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REVIEW OF THE FIRST SPECIAL SESSION AND THE REGULAR SESSION OF 2002

THE GOOD, THE BAD AND THE UGLY

First Special Session of 2002

The primary reason Governor Foster called the first Special Session of the Legislature on March 25th was to address economic development issues that could not be addressed in the 2002 Regular Session which was constitutionally restricted to fiscal matters only. The Governor's economic development package had several pieces. One part dealt with completing the legislative action needed to fund the agreement reached with the New Orleans Saints in order to keep the Saints from moving and also to complete the renovations to the new basketball arena which was part of the deal that enticed the Charlotte Hornets to move to New Orleans. The Administration was successful in accomplishing this in House Bill 46 which reallocated portions of the state hotel/motel tax for Orleans Parish to fund the commitment to the two professional sports franchises.

A second item of the Governor's economic development plan was a major revision of the Louisiana Quality Jobs Program, one of the state's key incentive programs for creating new jobs in Louisiana. The changes were made in House Bill 144 (Act 153). The new law offers rebates based on a percentage of qualified payroll versus the income and franchise tax credits offered by the old law. The new law also repeals the "basic" industry approach and targets certain industries which include advanced materials, agriculture, forest and food technology, biotech and biomedical, logistics and transportation, oil and gas, durable goods, entertainment, information technology and petrochemical and environmental technology by offering the rebates for new jobs created by a new location in the state or the expansion of existing operations. The new law also lowered the "new payroll" threshold which should make it easier for smaller operations to utilize the program. It also increase the amount of the rebate from 5 % to 6% in certain cases. However, the new law has more reporting requirements than the prior law to insure the program is creating new jobs in the industries the state has targeted. It also requires the employer to pay 85% of the cost of health insurance provided to employees versus 75% under the old law in order to qualify for the credits.

The third leg of the Governor's economic development program in the Special Session were tax credit bills aimed at specific activities. These included (1) expanding jobs credit program for movies, television shows, videos and national commercials made in Louisiana (House Bill 17); (2) a new credit for investments in movies, televisions shows, videos and national commercials (Senate Bill 108); (3) a new research and development tax credit which mirrors the federal program in Section 41 of Title 26 of the U.S.C.A. (House Bill 106); (4) a new tax credit for commercializing technology developed by Louisiana universities and technical schools (House Bill 105); (5) and a reduction in the sales tax on custom software (House Bill 30).

When the first Special Session ended, the general consensus was that the Governor had been largely successful in advancing his program.

2002 Regular Session

The 2002 Regular Session was limited by the constitution to fiscal matters. Governor Foster's primary goal was to stabilize the state's revenue stream. In an earlier fiscal crunch the exemption for certain items from sales tax (food, drugs and utilities) was suspended temporarily. After the initial suspension, the Legislature renewed it for 2 year cycles and has continued to do so on a 2 year basis for some time. The Governor wanted to extend the suspension for 10 years. He felt this would improve the state's credit rating and reduce the political maneuvering over the biennial renewals. The other issue of importance to the Administration was the renewal of a 2000 law that limited an individual to using only 50% of his or her federal excess itemized deduction when calculating taxable income for state purposes. In return the Governor proposed that the limitation would gradually be eliminated if the state's revenues grew more than 3% in a fiscal year.

The key business groups, especially the Louisiana Association of Business and Industry (LABI), had a very different agenda. Business wanted to (1) gradually eliminate the state franchise tax on corporations or at a minimum, eliminate the franchise tax on long term debt (Louisiana is the only state that taxes such debt) and (2) gradually eliminate all sales tax on machinery and equipment purchases or, at least, eliminate the state component of that tax.

When the dust settled neither the Governor nor business were too happy or successful. Neither of the LABI proposals passed. The Governor was able to pass only: (1) a 2 year extension of the limitation on the deductibility of the federal excess itemized deduction and only after increasing the amount deductible from 50% to 57.5% in 2002 and then to 65% in 2003 (House Bill 171-Act 24) and (2) a 2 year extension of the suspension of the sales tax exemption, but again only after providing that 10% of the exemptions would be effective in fiscal year 2002 and 20% in fiscal year 2003 (House Bill 169-Act 22).

There was some good legislation that emerged from the Regular Session and our firm was significantly involved in the passage of two of these bills. These include:

<u>Senate Bill 62</u> overturned 2 court decisions that upset years of jurisprudence dealing with sales tax exemptions for vessels operating in interstate commerce and for components used in the construction of vessels over 50 tons. The Legislation clarified the original intent of the exemptions.

<u>House Bill 150</u> now allows a subchapter S corporation with sub S subsidiaries to file a combined tax return for both state income and franchise tax purposes. Before, this could not be done.

<u>House Bill 267</u> restored the tax credit program for certified capital investment companies which expired 2 years ago.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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