By: Representatives West, Middleton

To: Ways and Means

HOUSE BILL NO. 982

AN ACT TO PROVIDE INCENTIVES IN THE FORM OF TEMPORARY EXEMPTIONS FROM LOCAL AD VALOREM TAXES AND STATE INCOME, SALES AND CORPORATION FRANCHISE TAXES FOR SMALL BUSINESS ENTERPRISES THAT LOCATE IN ADAMS COUNTY, JEFFERSON COUNTY, FRANKLIN COUNTY, AMITE COUNTY, CLAIBORNE COUNTY OR WILKINSON COUNTY, MISSISSIPPI; 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) For the purposes of this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "County" means Adams County, Jefferson County, Franklin County, Amite County, Claiborne County or Wilkinson County, Mississippi.

(b) "Local tax" means any county ad valorem tax imposed on the small business enterprise pursuant to law.

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

(d) "Small business enterprise" means a commercial enterprise with less than one hundred (100) full-time employees, less than Two Million Dollars ($2,000,000.00) in net worth or less than Three Hundred Fifty Thousand Dollars ($350,000.00) in net annual profit after taxes.

(f) "State tax" means any sales and use tax imposed on the small business enterprise pursuant to law related to the purchase of component building materials and equipment for initial construction of facilities or expansion of facilities in a county, all income tax imposed pursuant to law on income earned by the small business enterprise in a county, and franchise tax imposed pursuant to law on the value of capital used, invested or employed by the small business enterprise in a county.

(2) A small business enterprise locating its operations after July 1, 2004, in a county and outside the corporate limits of any municipality located within such county shall be exempt from all local taxes and all state taxes for a period of five (5) years.

(3) (a) The following conditions, along with any other conditions the MDA shall promulgate from time to time by rule or regulation, shall apply to such exemptions: (a) any exemption provided under this section is nontransferable and cannot be applied, used or assigned to any other person or business or tax account; (b) no small business enterprise may claim or use the exemption granted under this section unless that enterprise is in full compliance with all state and local tax laws, and related ordinances and resolutions; and (c) the small business enterprise must enter into an agreement with the MDA which sets out, at a minimum, the performance requirements of the small business enterprise during the term of the exemption and provisions for the recapture of all or a portion of the taxes exempted if the performance requirements of the small business enterprise are not met.

(b) Upon entering into such an agreement, the MDA shall forward such agreement to the State Tax Commission and the affected local taxing authority so that the exemption can be implemented. The State Tax Commission shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, for the implementation of both local and state exemptions granted under 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).

(m) 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, Section 57-64-33, and Section 1 of House Bill ____, 2004 Regular Session.

(n) **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.

(o) **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:

27-13-5. (1) **Franchise tax levy.** Except as otherwise provided in subsections (3), (4), (5) and (6) 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 operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act 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 such a county as provided in Section 57-64-33.

(6) A small business enterprise as defined in Section 1 of House Bill No. ____, 2004 Regular Session, shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the small business enterprise in a county as provided in Section 1 of House Bill No. ____, 2004 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), (5) and (6) 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 hereinbefore 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 operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act 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 such a county as provided in Section 57-64-33.

(6) A small business enterprise as defined in Section 1 of House Bill No. ____, 2004 Regular Session, shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the small business enterprise in a county as provided in Section 1 of House Bill No. ____, 2004 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. For the purposes of this exemption, electricity used directly in the electrolysis process in the production of sodium chlorate shall be considered a raw material. 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 57-64-33.

(aa) Sales of component materials and equipment to a small business enterprise as provided under Section 1 of House Bill No. ____, 2004 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.

(3) (a) For purposes of this subsection:

(i) "Telecommunications enterprises" shall have the meaning ascribed to such term in Section 57-73-21(13);

(ii) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21(1);

(iii) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21(1);

(iv) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21(1); and

(v) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(b) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2013, that is installed in Tier One areas and used in the deployment of broadband technologies shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

(c) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2013, that is installed in Tier Two and Tier Three areas and used in the deployment of broadband technologies shall be exempt from 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 ad valorem tax laws, 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 ad valorem tax laws, 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 January 1, 2004.