To: Ways and Means

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002
By: Representative Cameron

HOUSE BILL NO. 296

AN ACT TO PROVIDE THAT IF A BUSINESS ENTERPRISE THAT WAS DOING BUSINESS IN THIS STATE FOR AT LEAST TWO YEARS BEFORE JANUARY 1, 2002, AND IS LOCATED IN A GROWTH AND PROSPERITY COUNTY OR ELIGIBLE SUPERVISORS DISTRICT DETERMINES IT IS AT A COMPETITIVE DISADVANTAGE BECAUSE OF TAX EXEMPTIONS PROVIDED TO OTHER BUSINESS ENTERPRISES UNDER THE GROWTH AND PROSPERITY ACT, THE BUSINESS ENTERPRISE MAY REQUEST THE MISSISSIPPI DEVELOPMENT AUTHORITY TO DESIGNATE IT AS ELIGIBLE FOR SUCH TAX EXEMPTIONS; TO PROVIDE THAT A BUSINESS ENTERPRISE WILL BE ELIGIBLE TO RECEIVE SUCH TAX EXEMPTIONS IF THE MISSISSIPPI DEVELOPMENT AUTHORITY DETERMINES THE BUSINESS ENTERPRISE IS AT SUCH A COMPETITIVE DISADVANTAGE; TO PROVIDE THAT SUCH A BUSINESS ENTERPRISE SHALL NOT BE REQUIRED TO SATISFY THE MINIMUM NUMBER OF JOBS REQUIREMENT PROVIDED IN THE GROWTH AND PROSPERITY ACT; TO AMEND SECTIONS 27-7-21, 27-13-5, 27-13-7 AND 27-65-101, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) As used in this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Approved business enterprise" means, and has the same definition as that term has in Section 57-80-5.

(b) "Eligible supervisors district" means, and has the same definition as that term has in Section 57-80-5.

(c) "Growth and prosperity counties" means, and has the same definition as that term has in Section 57-80-5.

(d) "MDA" means the Mississippi Development Authority.

(2) If a business enterprise that was doing business in this state for at least two (2) years before January 1, 2002, and is located in a growth and prosperity county or in an eligible supervisors district within eight (8) miles of the boundary of a county that meets the criteria of Section 57-80-7(1)(b) determines it is at a competitive disadvantage because of tax exemptions provided to any approved business enterprise under the Growth and
Prosperity Act, such business enterprise may apply to the MDA and request the MDA to designate it as eligible for the tax exemptions provided under the Growth and Prosperity Act. The application shall be on a form prescribed by the MDA and shall contain such information as may be required by the MDA to determine if the business enterprise is at a competitive disadvantage because of tax exemptions provided to any approved business enterprise under the Growth and Prosperity Act. The MDA shall review the application and determine whether the business enterprise is at such a competitive disadvantage. If the MDA determines the business enterprise is at a competitive disadvantage, the MDA shall issue a certificate to the business enterprise designating it as eligible for the tax exemptions provided under the Growth and Prosperity Act. A business enterprise issued a certificate under this section shall not be required to satisfy any minimum number of jobs requirement provided in the Growth and Prosperity Act.

(3) The MDA shall promulgate rules and regulations necessary for the implementation and administration of this section.

SECTION 2. Section 27-7-21, Mississippi Code of 1972, is amended as follows:

27-7-21. (a) **Allowance of deductions.** In the case of a resident individual, the exemptions provided by this section, as applicable to individuals, shall be allowed as deductions in computing taxable income.

(b) **Single individuals.** In the case of a single individual, a personal exemption of Five Thousand Two Hundred Fifty Dollars ($5,250.00) for the 1979 and 1980 calendar years and Six Thousand Dollars ($6,000.00) for each calendar year thereafter.

(c) **Married individuals.** In the case of married individuals living together, a joint personal exemption of Eight Thousand Dollars ($8,000.00) for the 1979 and 1980 calendar years and Nine Thousand Five Hundred Dollars ($9,500.00) for the 1981 through
1997 calendar years, Ten Thousand Dollars ($10,000.00) for the
calendar year 1998, Eleven Thousand Dollars ($11,000.00) for the
calendar year 1999, and Twelve Thousand Dollars ($12,000.00) for
each calendar year thereafter. A husband and wife living together
shall receive but one (1) personal exemption in the amounts
provided for in this subsection for each calendar year against
their aggregate income.

(d) **Head of family individuals.** In the case of a head of
family individual, a personal exemption of Eight Thousand Dollars
($8,000.00) for the 1979 and 1980 calendar years and Nine Thousand
Five Hundred Dollars ($9,500.00) for each calendar year
thereafter. The term "head of family" means an individual who is
single, or married but not living with his spouse for the entire
taxable year, who maintains a household which constitutes the
principal place of abode of himself and one or more individuals
who are dependents under the provisions of Section 152(a) of the
Internal Revenue Code of 1954, as amended. The head of family
individual shall be entitled to the additional dependent exemption
as provided in subsection (e) of this section only to the extent
of dependents in excess of the one (1) dependent needed to qualify
as head of family.

(e) **Additional exemption for dependents.** In the case of any
individual having a dependent, other than husband or wife, an
additional personal exemption of One Thousand Five Hundred Dollars
($1,500.00) for each such dependent, except as otherwise provided
in subsection (d) of this section. The term "dependent" as used
in this subsection shall mean any person or individual who
qualifies as a dependent under the provisions of Section 152,
Internal Revenue Code of 1954, as amended.

(f) **Additional exemption for taxpayer or spouse aged
sixty-five (65) or more.** In the case of any taxpayer or the
spouse of the taxpayer who has attained the age of sixty-five (65)
before the close of his taxable year, an additional exemption of
One Thousand Five Hundred Dollars ($1,500.00).

(g) Additional exemption for blindness of taxpayer or
spouse. In the case of any taxpayer or the spouse of the taxpayer
who is blind at the close of the taxable year, an additional
exemption of One Thousand Five Hundred Dollars ($1,500.00). For
the purpose of this subsection, an individual is blind only if his
central visual acuity does not exceed 20/200 in the better eye
with correcting lenses, or if his visual acuity is greater than
20/200 but is accompanied by a limitation in the fields of vision
such that the widest diameter of the visual field subtends an
angle no greater than twenty (20) degrees.

(h) Husband and wife--claiming exemptions. In the case of
husband and wife living together and filing combined returns, the
personal and additional exemptions authorized and allowed by this
section may be taken by either, or divided between them in any
manner they may choose. If the husband and wife fail to choose,
the commissioner shall divide the exemptions between husband and
wife in an equitable manner. In the case of a husband and wife
filing separate returns, the personal and additional exemptions
authorized and allowed by this section shall be divided equally
between the spouses.

(i) Nonresidents. A nonresident individual shall be allowed
the same personal and additional exemptions as are authorized for
resident individuals in subsection (a) of this section; however,
the nonresident individual is entitled only to that proportion of
the personal and additional exemptions as his net income from
sources within the State of Mississippi bears to his total or
entire net income from all sources.

A nonresident individual who is married and whose spouse has
income from independent sources must declare the joint income of
himself and his spouse from sources within and without Mississippi
and claim as a personal exemption that proportion of the
authorized personal and additional exemptions which the total net
income from Mississippi sources bears to the total net income of
both spouses from all sources. If both spouses have income from
sources within Mississippi and wish to file separate returns,
their combined personal and additional exemptions shall be that
proration of the exemption which their combined net income from
Mississippi sources is of their total combined net income from all
sources. The amount of the personal and additional exemptions so
computed may be divided between them in any manner they choose.

In the case of married individuals where one (1) spouse is a
resident and the other is a nonresident, the personal exemption of
the resident individual shall be prorated on the same basis as if
both were nonresidents having net income from within and without
the State of Mississippi.

For the purpose of this subsection, the term "net income"
means gross income less business expenses incurred in the
taxpayer's regular trade or business and computed in accordance
with the provisions of the Mississippi Income Tax Law.

(j) Part-year residents. An individual who is a resident of
Mississippi for only a part of his taxable year by reason of
either moving into the state or moving from the state shall be
allowed the same personal and additional exemptions as authorized
for resident individuals in subsection (a) of this section; the
part-year resident shall prorate his exemption on the same basis
as nonresidents having net income from within and without the
state.

(k) Estates. In the case of an estate, a specific exemption
of Six Hundred Dollars ($600.00).

(l) Trusts. In the case of a trust which, under its
governing instrument, is required to distribute all of its income
currently, a specific exemption of Three Hundred Dollars
($300.00). In the case of all other trusts, a specific exemption
of One Hundred Dollars ($100.00).
Corporations, foundations, joint ventures, associations.

In the case of a corporation, foundation, joint venture or association taxable herein, there shall be allowed no specific exemption, except as provided under the Growth and Prosperity Act and Section 1 of House Bill No. , 2002 Regular Session.

Status. The status on the last day of the taxable year, except in the case of the head of family as provided in subsection (d) of this section, shall determine the right to the exemptions provided in this section; provided, that a taxpayer shall be entitled to such exemptions, otherwise allowable, if the husband or wife or dependent has died during the taxable year.

Fiscal-year taxpayers. Individual taxpayers reporting on a fiscal year basis shall prorate their exemptions in a manner established by regulations promulgated by the commissioner.

SECTION 3. Section 27-13-5, Mississippi Code of 1972, is amended as follows:

Franchise tax levy. Except as otherwise provided in subsections (3), (4) and (5) of this section, there is hereby imposed, to be paid and collected as hereinafter provided, a franchise or excise tax upon every corporation, association or joint-stock company or partnership treated as a corporation under the income tax laws or regulations, organized or created for pecuniary gain, having privileges not possessed by individuals, and having authorized capital stock now existing in this state, or hereafter organized, created or established, under and by virtue of the laws of the State of Mississippi, equal to Two Dollars and Fifty Cents ($2.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided. In no case shall the franchise tax due for the accounting period be less than Twenty-five Dollars ($25.00). It is the purpose of this section to require the payment to the State...
of Mississippi of this tax for the right granted by the laws of
this state to exist as such organization, and to enjoy, under the
protection of the laws of this state, the powers, rights,
privileges and immunities derived from the state by the form of
such existence.

(2) **Annual report of domestic corporations.** Each domestic
corporation shall file, within the time prescribed by Section
79-3-251, an annual report as required by the provisions of
Section 79-3-249.

(3) A corporation that has negotiated a fee-in-lieu as
defined in Section 57-75-5 shall not be subject to the tax levied
by this section on such project; provided, however, that the
fee-in-lieu payment shall be otherwise treated in the same manner
as the payment of franchise taxes.

(4) An approved business enterprise as defined in the Growth
and Prosperity Act shall not be subject to the tax levied by this
section on the value of capital used, invested or employed by the
approved business enterprise in a growth and prosperity county or
supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise issued a certificate under Section
1 of House Bill No. , 2002 Regular Session, shall not be
subject to the tax levied by this section on the value of capital
used, invested or employed by the business enterprise in a growth
and prosperity county or eligible supervisors district as provided
in Section 1 of House Bill No. , 2002 Regular Session.

SECTION 4. Section 27-13-7, Mississippi Code of 1972, is
amended as follows:

27-13-7. (1) **Franchise tax levy.** Except as otherwise
provided in subsections (3), (4) and (5) of this section, there is
hereby imposed, levied and assessed upon every corporation,
association or joint stock company, or partnership treated as a
corporation under the Income Tax Laws or regulations as
hereinbefore defined, organized and existing under and by virtue
of the laws of some other state, territory or country, or
organized and existing without any specific statutory authority,
now or hereafter doing business or exercising any power, privilege
or right within this state, as hereinafter defined, a franchise
or excise tax equal to Two Dollars and Fifty Cents ($2.50) of each
One Thousand Dollars ($1,000.00), or fraction thereof, of the
value of capital used, invested or employed within this state,
except as hereinafter provided. In no case shall the franchise
tax due for the accounting period be less than Twenty-five Dollars
($25.00). It is the purpose of this section to require the
payment of a tax by all organizations not organized under the laws
of this state, measured by the amount of capital or its
equivalent, for which such organization receives the benefit and
protection of the government and laws of the state.

(2) **Annual report of foreign corporations.** Each foreign
corporation authorized to transact business in this state shall
file, within the time prescribed by Section 79-3-251, an annual
report as required by the provisions of Section 79-3-249.

(3) A corporation that has negotiated a fee-in-lieu as
defined in Section 57-75-5 shall not be subject to the tax levied
by this section on such project; provided, however, that the
fee-in-lieu payment shall be otherwise treated in the same manner
as the payment of franchise taxes.

(4) An approved business enterprise as defined in the Growth
and Prosperity Act shall not be subject to the tax levied by this
section on the value of capital used, invested or employed by the
approved business enterprise in a growth and prosperity county or
supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise issued a certificate under Section
1 of House Bill No. 296, 2002 Regular Session, shall not be
subject to the tax levied by this section on the value of capital
used, invested or employed by the business enterprise in a growth
and prosperity county or eligible supervisors district as provided in Section 1 of House Bill No. ___ , 2002 Regular Session.

SECTION 5. Section 27-65-101, Mississippi Code of 1972, is amended as follows:

27-65-101. (1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the United States or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section. No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as containers or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of containers or shipping materials for use in ships engaged in international commerce.

(b) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) to a manufacturer for use directly in manufacturing or processing a product for sale or rental or repairing or reconditioning vessels or barges of fifty (50) tons load displacement and over. This exemption shall not apply to any property used as fuel except to the extent that such fuel comprises by-products which have no market value.
(c) The gross proceeds of sales of dry docks, offshore drilling equipment for use in oil exploitation or production, vessels or barges of fifty (50) tons load displacement and over, when sold by the manufacturer or builder thereof.

(d) Sales to commercial fishermen of commercial fishing boats of over five (5) tons load displacement and not more than fifty (50) tons load displacement as registered with the United States Coast Guard and licensed by the Mississippi Commission on Marine Resources.

(e) The gross income from repairs to vessels and barges engaged in foreign trade or interstate transportation.

(f) Sales of petroleum products to vessels or barges for consumption in marine international commerce or interstate transportation businesses.

(g) Sales and rentals of rail rolling stock (and component parts thereof) for ultimate use in interstate commerce and gross income from services with respect to manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof).

(h) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) used or consumed directly in manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof). This exemption shall not apply to any property used as fuel.

(i) Sales of machinery or tools or repair parts therefor or replacements thereof, fuel or supplies used directly in manufacturing, converting or repairing ships of three thousand (3,000) tons load displacement and over, but not to include office and plant supplies or other equipment not directly used on the ship being built, converted or repaired.

(j) Sales of tangible personal property to persons operating ships in international commerce for use or consumption.
on board such ships. This exemption shall be limited to cases in which procedures satisfactory to the commissioner, ensuring against use in this state other than on such ships, are established.

(k) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-51-5, which are located in a county or portion thereof designated as an enterprise zone pursuant to Sections 57-51-1 through 57-51-15.

(l) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-54-5.

(m) Income from storage and handling of perishable goods by a public storage warehouse.

(n) The value of natural gas lawfully injected into the earth for cycling, repressuring or lifting of oil, or lawfully vented or flared in connection with the production of oil; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be exempt.

(o) The gross collections from self-service commercial laundering, drying, cleaning and pressing equipment.

(p) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified companies, certified as
such by the Mississippi Development Authority under Section 57-53-1.

(q) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Three areas (as such term is defined in Section 57-73-21), which businesses are certified by the State Tax Commission as being eligible for the exemption granted in this paragraph (q).

(r) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi and creating a minimum of thirty-five (35) jobs at the new headquarters in this state. The Tax Commission shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this paragraph.

(s) The gross proceeds from the sale of semitrailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles if exported from this state within forty-eight (48) hours and registered and first used in another state.

(t) Gross income from the storage and handling of natural gas in underground salt domes and in other underground
reservoirs, caverns, structures and formations suitable for such
storage.

(u) Sales of machinery and equipment to nonprofit
organizations if the organization: (i) is tax-exempt pursuant to
Section 501(c)(4) of the Internal Revenue Code of 1986, as
amended; (ii) assists in the implementation of the national
contingency plan or area contingency plan, and which is created in
response to the requirements of Title IV, Subtitle B of the Oil
Pollution Act of 1990, Public Law 101-380; and (iii) engages
primarily in programs to contain, clean up and otherwise mitigate
spills of oil or other substances occurring in the United States
coastal and tidal waters. For purposes of this exemption,
"machinery and equipment" means any ocean-going vessels, barges,
booms, skimmers and other capital equipment used primarily in the
operations of nonprofit organizations referred to herein.

(v) Sales of component materials and equipment to
approved business enterprises as provided under the Growth and
Prosperity Act.

(w) From and after July 1, 2001, sales of pollution
control equipment to manufacturers or custom processors for
industrial use. For the purposes of this exemption, "pollution
control equipment" means equipment, devices, machinery or systems
used or acquired to prevent, control, monitor or reduce air, water
or groundwater pollution, or solid or hazardous waste as required
by federal or state law or regulation.

(x) Sales or leases to a manufacturer of motor vehicles
operating a project that has been certified by the Mississippi
Major Economic Impact Authority as a project as defined in Section
57-75-5(f)(iv)1 of machinery and equipment; special tooling such
as dies, molds, jigs and similar items treated as special tooling
for federal income tax purposes; or repair parts therefor or
replacements thereof; repair services thereon; fuel, supplies,
electricity, coal and natural gas used directly in the manufacture
of motor vehicles or motor vehicle parts or used to provide climate control for manufacturing areas.

(y) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1 and any other sales or leases required to establish or operate such project.

(z) Sales of component materials and equipment to a business enterprise as provided under Section 1 of House Bill No. _____, 2002 Regular Session.

(2) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the State Tax Commission as being eligible for the exemption granted in this paragraph, shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws, corporation franchise tax laws or sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of
the income tax laws, corporation franchise tax laws and sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

SECTION 7. This act shall take effect and be in force from and after July 1, 2002.