clerk was required to collect the tax and to affix "mineral documentary tax stamps" to the deed evidencing the payment of such tax. A bill was passed to simplify to procedure for documenting the payment of such tax. The chancery clerk is no longer required to attach mineral documentary tax stamps to the deed transferring such interest. Rather the chancery clerk may note in writing on the face of such deed that the mineral documentary tax has been paid. (Senate Bill 2714, effective January 1,

2009). [back to top](#) 

Judicial Developments

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

Administrative Developments

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

Other Notes of Interest

In Governor Barbour's state of the state address, which was delivered on January 21, he announced the appointment of a commission to conduct a comprehensive study of Mississippi's tax system, including how the combined federal and local tax structures affect Mississippi citizens and businesses.

The public-private commission will be chaired by Leland S. Speed, one of the state's long-time business leaders and the former Director of the Mississippi Development Authority. The 37 other members of the Commission come from business, legal, academic and legislative backgrounds. The members of the Commission include the Secretary of State, the State Treasurer and the Chair of the State Tax Commission. Governor Barbour asked the commission to provide a report on its findings by August 31, 2008.

Contact Us



• **Paul Varner** is the Practice Group Leader for Butler Snow's Tax Group. His practice includes a wide array of taxation issues, including state and local taxation, tax planning and tax dispute resolution. Paul can be contacted via e-mail at paul.varner@butlersnow.com.

¹ Docket No. 2006-CA-00698-COA.

² Docket No. 2006-CC-00673-COA.

³ Docket No. 2006-CA-01390-SCT.

