



Volume 2010 - May 4

## Change in Mississippi Contractor's Tax Impacts Refinery Owners and Contractors That Construct Improvements at Refineries

The Mississippi Legislature recently passed during its 2010 regular session, and Governor Haley Barbour recently signed, House Bill 1684, which modifies the manner in which the Mississippi contractor's tax applies to owners of refineries and contractors that construct improvements at refineries. This legislation streamlines the administration of the Mississippi contractor's tax for refinery owners by (i) eliminating the tax on contractors that engage in construction activities at refineries and (ii) imposing a similar tax on refinery owners that engage contractors to construct improvements at the refinery. This change creates a direct pay relationship between the refinery owner and the Tax Commission for payment of this tax, which is similar to the direct pay relationship between a manufacturer and the Tax Commission for payment of Mississippi sales tax.

Under current law, Miss. Code Section 27-65-21 imposes a 3.5% tax on "prime" contractors in connection with certain construction projects in Mississippi, which is commonly referred to as the Mississippi contractor's tax. The Mississippi contractor's tax only applies to the construction of improvements that are classified as non-residential real property where the consideration for the contract exceeds \$75,000. It does not apply to the construction of personal property or residential real property.

Contractors include the tax in the bid price so that the project owner bears the economic burden of the tax, but it is not technically a pass through tax like the sales tax. Because the tax is imposed on the total consideration paid by the project owner to the contractor, which includes the embedded tax, the contractor's tax includes a "tax on a tax" element.

Under current law, a contractor is required to file an application for a Material Purchase Certificate with the Mississippi Tax Commission before construction on a taxable project commences, and the contractor must either pay the tax in advance or post a performance bond. The Material Purchase Certificate allows the contractor to purchase the component materials for the project free of the normal retail sales tax.

The refurbishment and renovation of refineries often costs tens, and

[OUR FIRM](#)

[OUR ATTORNEYS](#)

[OUR PRACTICE GROUPS](#)

[LATEST NEWS](#)

[CONTACT US](#)

**Butler Snow** has been a leading presence in the legal community since 1954. With more than 160 attorneys, the firm provides a broad range of services to clients on a regional and national basis from its offices in Jackson and Gulfport, Mississippi; Memphis, Tennessee; New Orleans, Louisiana and Bethlehem, Pennsylvania.

© 2010 MISSISSIPPI TAX BULLETIN is published by Butler, Snow, O'Mara, Stevens & Cannada, PLLC. MISSISSIPPI TAX BULLETIN is intended for general informational purposes only and is not intended to be comprehensive with respect to the subject matter. MISSISSIPPI TAX BULLETIN is not intended to create an attorney-client relationship with any user. MISSISSIPPI TAX BULLETIN is not designed or intended to provide legal or other professional advice, as any such advice requires the consideration of the facts of the specific situation.

If you no longer wish to receive this publication, please click on the UNSUBSCRIBE link at the bottom of this e-mail.

FREE BACKGROUND INFORMATION IS AVAILABLE UPON REQUEST.

sometimes even hundreds, of millions of dollars and involves large numbers of specialty contractors. Because petroleum refineries are highly complex industrial facilities, determining whether a construction project involves real property (subject to the contractors' tax) or personal property (subject to the sales tax) is a significant administrative burden for construction contractors, the Tax Commission, and the refinery owner.

Under the current law, it is not uncommon for a contractor to improperly classify a construction project at a refinery for contractor's tax purposes. This has resulted in some refineries paying contractor's tax on projects that should not have been taxed or being double taxed on some component parts of the project. Refinery owners in this situation have to file a claim for refund with the Mississippi Tax Commission to recover this tax overpayment, which puts an unnecessary manpower burden on both the refinery owner and the Tax Commission.

House Bill 1684 recognizes that refinery owners are in the best position to determine whether a given construction project is subject to the contractor's tax. The bill amends Section 27-65-21 to exempt contractors that engage in construction activities at refineries from the tax imposed by that section. It adds new Section 27-65-24, which imposes a tax on refinery owners at the rate of 3.5% on 103.5% (this preserves the "tax on a tax" element of current law) of the consideration paid to contractors for the construction of improvements that are properly classified as real property. As a result, the bill shifts the responsibility for paying the contractors' tax only for construction projects at refineries from the contractors to the refinery owner.

The stated intent of the Bill is to establish a structure that will reduce the administrative burden of the Mississippi Tax Commission related to the collection of the contractor's tax owed as a result the construction of improvements for refinery owners. It seeks to achieve this goal by removing the contractor as the conduit for the payment of the tax and centralizing the tax payment obligation with the refinery owner. Under the new law, the Mississippi Tax Commission will no longer have to audit numerous contractors working on various projects at a single refinery to determine if the proper amount of contractor's tax is being paid. It can now look to the refinery owner to determine if the proper amount of contractor's tax is being paid on the various construction projects at its refinery.

This change in the manner of administering the Mississippi contractor's tax for construction projects at refineries should benefit the Tax Commission because its staff will process fewer contractor applications, bonds, and tax payments. It will also require fewer audits to collect the same amount of tax. The refinery owners and contractors who construct improvements at refineries will also benefit from a reduced administrative burden in complying with the contractor's tax.

House Bill 1684 is effective July 1, 2010.

## Contact Us



- [Paul Varner](#) is a member of the firm's Business Services Group and leads the firm's Tax Group. His practice includes a wide array of taxation issues, including state and local taxation, tax planning and tax dispute resolution. Paul can be contacted via e-mail at [paul.varner@butlersnow.com](mailto:paul.varner@butlersnow.com). He is licensed to practice in Mississippi.



- [Gene Magee](#) is a member of the firm's Business Services Group. His practice focuses on economic development incentives, employee welfare benefits and property tax abatements. Gene can be contacted via e-mail at [gene.magee@butlersnow.com](mailto:gene.magee@butlersnow.com). He is licensed to practice in Mississippi.

You are receiving this e-mail because you are on Butler Snow's Mississippi Tax Bulletin list.

[Unsubscribe](#) <<Email Address>> from this list.

Our mailing address is:  
Butler, Snow, O'Mara, Stevens and Cannada, PLLC  
1020 Highland Colony Pkwy  
Suite 1400  
Ridgeland, MS 39157

[Add us to your address book](#)

Copyright (C) 2010 Butler, Snow, O'Mara, Stevens and Cannada, PLLC All rights reserved.

[Forward](#) this email to a friend  
[Update your profile](#)

