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To: Ways and Means

HOUSE BILL NO. 1780  
(As Passed the House)

1 AN ACT TO ENACT THE MISSISSIPPI MOTION PICTURE INCENTIVE ACT;  
2 TO PROVIDE THAT A MOTION PICTURE PRODUCTION COMPANY SHALL BE  
3 ENTITLED TO AN INCOME AND FRANCHISE TAX CREDIT FOR THE EMPLOYMENT  
4 OF RESIDENTS OF MISSISSIPPI IN CONNECTION WITH THE PRODUCTION OF A  
5 MOTION PICTURE; TO PROVIDE FOR THE AMOUNT OF THE CREDIT; TO  
6 PROVIDE FOR A REBATE OF A PERCENTAGE OF THE INVESTMENT INTO MADE  
7 BY A MOTION PICTURE PRODUCTION COMPANY IN CERTAIN MOTION PICTURE  
8 PICTURES; TO PROVIDE FOR THE AMOUNT OF THE REBATE; TO AMEND  
9 SECTION 27-65-11, MISSISSIPPI CODE OF 1972, TO REVISE THE  
10 DEFINITION OF THE TERM "MANUFACTURING MACHINERY" UNDER THE STATE  
11 SALES TAX LAW TO INCLUDE CERTAIN MACHINERY AND EQUIPMENT USED IN  
12 THE PRODUCTION OF MOTION PICTURES; TO AMEND SECTION 27-65-101,  
13 MISSISSIPPI CODE OF 1972, TO CREATE AN INDUSTRIAL SALES TAX  
14 EXEMPTION FOR SALES OF CERTAIN MACHINERY AND EQUIPMENT USED IN THE  
15 PRODUCTION OF MOTION PICTURES; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** The provisions of Sections 1 through 4 of this  
18 act shall be known and may be cited as the "Mississippi Motion  
19 Picture Incentive Act."

20 **SECTION 2.** As used in Sections 1 through 4 of this act, the  
21 following terms shall have the meanings ascribed in this section  
22 unless the context clearly indicates otherwise:

23 (a) "Base investment" means the actual investment made  
24 and expended by a motion picture production company in connection  
25 with the production of a state-certified production in the state.  
26 The term "base investment" shall not include payroll.

27 (b) "Motion picture" means a nationally distributed  
28 feature-length film, video, television series or commercial made  
29 in Mississippi, in whole or in part, for theatrical or television  
30 viewing or as a television pilot. The term "motion picture" shall  
31 not include the production of television coverage of news and  
32 athletic events, or a film, video, television series or commercial

33 that contains any material or performance defined in Section  
34 97-29-103.

35 (c) "Motion picture production company" means a company  
36 engaged in the business of producing nationally distributed motion  
37 pictures, videos, television series or commercials intended for a  
38 theatrical release or for television viewing. The term "motion  
39 picture production company" shall not mean or include any company  
40 owned, affiliated, or controlled, in whole or in part, by any  
41 company or person which is in default on a loan made by the state  
42 or a loan guaranteed by the state, or any company or person who  
43 has ever declared bankruptcy under which an obligation of the  
44 company or person to pay or repay public funds or monies was  
45 discharged as a part of such bankruptcy.

46 (d) "Payroll" means salary, wages or other compensation  
47 including related benefits.

48 (e) "Resident" or "resident of Mississippi" means a  
49 natural person, and for the purpose of determining eligibility for  
50 the tax credit provided by Section 3 of this act, any person  
51 domiciled in the State of Mississippi and any other person who  
52 maintains a permanent place of abode within the state and spends  
53 in the aggregate more than six (6) months of each year within the  
54 state.

55 (f) "State" means the State of Mississippi.

56 (g) "State-certified production" means a motion picture  
57 approved by the Mississippi Development Authority produced by a  
58 motion picture production company in the state.

59 **SECTION 3.** (1) A motion picture production company shall be  
60 entitled to a tax credit for the employment of residents of  
61 Mississippi in connection with production of a state-certified  
62 production in the state. The credit shall be equal to ten percent  
63 (10%) of the total aggregate payroll for residents employed in  
64 connection with such state-certified production during the taxable  
65 year.

66           (2) The credit may be applied to the aggregate tax liability  
67 applicable to the motion picture production company imposed by  
68 Chapters 7 and 13 of Title 27, Mississippi Code of 1972.

69           (3) If the motion picture production company is an entity  
70 not subject to the tax imposed by Chapters 7 and 13 of Title 27,  
71 Mississippi Code of 1972, the tax credit shall flow through to its  
72 partners or members as follows:

73                   (a) Corporate partners or members shall claim their  
74 share of the credit on their corporation income or corporation  
75 franchise tax returns.

76                   (b) Individual partners or members shall claim their  
77 share of the credit on their individual income tax returns.

78                   (c) Partners or members that are estates or trusts  
79 shall claim their share of the credit on their fiduciary income  
80 tax returns.

81           (4) Any unused credit may be carried forward no more than  
82 ten (10) years from the date the credit was earned.

83           (5) A motion picture production company desiring a tax  
84 credit under this section must submit an application to the State  
85 Tax Commission. The application must include a detailed  
86 accounting of the total aggregate payroll for residents employed  
87 in connection with such state-certified production during the  
88 taxable year and any other information required by the State Tax  
89 Commission.

90           (6) The State Tax Commission shall have all powers necessary  
91 to implement and administer the provisions of this section, and  
92 the commission shall promulgate rules and regulations, in  
93 accordance with the Mississippi Administrative Procedures Law,  
94 necessary for the implementation of this section.

95           **SECTION 4.** (1) A motion picture production company shall be  
96 entitled to a rebate of a portion of the base investment made by  
97 the motion picture production company. The amount of the rebate

98 shall be equal to ten percent (10%) of the base investment made by  
99 the motion picture production company.

100 (2) A motion picture production company desiring a rebate  
101 under this section must submit an application to the State Tax  
102 Commission. The application must include a detailed accounting of  
103 the base investment made by the motion picture production company  
104 and any other information required by the State Tax Commission.  
105 Rebates made by the State Tax Commission under this section shall  
106 be made from current tax collections.

107 (3) The State Tax Commission shall have all powers necessary  
108 to implement and administer the provisions of this section, and  
109 the State Tax Commission shall promulgate rules and regulations,  
110 in accordance with the Mississippi Administrative Procedures Law,  
111 necessary for the implementation of this section.

112 **SECTION 5.** Section 27-65-11, Mississippi Code of 1972, is  
113 amended as follows:

114 27-65-11. (a) "Manufacturer" means one who is exclusively  
115 or predominately engaged in the business of manufacturing as  
116 defined under the terms "to manufacture" or "manufacturing." A  
117 person who is engaged in manufacturing and nonmanufacturing  
118 activities may be classified as a manufacturer as to his  
119 manufacturing activities which are operated as a separate business  
120 or division.

121 (b) "To manufacture" or "manufacturing" embraces activities  
122 of an industrial or commercial nature wherein labor or skill is  
123 applied, by hand or machinery, to materials belonging to the  
124 manufacturer so that a new, different, or more useful article of  
125 tangible personal property or substance of trade or commerce or  
126 electric power is produced for sale or rental and includes the  
127 production or fabrication of special-made or custom-made articles  
128 for sale or rental.

129 "To manufacture" or "manufacturing" does not include  
130 activities such as cooking or preparing food or food products by a

131 retailer in the regular course of retail trade; repairing and  
132 reconditioning property; the filling of prescriptions by a  
133 pharmacist; the washing or screening of mineral products; the  
134 cutting, hauling and decking of logs; or similar preparatory  
135 functions even when performed by a manufacturer.

136 (c) "Remanufacturing" embraces activities of an industrial  
137 or commercial nature wherein labor or skill is applied by hand or  
138 machinery to materials, a portion of which may belong to the  
139 customer, so that rebuilt articles of tangible personal property,  
140 comparable in quality to new articles of the same property, are  
141 created, a majority of the value of which is produced by the  
142 remanufacturing activity.

143 (d) "Custom processor" means one who is exclusively or  
144 predominately engaged in the business of custom processing or  
145 remanufacturing as defined under the terms "custom processing" and  
146 "remanufacturing."

147 (e) "Custom processing" means the performance of a  
148 manufacturing service done or made to order upon the property of  
149 the customer and shall include laundering, cleaning and pressing,  
150 but shall not include "repairs" or "maintenance" as these terms  
151 are defined herein; nor self-service commercial laundering,  
152 drying, cleaning and pressing equipment.

153 (f) "Manufacturing machinery" shall mean and include that  
154 machinery owned or leased by a manufacturer or custom processor  
155 for use by said manufacturer or custom processor in his plant  
156 directly and exclusively in manufacturing tangible personal  
157 property for subsequent sale, rental or in custom processing for a  
158 fee. Motorized units, conveyors, track and track structures,  
159 conduits, and similar items for use in transporting the unfinished  
160 product from storage or from one (1) phase of the manufacturing  
161 process to another may be classed as "manufacturing machinery."

162 "Manufacturing machinery" shall also include laboratory  
163 machinery which shall include X-ray machines and film, scales,

164 chemical equipment, pressure and tensile analysis machines and  
165 similar equipment to determine the quality of the product in  
166 process of manufacture, and equipment used in the processing of  
167 waste materials to avoid air and water pollution, but only when  
168 located at the manufacturer's plant site.

169 Machinery used by a manufacturer to move, repair, clean,  
170 alter, improve, or otherwise recondition, rail rolling stock for  
171 sale or rental shall likewise constitute "manufacturing  
172 machinery."

173 "Manufacturing machinery" shall also include machinery and  
174 equipment used in the production of motion pictures such as  
175 editing equipment, audio equipment, lighting equipment, projection  
176 equipment, camera equipment, sound equipment, cables, computer  
177 equipment used in the editing process, computer equipment used in  
178 the creation of special effects, and computer equipment used in  
179 the graphic and animation process. For the purposes of this  
180 paragraph the term "motion picture" means a nationally distributed  
181 feature-length film, video, television series or commercial made  
182 in Mississippi, in whole or in part, for theatrical or television  
183 viewing or as a television pilot. The term "motion picture" shall  
184 not include the production of television coverage of news and  
185 athletic events, or a film, video, television series or commercial  
186 that contains any material or performance defined in Section  
187 97-29-103.

188 "Manufacturing machinery" shall not include machinery for use  
189 in the hatching of baby chicks, the severance of timber, sand,  
190 gravel, oil, gas or other natural resources produced or severed  
191 from the soil or water, maintenance or repair machinery, research  
192 laboratory machinery, storage warehouse machinery, equipment for  
193 protection of the plant or comfort of the personnel, or other  
194 equipment and supplies of like character. "Manufacturing  
195 machinery" does not include machine foundations or materials for  
196 their construction.

197 (g) "Machine parts" are component parts of manufacturing  
198 machinery and do not include parts for service equipment,  
199 nonmanufacturing machinery, fuels, lubricants, paints, or tools  
200 for maintenance.

201 (h) "Manufacturing plant" means the real and personal  
202 property owned or leased by a manufacturer which is assembled and  
203 used at a fixed location to perform activities defined as  
204 "manufacturing."

205 (i) "Repair," "repairs," or "maintenance" means the  
206 restoring of property in some measure to its original condition,  
207 which may involve the use of either personal property or labor or  
208 both, but, for the purposes of this chapter, the total charge for  
209 the service shall constitute gross income taxable in the class in  
210 which it falls.

211 (j) "Producer" means any person producing natural resource  
212 products or agricultural or horticultural products from the soil  
213 or water for sale.

214 **SECTION 6.** Section 27-65-101, Mississippi Code of 1972, is  
215 amended as follows:

216 27-65-101. (1) The exemptions from the provisions of this  
217 chapter which are of an industrial nature or which are more  
218 properly classified as industrial exemptions than any other  
219 exemption classification of this chapter shall be confined to  
220 those persons or property exempted by this section or by the  
221 provisions of the Constitution of the United States or the State  
222 of Mississippi. No industrial exemption as now provided by any  
223 other section except Section 57-3-33 shall be valid as against the  
224 tax herein levied. Any subsequent industrial exemption from the  
225 tax levied hereunder shall be provided by amendment to this  
226 section. No exemption provided in this section shall apply to  
227 taxes levied by Section 27-65-15 or 27-65-21.

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

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

237           (b) Sales of raw materials, catalysts, processing  
238 chemicals, welding gases or other industrial processing gases  
239 (except natural gas) to a manufacturer for use directly in  
240 manufacturing or processing a product for sale or rental or  
241 repairing or reconditioning vessels or barges of fifty (50) tons  
242 load displacement and over. For the purposes of this exemption,  
243 electricity used directly in the electrolysis process in the  
244 production of sodium chlorate shall be considered a raw material.  
245 This exemption shall not apply to any property used as fuel except  
246 to the extent that such fuel comprises by-products which have no  
247 market value.

248           (c) The gross proceeds of sales of dry docks, offshore  
249 drilling equipment for use in oil exploitation or production,  
250 vessels or barges of fifty (50) tons load displacement and over,  
251 when sold by the manufacturer or builder thereof.

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

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

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

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

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

273           (i) Sales of machinery or tools or repair parts  
274 therefor or replacements thereof, fuel or supplies used directly  
275 in manufacturing, converting or repairing ships of three thousand  
276 (3,000) tons load displacement and over, but not to include office  
277 and plant supplies or other equipment not directly used on the  
278 ship being built, converted or repaired.

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

285           (k) Sales of materials used in the construction of a  
286 building, or any addition or improvement thereon, and sales of any  
287 machinery and equipment not later than three (3) months after the  
288 completion of construction of the building, or any addition  
289 thereon, to be used therein, to qualified businesses, as defined  
290 in Section 57-51-5, which are located in a county or portion  
291 thereof designated as an enterprise zone pursuant to Sections  
292 57-51-1 through 57-51-15.

293           (l) Sales of materials used in the construction of a  
294 building, or any addition or improvement thereon, and sales of any

295 machinery and equipment not later than three (3) months after the  
296 completion of construction of the building, or any addition  
297 thereon, to be used therein, to qualified businesses, as defined  
298 in Section 57-54-5.

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

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

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

308 (p) Sales of materials used in the construction of a  
309 building, or any addition or improvement thereon, and sales of any  
310 machinery and equipment not later than three (3) months after the  
311 completion of construction of the building, or any addition  
312 thereon, to be used therein, to qualified companies, certified as  
313 such by the Mississippi Development Authority under Section  
314 57-53-1.

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

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

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

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

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

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

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

370 (x) Sales or leases to a manufacturer of motor vehicles  
371 operating a project that has been certified by the Mississippi  
372 Major Economic Impact Authority as a project as defined in Section  
373 57-75-5(f)(iv)1 of machinery and equipment; special tooling such  
374 as dies, molds, jigs and similar items treated as special tooling  
375 for federal income tax purposes; or repair parts therefor or  
376 replacements thereof; repair services thereon; fuel, supplies,  
377 electricity, coal and natural gas used directly in the manufacture  
378 of motor vehicles or motor vehicle parts or used to provide  
379 climate control for manufacturing areas.

380 (y) Sales or leases of component materials, machinery  
381 and equipment used in the construction of a building, or any  
382 addition or improvement thereon to an enterprise operating a  
383 project that has been certified by the Mississippi Major Economic  
384 Impact Authority as a project as defined in Section  
385 57-75-5(f)(iv)1 and any other sales or leases required to  
386 establish or operate such project.

387 (z) Sales of component materials and equipment to a  
388 business enterprise as provided under Section 57-64-33.

389 (aa) Sales of machinery and equipment used in the  
390 production of motion pictures such as film; videotape; component  
391 building materials used in the construction of a set; makeup;  
392 fabric used as or in the making of costumes; clothing, including,

393 shoes, accessories and jewelry used as wardrobes; materials used  
394 as set dressing; materials used as props on a set or by an actor;  
395 materials used in the creation of special effects; and expendable  
396 items purchased for limited use by grip, electric and camera  
397 departments such as tape, fasteners and compressed air. For the  
398 purposes of this paragraph (aa) the term "motion picture" means a  
399 nationally distributed feature-length film, video, television  
400 series or commercial made in Mississippi, in whole or in part, for  
401 theatrical or television viewing or as a television pilot. The  
402 term "motion picture" shall not include the production of  
403 television coverage of news and athletic events, or a film, video,  
404 television series or commercial that contains any material or  
405 performance defined in Section 97-29-103.

406 (2) Sales of component materials used in the construction of  
407 a building, or any addition or improvement thereon, sales of  
408 machinery and equipment to be used therein, and sales of  
409 manufacturing or processing machinery and equipment which is  
410 permanently attached to the ground or to a permanent foundation  
411 and which is not by its nature intended to be housed within a  
412 building structure, not later than three (3) months after the  
413 initial start-up date, to permanent business enterprises engaging  
414 in manufacturing or processing in Tier Two areas and Tier One  
415 areas (as such areas are designated in accordance with Section  
416 57-73-21), which businesses are certified by the State Tax  
417 Commission as being eligible for the exemption granted in this  
418 paragraph, shall be exempt from one-half (1/2) of the taxes  
419 imposed on such transactions under this chapter.

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

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

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

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

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

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

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

443 (c) Sales of equipment to telecommunications  
444 enterprises after June 30, 2003, and before July 1, 2013, that is  
445 installed in Tier Two and Tier Three areas and used in the  
446 deployment of broadband technologies shall be exempt from the  
447 taxes imposed on such transactions under this chapter.

448 **SECTION 7.** This act shall take effect and be in force from  
449 and after July 1, 2004.