

PUBLICATION

Spotlight on Mississippi: Tax on Refinery Activities Made Permanent

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Mississippi H.B. 598, enacted during the 2011 session, makes permanent a 2010 refinery equipment tax that originally was to expire June 30, 2011. Mississippi Code Annotated Section 27-65-24, enacted by H.B. 1684 in 2010, levied a tax on the sale of manufacturing or processing machinery which is installed or used at a refinery in Mississippi equal to 1.5 percent on the gross proceeds of sales for manufacturing or processing machinery. In addition, this Section taxes the performance of construction activities at a Mississippi refinery at the rate of 3.5 percent of 103.5 percent of the total contract price or compensation paid for the performance of such construction activities.

Mississippi Code Annotated Section 27-65-21 imposes a contractor's tax of 3.5 percent of the gross proceeds on most construction activities. The contractor's tax would include the activities covered by the new Section 27-65-24, so Section 27-65-21(1)(b)(iv) was also enacted by H.B. 1684 in 2010 to provide an exclusion from the tax for "the contract price or compensation received for constructing, building, erecting, repairing or adding to any building, facility or structure" located at Mississippi refineries. The net effect was to shift the burden of collecting the contractor's tax for these construction projects from prime contractors to refinery owners.

Importantly, the 2010 legislation also provided that a refinery owner could apply for a material purchase certificate (MPC) instead of the contractor. This simplified and streamlined the process of applying for an MPC, as it could be unclear who was responsible for obtaining a MPC when multiple contractors were working on a project.

The 2010 legislation was initially set to be effective for a period of one year, expiring on June 30, 2011. However, enacted during the 2011 session, H.B. 598 deletes this repealer and makes Section 27-65-24 and the exclusion in Section 27-65-21(1)(b)(iv) permanent fixtures of Mississippi sales tax law.

If you have questions regarding this Mississippi legislation and how it may impact your business, please feel free to any attorney in the Firm's Tax Department.