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## 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%

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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*

No Substantive Cases. [back to top](#) 

#### *Administrative Developments*

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


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## **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.<sup>1</sup> - 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. [back to top](#) 

### *Administrative Developments*

**1. Sales Tax on Finance Charges.** The Tax Commission has amended its rule that pertains to the imposition of sales tax on finance charges when an item is sold on credit by the retailer. The retailer must collect sales tax not only on the sales price of the property but also the finance charge. The amended rule clarifies that the retailer is allowed to claim a credit on subsequent sales tax returns for any bad debts charged off as uncollectible provided the retailer remitted tax on the initial sale of the item and the applicable finance charge. MSTC Rule 35.IV.02.04 (effective 8/15/08). [back to top](#) 


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## **Property Taxes**

### *Legislative Developments*

**1. Ad valorem Exemptions for Certain Suppliers.** 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](#) 

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### **Governor's Tax Study Commission**

During his state of the state address on January 21, 2008, Mississippi Governor Haley Barbour (R) announced the appointment of a Commission to conduct a comprehensive study of Mississippi's tax system. The 38 members of the Commission represent private businesses, state and local elected officials, educators, accountants and attorneys. The members of the Commission included the Secretary of State, the State Treasurer and the Chair of the State Tax Commission. The Commission was asked to analyze the tax burden and how it is spread across all taxpayers while maintaining a focus on compliance, fairness, job creation and revenue stability. The Commission released its final report and recommendations during the last week in September. That report includes both short-term and long-term recommendations.

#### **A. Short-Term Recommendations**

1. **Restructure the MSTC.** In order to provide

independence in the tax appeals process, the current job of the Commissioner of Revenue should be divided into two separate jobs. The Tax Commission would continue to consist of three persons appointed by the Governor that would constitute the second and final administrative appeals Board. An Executive Director would be appointed to assume all other administrative duties currently held by the Chairman of the Tax Commission to oversee the State's taxing agency, which would be renamed the Department of Revenue.

**2. Other Administrative Changes.** Current Mississippi law requires a taxpayer to post a bond equal to twice the amount of tax in controversy in order to obtain a judicial review of an adverse decision from the Tax Commission's administrative appeals process. The Commission recommends that the Bond requirement be reduced to an amount equal to one-half of the amount of tax in question.

### **3. Corporate Income and Franchise Taxes**

- The Commission recommends that the franchise tax rate be reduced from \$2.50 to \$2.25 per \$1,000 of capital employed in the State.
- The Commission recommends that rarely utilized income tax credits be eliminated, such as the R & D Skills Credit, the Job Care Credit, the Financial Institutions Jobs Tax Credit and the Airport Cargo Charges Credit.
- The Commission recommends that the first \$10,000 of the taxable income of each corporation be exempt.
- The Commission recommends that Mississippi income tax law be changed so that it tracks federal income tax law as it pertains to depreciation.

### **4. Property Tax**

- The Commission discussed, but did not recommend, abolishing the property tax on inventories. To lessen the burden of that tax, the Commission recommended expanding the existing freeport warehouse exemption to give local governments the authority to exempt all raw materials, work-in-process and finished goods inventory from all property taxes. This recommendation is intended only for manufacturing, warehousing and distribution facilities.
- The Commission recommended a \$20,000 personal property exemption for furniture, fixtures and equipment for all businesses.


### **5. Sales Tax**

- The current sales tax exemption related to bond financing should be limited only to certain designated industries, which are targeted industries under the current economic development statutes.
- The Commission recommended that municipalities and counties be authorized to impose a local sales tax more specific capital projects when approved by a vote of 60% of the local citizens.
- The local levy would expire when the intended purpose is met.
- The Commission recommended that the sales tax exemption granted to certain non-profit organizations and hospitals be repealed.
- The Commission recommended adding numerous additional services to the list of services and business activities that are subject to sales tax.

## B. Long-Term Recommendations

1. **Streamline Sales Tax Project.** Mississippi is currently an "implementing state" in the Streamlined Sales Tax Project. The Commission recommended that Mississippi enact legislation to become a conforming or member state of the SSTP.

2. **Sales Tax Base.** The Commission recommended that Mississippi reduce its overall sales tax rate by broadening the base by taxing additional services and/or eliminating current exemptions.

3. **Corporate Income Tax Reporting.** Mississippi currently requires members of an affiliated corporate group doing business in Mississippi to determine their Mississippi taxable income on a separate entity basis. The Commission recommended that Mississippi carefully consider requiring combined unitary reporting as a method of determining the Mississippi taxable income of an affiliated group of corporations where one or more does business in Mississippi. [back to top](#) 

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## Contact Us

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<sup>1</sup> Docket No. 2006-CC-00673-COA.

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