

2010 SOUTHEAST LEGISLATIVE STATE TAX UPDATE

JUNE 24, 2010

As many states are grappling with the recession and a gloomy economic outlook, state legislatures are attempting to find inventive ways to stimulate the local economy. This newsletter describes significant tax legislation passed, pending, proposed, or failed during the 2010 legislative sessions in the various states in the Southeast. The failed legislation is important due to the economic position of many states. Although certain legislation may have failed initially, it is a signal of the types of legislation that may pass in a special session or in subsequent years. The following legislative synopsis contains either direct or indirect excerpts from legislative committees or specific bill language. In addition, this newsletter is current as of the date prepared as stated above and is not intended to be a comprehensive analysis of the respective legislative sessions.

2010 LEGISLATIVE SESSIONS

ALABAMA

Passed Legislation

CORPORATE INCOME TAX

HB 260 – Job Creation Incentive

These provisions took effect April 22, 2010 and relate to tax years 2011 and 2012

(Vote: Senate: 26-0; House: 89-0)

Provides an incentive for job creation for unemployed persons by creating an income tax deduction for businesses that hire certain unemployed persons.

Failed Legislation

CORPORATE INCOME TAX

HB 73 – Research and Development Credit

Died in the House Committee on Education Appropriations

Allows a research and development credit for tax years beginning after December 31, 2010, that will annually phase in and increase in percentage to a maximum of twenty percent (20%) of that amount allowed by the Internal Revenue Code, if certain conditions are met.

HB 137 – Work Opportunity Credit

Died in the House Committee on Education Appropriations

Allows a work opportunity income tax credit for tax years beginning after December 31, 2010, that will annually phase in, if certain conditions are met, and increase in percentage to a maximum of twenty percent (20%) of that amount which is currently allowed by the Internal Revenue Code for federal purposes.

FLORIDA

Passed Legislation

GENERAL ADMINISTRATIVE

HB 5801 – Tax Amnesty Program

In effect from July 1, 2010 to September 30, 2010

(Vote: Senate: 39-0; House: 118-0)

Provides an amnesty program for taxpayers subject to state and local taxes; provides time periods, program guidelines, eligible participants, and for waiver of penalties and interest; provides that Department of Revenue may release confidential taxpayer information relating to corporations having an outstanding tax warrant.

SALES AND USE TAX

HB 173 – Aircraft Use Tax

This provision takes effect July 1, 2010

(Vote: Senate: 37-0; House: 110-6)

Exempts from use tax aircraft owned by nonresidents entering and remaining in the state under certain circumstances.

HB 483 – Tax on Sales, Use (Back to School Sales Tax Holiday)

This provision took effect May 26, 2010

(Vote: Senate: 37-1; House: 115-0)

Specifies period during which sales of books, clothing, and school supplies are exempt from such tax.

SB 2126 – Florida Tax Credit Scholarship

This provision takes effect July 10, 2010

(Vote: Senate: 27-11; House: 95-23)

Expands the Florida Tax Credit Scholarship, a program that gives businesses a tax credit in exchange for paying for a scholarship. The bill provides additional credits from various taxes for contributions to the scholarship program, including the oil and gas production tax, corporate income tax, the alcoholic beverage tax and certain sales and use taxes. The bill also increases the total amount of scholarship money that can be awarded, expands the income eligibility for students, and increases the per-student award gradually.

CORPORATE INCOME TAX

SB 1752 – Economic Development “Jobs Bill”

This provision takes effect July 1, 2010

(Vote: Senate: 38-0; House: 117-0)

Contains a number of provisions aimed at job growth, business development, and long-term economic expansion, including incentives for the marine and aviation industries, such as a sales tax cap for fractional aircraft. The bill increases the amount of tax refund payments available to pay the state's share of refunds under the qualified defense contractor and space flight business tax refund program and the tax refund program for qualified target industry businesses. The bill also includes an exemption for sales tax due on commercial rent paid by telecommunications, internet, and data management service companies to a convention hall or other public meeting space. The bill provides for a \$1,000 credit for each new worker hired that remains employed for a year.

HB 7109 – Qualified Target Industry Tax Refund Program

This provision takes effect July 1, 2010

(Vote: Senate: 36-0; House: 110-0)

Revises the Qualified Target Industry Tax Refund Program administered by the Governor's Office of Tourism, Trade, and Economic Development. Only businesses serving multi-state and/or international markets qualify as target industries.

HB 7157 – General Department of Revenue Bill

This provision took effect May 28, 2010

(Vote: Senate: 39-0; House: 112-0)

Relates to taxation including unemployment compensation tax liens, communications services tax exemptions for transient public lodging facilities, building cleaning and pest control sales tax credits, vending machine product taxes, contractors sales tax exclusions, the Department of Revenue and financial institution record sharing, hotel or restaurant licensure and tax warrants, motor fuel and diesel fuel tax distribution, international banking tax deductions, and renewable energy technologies tax credit.

HB 7219 – IRC Adoption

This provision is retroactive to January 1, 2010

(Vote: Senate: 38-0; House: 115-0)

Adopts the 2010 version of the Internal Revenue Code.

REAL AND PERSONAL PROPERTY TAX

HB 927 – Homestead Assessments

This provision takes effect July 1, 2010

(Vote: Senate: 38-0; House: 113-0)

Provides that transfers between different forms of equitable title are not considered a change in ownership, provided that the same individual continues to qualify for the homestead tax exemption. Additionally, a transfer to a certain form of long-term leasehold interest used for estate tax purposes will also not be considered a change in ownership.

HB 965 – Real Property Assessment

This provision took effect June 1, 2010 and shall apply to the 2010 and subsequent assessment rolls

(Vote: Senate: 37-0; House: 106-0)

Relates to real property assessment; requires property appraisers to adjust assessed value of certain properties affected by imported or domestic drywall under certain circumstances; provides for a nominal just value under certain circumstances; provides for the application of certain properties; specifies homestead property as damaged for certain purposes; prohibits consideration of homestead property as abandoned; provides for assessment of certain property after remediation or repair.

HB 1279 – Assessment of Property for Back Ad Valorem Taxes

These provisions take effect July 1, 2010

(Vote: Senate: 34-0; House: 111-0)

Relates to assessment of property for back ad valorem taxes; provides for nonapplication of retroactive assessment and collection of ad valorem taxes on property pursuant to voluntary disclosure to the property appraiser.

Failed Legislation

SALES AND USE TAX

HB 165, SB 204 – Streamlined Sales and Use Tax Agreement

Died in House Full Appropriations Council on Education and Economic Development

Died in Senate Policy and Steering Committee on Ways and Means

Revises various provisions of law relating to the Streamlined Sales and Use Tax Agreement to include transient rentals taxes, motor vehicle leases or rentals taxes, prepaid calling arrangement taxes, taxes on the sale of motor vehicles, aircraft, boats and manufactured homes, mail order sales taxes, taxes on digital goods or services, the tax on food and medical products, sales and use tax rate changes, amnesty for uncollected or unpaid taxes, tax computation and refunds, and the registration of sellers.

HB 335, SB 156 – Tax on Transient Rentals

Died in House Full Appropriations Council on Education and Economic Development

Died in Senate Policy and Steering Committee on Ways and Means

Requires online hotel booking companies to apply state and local taxes to the full price of the booking, not just the amount paid to the accommodation owner for the right to book the room.

REAL AND PERSONAL PROPERTY TAX

HB 73, HB 7127, SB 346, SB 1408 – Working Waterfront Property

Died in House Council on Economic Development and Community Affairs Policy

Specifies properties eligible for classification as working waterfront property and requires assessment of working waterfront property based on current use. The bill denotes application requirements for classification of property as working waterfront property.

GEORGIA

Passed Legislation

CORPORATE INCOME TAX

HB 984 – Local Income Taxes

This provision took effect May 20, 2010

(Vote: Senate: 41-5; House: 155-0)

Prohibits the levy or collection of local income taxes by any political subdivision of the state.

HB 1023 – Job Opportunity and Business Success Act

This bill takes effect July 1, 2010, except provisions related to the corporate net worth tax take effect January 1, 2012

(Vote: Senate: 33-13; House: 154-8)

Creates the Jobs, Opportunity, and Business Success Act, which assesses a provider payment on hospitals, provides tax credits for certain investments and for hiring persons receiving unemployment compensation, creates corporate and individual income tax exemptions, and provides sales tax exemptions for sales to nonprofit health centers and clinics. This act eliminates the corporate net worth tax beginning January 1, 2012.

GENERAL ADMIN. & INCOME & PROPERTY TAXES

HB 1055 – Fee Increases

This provision takes effect in part May 12, 2010, and in part July 1, 2010

(Vote: Senate 50-0; House: 107-63)

Amends fees for drivers' licenses, identification cards, license plates, business licenses, grain dealers, timber dealers, racetracks, court costs and coin operated amusement machines. The bill eliminates state income tax on retirement income and phases out the state levy on property taxes.

Failed Legislation

SALES & USE TAX

HB 347 – Reimbursement of Ad Valorem Taxes

Died in Senate Committee on Finance

Excludes from total lease or rental proceeds an amount for the reimbursement of ad valorem taxes on leased or rented equipment of which ad valorem taxes are paid by the lessor of such equipment, but an equivalent amount is charged to the lessee of such equipment.

HB 951, HB 952, HB 953 – Exemptions from Sales and Use Tax

Died in House Committee on Ways and Means

Proposes an exemption with respect to the sale of certain school supplies, clothing, footwear, computers, and computer related accessories for a limited period of time. Also proposes an exemption from sales and use tax with respect to certain sales of certain energy efficient products or water efficient products for a limited period of time.

CORPORATE INCOME TAX

HB 1029 – Corporate Income Tax

Died in House Committee on Ways and Means

Proposes to abolish state income tax for corporations for tax years beginning January 1, 2011.

LOUISIANA

Passed Legislation

REAL AND PERSONAL PROPERTY TAX

SB 648 – Energy Efficient Property Appraisals

This provision takes effect August 15, 2010

(Vote: Senate: 37-2; House: 95-10)

Allows real estate appraisers to consider energy efficiency aspects when assigning appraisal value to certain property and to be considered in appraisal reports.

SALES AND USE TAX

HB 666 – Recovery of Attorney Fees

This provision takes effect following approval by the Governor

(Vote: Senate: 30-0; House: 94-1)

Authorizes a taxpayer to recover attorney fees under certain circumstances relating to local sales taxes.

HB 667 – Recovery of Costs

This provision takes effect following approval by the Governor

(Vote: Senate: 32-0; House: 94-0)

Authorizes a taxpayer to recover costs related to arbitrary tax assessments relating to sales taxes.

SB 567 – Arbitration

*This provision takes effect January 1, 2011 following approval by the Governor
(Vote: Senate 36-0; House 95-0)*

Allows a taxpayer who is subject to any collection procedure for local sales tax, or whose request for a refund of such tax has been denied by a collector, to initiate a mandatory, binding, arbitration proceeding.

CORPORATE INCOME TAX

SB 680 – Tax Return Due Dates

*This provision is retroactive to January 1, 2009 following approval by the Governor
(Vote: Senate: 34-0; House: 93-1)*

Modifies the due date of corporation income tax returns and payments for nonprofit organizations to be the 15th day of June or 15th day of the sixth month following the close of the fiscal year.

Failed Legislation

REAL AND PERSONAL PROPERTY TAX

SB 24 – Assessed Value of Real Property

Died in Senate Committee on Revenue and Fiscal Affairs

Proposes a constitutional amendment to limit the increase in the assessed value of real or immovable property upon reappraisal to the increase in the Consumer Price Index except in certain circumstances.

SB 697 – Personal Property Tax Amnesty

Died in Senate Committee on Revenue and Fiscal Affairs

Creates the Personal Property Tax Amnesty Act of 2010, which authorizes a taxpayer, beginning August 1, 2010 through November 1, 2010, to file an amended tax return indicating taxable personal property upon which property tax was not levied or paid for certain tax periods and to pay the tax without interest.

CORPORATE INCOME TAX

HB 1122 – Angel Investor Tax Rebate Program

Died in House Committee on Ways and Means

Establishes the Angel Investor Tax Rebate Program to provide rebates for income and corporation franchise taxes to be claimed over a five year period for qualifying taxpayers that invest in a Louisiana Entrepreneurial Business.

SB 500 – Investment Rebate

Died in Senate Conference Committee

Authorizes the Department of Economic Development to grant up to \$5 million of rebates per calendar year at the rate of 35% of an investor's investment in Louisiana Entrepreneurial Business, not to exceed \$1 million per year per business and \$2 million total per business.

NORTH CAROLINA

(Session ends early July)

Passed Legislation

CORPORATE INCOME TAX

SB 388 – Renewable Energy Property Credit

Effective retroactive to January 1, 2009 and applies to renewable energy property placed into service on or after that date

(Vote: Senate: 49-0; House: 115-1)

Removes certain grants made under the American Recovery and Reinvestment Tax Act from the definition of public funds for which a credit for investing in renewable energy property is not available.

Pending Legislation

SALES AND USE TAX

HB 1668 – Sales Tax Exemption and Recycled Material

To House Committee on Commerce, Small Business and Entrepreneurship

Exempts from sales and use tax the purchase of products entirely composed of recycled materials.

HB 1839 – Tax Refunds and Quality Jobs

To House Committee on Commerce, Small Business and Entrepreneurship

Keeps North Carolina competitive by modifying sales and use tax refunds to lure quality jobs to the state. For example, provides for qualifying businesses that are primarily engaged in paper-from-pulp manufacturing to receive an annual refund of sales and use taxes.

HB 1973 – Economic Tax Incentives

To Senate

Relates to tax incentives for film production, sales tax exemptions for cameras, film and certain building materials, exemptions for interactive digital media producers, datacenters, paper-from-pulp manufacturing facilities, wood-chipping machinery, and turbine generator manufacturing facilities, agrarian growth zones, renewable energy facility construction, biofuel production, air carriers, aviation fuel tax exemptions for motorsports racing teams, eco-industrial parks, and public construction contracts.

SB 1171 – Keeping NC Competitive Act

To House Committee on Commerce, Small Business and Entrepreneurship

Modifies eligibility for economic incentive sales and use tax exemptions for internet data centers, paper manufacturers and turbine manufacturers; modifies eligibility for the 1% privilege tax on data center machinery and equipment.

CORPORATE INCOME TAX

HB 1721 – Health Care and Small Business Act

To House Committee on Appropriations

Enacts the H.E.L.P. (Health Care, Employment, Leverage, and Preparation) Small Business Act; increases tax benefits for investments in small businesses; provides tax benefits for small businesses that provide health insurance and for putting people back to work; increases funding for small business support programs, including the Business Link North Carolina Program; leverages federal funds to create research jobs; increases access to capital for small businesses.

HB 1829 – Taxes

To Senate Committee on Finance

Extends the mill rehabilitation credit; makes changes to the credit for investing in renewable energy property; establishes a credit for constructing a renewable energy property facility; lowers the sales tax compliance burden on small retailers; relieves the annual report compliance burden on small business; reduces the franchise tax burden on construction companies; improves the tax and debt collection process.

HB 2008 – Renewable Energy Property Tax Credit

To House Committee on Energy and Energy Efficiency

Modifies the credit for investing in renewable energy property; provides for regulation of pass through entities that claim the credit.

SB 897 – Appropriations Act

To House and Senate Conference Committee

Modifies the current Operations and Capital Improvements Appropriations Act of 2009 by adjusting appropriations for the 2010-2011 fiscal year; conforms to changes made in the Internal Revenue Code; extends and enhances the tax credit for investments in qualified business ventures; extends the tax credit for small businesses that provide health insurance to their employees; provides for a tax credit for small businesses that create jobs.

SOUTH CAROLINA

Passed Legislation

CORPORATE INCOME TAX

SB 1174 – State Income Tax Laws

These provisions took effect March 31, 2010

Adopts the 2009 Internal Revenue Code and allows the department of revenue to waive penalties on corporate taxpayers who calculate estimated tax payments based on federal estimated tax periods that do not conform to state law.

REAL AND PERSONAL PROPERTY TAX

HB 4174 – Assessable Transfer of Interest

Applies to real property transfers after 2009

Provides that a conveyance to a trust does not constitute an assessable transfer of interest for purposes of determining when a parcel of real property must be appraised if the settlor or settlor's spouse conveys the property to a trust the beneficiaries of which are a child or children of the settlor or the settlor's spouse.

Failed Legislation

REAL AND PERSONAL PROPERTY TAX

HB 3272 – Real Property Valuation

Died in Senate Committee on Finance

Relates to determining the fair market value of real property; postpones the implementation of the transfer value of a parcel of real property unimproved since the last countywide reassessment program until the time of implementation of the next countywide reassessment

program; requires the limit on increases in value to be calculated separately on land and improvements.

HB 4179 –Property Tax Exemptions

Died in House Committee on Ways and Means

(Joint Resolution) Exempts from property tax the value of improvements to real property consisting of unsold commercial structures, individual units in commercial structures, and individual units in residential structures.

HB 4721 – Classification of Property

Died in House Committee on Ways and Means

Provides that no additional property tax is due for any prior property tax year on a parcel of real property because of an erroneous classification of the parcel when that error was not the result of any act or omission of the current owner of the parcel.

SB 879 – Assessable Transfers of Interest

Died in House vote

Provides additional instances of property transfers not considered assessable transfers of interest, including transfers of fractional interests constituting not more than 50% of fee simple title, transfers into and out of a single member limited liability company when the member is the transferee and transferor, and transfers creating or terminating a joint tenancy with rights of survivorship if the grantors and grantees are the same.

SALES & USE TAX

HB 4800 – Retail Sales License

Died in House Committee on Ways and Means

(Joint Resolution) Allows the holder of a retail sales license a state sales tax credit for a portion of construction costs paid in 2010 and 2011 to acquire a new retail location or to enlarge or renovate an existing retail location placed in service or otherwise completed in 2010 or 2011. The credit equals twenty percent of construction costs paid in 2010 and 2011 aggregating at least one hundred thousand dollars in those years.

SB 902, SB 942 – State Fair Tax Act, Palmetto Fair Tax Act

Died in Senate Committee on Finance

Relates respectively to the state income tax act, income tax withholding, the income tax on banks and savings and loan associations, the state estate tax act, and the state sales tax act. For example, eliminates the state personal and corporate income taxes, and estate tax.

SB 1080 – Sales Tax Exemptions

Died in Senate Committee on Finance

Repeals the sales tax exemptions for textbooks, books, magazines, periodicals, newspapers, and access to on-line information.

CORPORATE INCOME TAX

SB 1176 – Back to Work Tax Rebate Act

Died in Senate Committee on Finance

The Back to Work Tax Rebate Act of 2010 allows a state tax credit for employers hiring an unemployed individual receiving unemployment compensation benefits. The amount of credit must be equal to the state income tax withholdings applicable to that employee for a period of up to one year.

TENNESSEE

Passed Legislation

CORPORATE INCOME TAX

SB 3522 – Trusts

These provisions take effect July 1, 2010

(Vote: Senate: 31-0; House 95-0)

Modifies various provisions relating to trusts and trustees; makes changes concerning the estate tax marital deduction, special needs trusts, investments and compliance with the Uniform Prudent Investor Act, confidentiality restrictions, liability of trustees for certain misconduct, investment services trusts and fraud, conversion of income trusts to total return unitrusts, income taxes due on certain trusts, and related matters.

SB 2803 – Forest Products Incentives

These provisions take effect July 1, 2010

(Votes: Senate: 30-0; House 95-0)

Enacts the Forest Product Fairness Act, which requires that any tax exemption, tax credit, tax exclusion, tax deduction, rebate, investment, contract, or grant made available by the state to directly support the purchase of forest products, excluding any such benefit available under statutorily provided programs, to directly support the purchase of forest products must be approved by the commissioner of agriculture through a fair and equitable process prior to being

awarded. The process must be open to individuals and both new and existing businesses.

Failed Legislation

REAL AND PERSONAL PROPERTY TAX

HB 2475, SB 2605 – Shares of Stock

Died in House and Senate Committees on Finance, Ways and Means

Excludes shares of stock of stockholders of cemetery companies from taxation of intangible personal property.

HB 3128, SB 3305 – Extended Personal Property Tax Deadline

Died in House and Senate Committees on State and Local Government

Extends the deadline from March 1 to April 15 for businesses to file schedules with property assessor detailing personal property.

SALES AND USE TAX

HB 2584, SB 2540 – Prescription Drug Exemption

Died in House and Senate Committees on Finance, Ways and Means

Exempts drugs, including medicines such as vitamins, provided by prescription from the sales tax.

HB 2906, SB 2824 – Job Tax Credit

Died in House and Senate Committees on Finance, Ways and Means

Allows a job tax credit to be applied against the franchise and excise liability of a small business that fills at least one new full time position and meets the required investment in a tax year.

GENERAL ADMIN. & SALES & INCOME TAXES

HB 3934, SB 2978 – Tax Cuts and Job Creation

Died in House Committee on Government Operations

Died in Senate Committee on Finance, Ways and Means

The Food, Sales and Franchise Tax Cut and Job Creation Act of 2010 repeals the sales tax on grocery food, eliminates the local option sales tax and establishes a uniform, statewide sales tax, eliminates the Hall income tax, decreases the tax rate on interstate or international telecommunications services sold to businesses, increases the franchise tax on taxpayers doing business in Tennessee, and establishes a graduated income tax.

HB 3596, HB 3597, SB 3235, SB 3236 – Tax Cuts and Job Creation

Died in House Committee on Government Operations

Died in Senate Committee on Finance Ways and Means

The Tax Cut and Job Creation Act eliminates the state portion of sales tax on food, cuts the state share of the sales tax on other goods to a 5% rate, cuts the business franchise tax by more than half, eliminates the Hall income tax and establishes a tax on personal income at a flat rate.

If you have any questions or for further information, please contact us.

Tracey Sellers

(813) 434-4004

Tracey.sellers@TPCtax.com

Lauren Conn

(813) 434-4018

Lauren.conn@TPCtax.com

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