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To: Ways and Means

HOUSE BILL NO. 1780

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 27-65-11. (a) "Manufacturer" means one who is exclusively
113 or predominately engaged in the business of manufacturing as
114 defined under the terms "to manufacture" or "manufacturing." A
115 person who is engaged in manufacturing and nonmanufacturing
116 activities may be classified as a manufacturer as to his
117 manufacturing activities which are operated as a separate business
118 or division.

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

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

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

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

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

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

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

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

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

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

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

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

193 (g) "Machine parts" are component parts of manufacturing
194 machinery and do not include parts for service equipment,

195 nonmanufacturing machinery, fuels, lubricants, paints, or tools
196 for maintenance.

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

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

207 (j) "Producer" means any person producing natural resource
208 products or agricultural or horticultural products from the soil
209 or water for sale.

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

212 27-65-101. (1) The exemptions from the provisions of this
213 chapter which are of an industrial nature or which are more
214 properly classified as industrial exemptions than any other
215 exemption classification of this chapter shall be confined to
216 those persons or property exempted by this section or by the
217 provisions of the Constitution of the United States or the State
218 of Mississippi. No industrial exemption as now provided by any
219 other section except Section 57-3-33 shall be valid as against the
220 tax herein levied. Any subsequent industrial exemption from the
221 tax levied hereunder shall be provided by amendment to this
222 section. No exemption provided in this section shall apply to
223 taxes levied by Section 27-65-15 or 27-65-21.

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

226 (a) Sales of boxes, crates, cartons, cans, bottles and
227 other packaging materials to manufacturers and wholesalers for use

228 as containers or shipping materials to accompany goods sold by
229 said manufacturers or wholesalers where possession thereof will
230 pass to the customer at the time of sale of the goods contained
231 therein and sales to anyone of containers or shipping materials
232 for use in ships engaged in international commerce.

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

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

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

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

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

258 (g) Sales and rentals of rail rolling stock (and
259 component parts thereof) for ultimate use in interstate commerce
260 and gross income from services with respect to manufacturing,

261 repairing, cleaning, altering, reconditioning or improving such
262 rail rolling stock (and component parts thereof).

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

269 (i) Sales of machinery or tools or repair parts
270 therefor or replacements thereof, fuel or supplies used directly
271 in manufacturing, converting or repairing ships of three thousand
272 (3,000) tons load displacement and over, but not to include office
273 and plant supplies or other equipment not directly used on the
274 ship being built, converted or repaired.

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

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

289 (l) Sales of materials used in the construction of a
290 building, or any addition or improvement thereon, and sales of any
291 machinery and equipment not later than three (3) months after the
292 completion of construction of the building, or any addition

293 thereon, to be used therein, to qualified businesses, as defined
294 in Section 57-54-5.

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

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

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

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

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

323 (r) Sales of component materials used in the
324 construction of a building, or any addition or improvement
325 thereon, and sales of any machinery and equipment not later than

326 three (3) months after the completion of the building, addition or
327 improvement thereon, to be used therein, for any company
328 establishing or transferring its national or regional headquarters
329 from within or outside the State of Mississippi and creating a
330 minimum of thirty-five (35) jobs at the new headquarters in this
331 state. The Tax Commission shall establish criteria and prescribe
332 procedures to determine if a company qualifies as a national or
333 regional headquarters for the purpose of receiving the exemption
334 provided in this paragraph.

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

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

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

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

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

366 (x) Sales or leases to a manufacturer of motor vehicles
367 operating a project that has been certified by the Mississippi
368 Major Economic Impact Authority as a project as defined in Section
369 57-75-5(f)(iv)1 of machinery and equipment; special tooling such
370 as dies, molds, jigs and similar items treated as special tooling
371 for federal income tax purposes; or repair parts therefor or
372 replacements thereof; repair services thereon; fuel, supplies,
373 electricity, coal and natural gas used directly in the manufacture
374 of motor vehicles or motor vehicle parts or used to provide
375 climate control for manufacturing areas.

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

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

385 (aa) Sales of machinery and equipment used in the
386 production of motion pictures such as film; videotape; component
387 building materials used in the construction of a set; makeup;
388 fabric used as or in the making of costumes; clothing, including,
389 shoes, accessories and jewelry used as wardrobes; materials used
390 as set dressing; materials used as props on a set or by an actor;
391 materials used in the creation of special effects; and expendable

392 items purchased for limited use by grip, electric and camera
393 departments such as tape, fasteners and compressed air. For the
394 purposes of this paragraph (aa) the term "motion picture" means a
395 nationally distributed feature-length film, video, television
396 series or commercial made in Mississippi, in whole or in part, for
397 theatrical or television viewing or as a television pilot. The
398 term "motion picture" shall not include the production of
399 television coverage of news and athletic events.

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

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

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

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

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

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

423 (v) "Equipment used in the deployment of broadband
424 technologies" means any equipment capable of being used for or in

425 connection with the transmission of information at a rate, prior
426 to taking into account the effects of any signal degradation, that
427 is not less than three hundred eighty-four (384) kilobits per
428 second in at least one direction, including, but not limited to,
429 asynchronous transfer mode switches, digital subscriber line
430 access multiplexers, routers, servers, multiplexers, fiber optics
431 and related equipment.

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

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

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