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Procedure

With Filing Deadline Close, Mississippi Businesses Expect Franchise Tax Bill

With a little over a month before the deadline to file revenue bills at the Mississippi Legislature, the business community is still waiting for the most significant tax bill of the 2016 session, one that will either phase out or eliminate the corporate franchise tax.

It is expected that Lieutenant Governor Tate Reeves (R), president of the state Senate, will file such a bill, John Fletcher, a partner at Jones Walker LLP, told Bloomberg BNA. A similar bill was considered during the 2015 legislative session and failed to pass. The deadline for filing revenue bills is March 16.

“The one everyone is expecting to see is the one that will phase out or get rid of the franchise tax,” Fletcher said. “Last year there were a lot of competing proposals, such as reduction to individual income tax, but there’s a momentum to do away with it and make Mississippi a more attractive place to do business.”

With only a handful of states still levying both an income tax and a franchise tax, the franchise tax is a hindrance on business development in Mississippi, Fletcher said. While the momentum to pass such a bill is there, obstacles still remain. Notably, the need for additional school funding and infrastructure repairs. In fiscal year 2015, Mississippi’s total revenue was about \$5.4 billion. Franchise tax income totaled approximately \$260.5 million, according to the Department of Revenue’s Fiscal Year 2015 annual report.

“The big debate, of course, is we have some big issues on the spending side that we’re going to have to tackle; school funding is a really hot topic right now,” Fletcher said. “We’ve also got some pretty serious roads and bridges issues around the state. The business community has really coalesced to put together a multi-year plan to address that. That’s going to require money.”

Reeves will probably file a bill addressing the franchise tax sometime in early March as he’s currently focused on moving some general bills along in the Legislature, Laura Hipp, Reeves’ spokeswoman, told Bloomberg BNA. “He’s definitely been very vocal about the need to get rid of the franchise tax in Mississippi,” Hipp said. “Particularly on the franchise tax, he believes it is a tax that places Mississippi at a competitive disadvantage when employers are looking to locate here and our neighbors don’t have the tax. For Mississippi businesses, the franchise tax is a cost of doing business that their competitors don’t necessarily have.”

The bill that is filed may be a comprehensive tax bill that addresses franchise tax as well as other tax issues, such as bringing state taxes for self-employed to the same level as federal rates and flattening the income tax rates.

Define ‘Facilitate.’ Already introduced in the Legislature are a number of smaller tax bills ranging from some that would extend various tax credits to others that would divert some sales tax to municipalities to repair roads and water systems. These bills have been referred to the Senate Finance Committee.

One bill, originating with the Department of Revenue, that might have some unintended consequences and has Fletcher concerned is S.B. 2052, which revises the definition of “retailer,” “retail sale” and “doing business under.” This bill, and its companion, H.B. 418, would change the definition of a retailer and a retail sale to cover anyone who facilitates a sale of tangible property.

There’s concern that if the bill passes, it could target entities such as Ebay Inc., Craigslist Inc. or even flea market organizers, although they aren’t the intended targets. There needs to be clarification around the definition, Fletcher said.

“As written, it could have some pretty broad consequences,” Fletcher said. “The problem is they don’t define what facilitate means. A reasonable reading of the bill as it is now written is to say anyone who brings together buyers and sellers is a facilitator. Suddenly all these private party sales become retail sales and somebody has to collect sales tax even if they don’t handle the money.”

Other Filed Bills. Other notable bills filed include:

- S.B. 2067, called the Working Families Tax Credit Act, which would authorize an income tax credit in an amount equal to a portion of the earned income tax;
- S.B. 2258, which would extend the tourism sales tax incentive program;
- S.B. 2074, which would also extend the tourism sales tax incentive program, and in addition extend the tax credit for skill training and the motion picture incentive program;
- S.B. 2059, which would authorize a credit for uncompensated physicians providing clinical rotations to medical students;
- S.B. 2065, which would increase the maximum amount of credits available under the historic property income tax credit;
- S.B. 2146, which would divert an additional percentage of sales tax revenue, up to 1.5 percent, to municipalities to be used for infrastructure, including wa-

ter and sewer system projects and street and bridge repair, reconstruction and resurfacing projects;

- S.B. 2120, which would reduce the sales tax rate on motorcycles to 5 percent from 7 percent;

- S.B. 2053, which would revise the exemption for durable medical equipment and home medical supplies;

- S.B. 2054, which would revise the definition of “manufacturer’s list price” under the tobacco tax law; and

- S.B. 2058, which would allow the commissioner of the Department of Revenue to require fingerprinting

and background checks of employees with access to federal tax information.

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Information on the bills is at <http://billstatus.ls.state.ms.us/2016/pdf/mainmenu.htm>.