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I. Legislative Developments

A. 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

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

B. 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).

C. 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).

D. 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).

E. 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 Ann. § 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, if and when signed by the Governor).

F. 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).

G. 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).

H. Credit for Payments to a Qualified Community Development Entity. This bill provides an income tax and insurance premium tax credit for taxpayers that pay a qualified community development entity for equity investments. The Mississippi Development Authority is charged with allocating the credit. 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 maximum aggregate amount of such credits that may be allocated in any one year may not exceed \$15,000,000. 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).

I. 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).

J. 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).

K. Jobs Tax Credit Extension for Alternative Energy Producers. 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).

L. 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).

M. 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).

II. Judicial Developments

A. AT&T Corp. On May 26, 2006, a Mississippi trial court found the state's dividends-received deduction and consolidated income tax statutes to be invalid after concluding that both statutes discriminated against interstate commerce and thereby violated the third prong of the Complete Auto Transit test.¹

Mississippi's dividends-received deduction statute² permits a parent to exclude from gross income only those dividends received from subsidiaries that have a taxable presence in Mississippi. It does not, however, permit the exclusion of dividends received from subsidiaries that do not have a taxable presence in Mississippi. Accordingly, the statute was found to discriminate against interstate commerce. The court stated that Mississippi could not deny the dividends-received deduction to companies simply because they chose not to locate some part of the business activities of their subsidiaries in Mississippi.

Mississippi's consolidated corporate income tax return statute³ allowed affiliated groups to file federal-style consolidated income tax returns only if all members of the group were taxable solely by Mississippi. The statute did not permit affiliated groups to file consolidated returns if any member of the group was taxable by another state. Multi-state affiliated groups were given the option of filing either separate or combined (post-apportionment) returns. AT&T showed that vastly different tax liabilities might result for the same taxpayer depending upon whether the taxpayer filed consolidated as opposed to

combined returns. The court found that the statute discriminated against interstate commerce. It stated that multi-state affiliated groups were being denied the tax benefit of filing consolidated returns solely because they chose to engage in taxable activities outside of Mississippi.

In order to remedy this discrimination, the court concluded that Mississippi must provide the benefits of the dividends-received deduction and consolidated income tax return filing to those companies that have previously been denied those options. Any corporate taxpayer that can demonstrate that it overpaid its Mississippi corporate income taxes because it did not take advantage of those tax benefits will be entitled to a refund.

The Mississippi legislature eliminated the right to file a consolidated corporate income tax return for tax years beginning on or after January 1, 2004. Accordingly, the refund opportunity pertaining to the filing of consolidated income tax returns will apply only for those tax years beginning prior to 2004 that are not closed by the applicable statute of limitations.

¹ AT&T Corp. v. Miss. State Tax Commission, Case No. G-200-31 S 2, Hinds County Chancery Court, May 26, 2006.

² Miss. Code § 27-7-15(4)(i).

³ Miss. Code § 27-7-37(2)(a)(i).

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