



The 2015 Legislative Session has drawn to a close with both the House and Senate Adjourning Sine Die. The last few days of the session involved reaching agreements on compromise versions of bills that passed the House and Senate in different forms and then sending them to the Governor to be signed into law. I am happy to report that SB 2589 “*Amending the law dealing with the 5% Tax On The Gross Proceeds Or The Gain Realized By An Out Of State Seller To An Instate Buyer,*” is on its way to the Governor’s desk for his signature.

As you know, the original legislation introduced would have eliminated the 5% tax all together on transactions involving an out of state seller and an instate buyer. However, we were advised by the MS Dept. of Revenue (DOR) that this approach would possibly expose the State to a lawsuit because MS residents would still be required to pay taxes on any gains from the sale of real property in MS while someone living outside of the state would not. DOR went as far as to say as the tax could be interpreted at discriminatory.

Without the ability to repeal the 5% tax altogether, we took an approach to amend the current statute (Miss. Code Ann., Sec. 27-7-308) to make it clear that the seller (not the buyer) shall withhold from the proceeds of the sale and pay over to the MS DOR an amount equal to five percent (5%) of the amount realized by the seller on the sale. The obvious reason for this change is the fact that it was impossible for a typical buyer in a real estate transaction to comply with Sec. 27-7-308 as it existed. This statute made the buyer the collection agent for the Department of Revenue and imposed on them the obligation to calculate the seller’s gain on the sale, collect (“withhold”) taxes due and file informational returns with DOR. This was impossible insofar as the data required to make these calculations (seller’s selling expenses, mortgage payoff, liens or advances on credit lines) is not available to the buyer in most, if not all, residential transactions. In fact, that information is routinely withheld from the buyer by sellers and buyers have no means to secure that information, nor should they have to.

The law was also amended to provide some protections to real estate licensees (and closing agents) who are involved in a transaction where this law would be applicable. The following language was added to Miss. Code Ann., Sec. 27-7-308:

A person licensed under Sections 73-35-1, et seq. (licensed real estate agents) and/or a closing agent who is involved in the sale of property governed by this section shall:

(a) Have no duty to the buyer, seller or any other party to such sale regarding the applicability of, compliance with, violation or enforcement of this section; and

(b) Not be liable to any party to such sale or the State of Mississippi for any damages sustained or liability of another arising under this section.

We are hopeful that these changes will be signed into law by Governor Bryant and that transactions involving out of state sellers and instate buyers will go more smoothly now that it is clear that the seller is the one responsible for the transmitting of any tax liability to the DOR. We are also excited that the legislature made it clear that the a real estate licensee who is

involved in one of these transactions cannot be held liable by the buyer or seller if someone involved in the transaction fails to comply with the law.

Below you will find the status of MAR's 2015 Legislative Priorities still making their way through the legislative process.

Amending the law dealing with the 5% Tax On The Gross Proceeds Or The Gain Realized By An Out Of State Seller To An Instate Buyer – Would require that the withholding of gross proceeds realized by a nonresident seller of real property in Mississippi shall be withheld by the closing agent or seller and paid over to the Department of Revenue.

- **Senate Bill 2589 – On its way to the Governor**

Patent Troll Legislation - An act to prohibit bad faith assertions of patent infringement; to provide factors that the court may consider in determining whether a bad faith assertion of patent infringement has been made; to provide for enforcement, remedies and damages. A "patent troll," buys broad patents and uses them to threaten small businesses and individuals, including realtors®, into paying a license fee. Recent instances include NAR members receiving letters for their use of property search applications on their websites and their use of certain scanner copier machines.

- **House Bill 589 – Signed by the Governor**

Property Insurance Clarity Act – Would require insurers to disclose how much they collect in premiums and how much they pay in claims in each ZIP code. The bill aims to show how much coastal homeowners are charged to cover against hurricanes, as well as make it clearer what areas private wind insurers are avoiding.

- **House Bill 739 – Signed by the Governor**

Creating the Mississippi Main Street Investment Act - An act to create the Mississippi main street investment act; to create the Mississippi main street investment loan fund; to require the Mississippi development authority to establish a program to make loans to municipalities to assist with maintaining and improving the viability of revitalization zones; to require a municipality desiring a loan under this act to submit an application to the Mississippi development authority; to authorize the issuance of state general obligation bonds in the amount of \$5,000,000.00 and provide that the proceeds of such bonds shall be deposited into the Mississippi main street investment loan fund; and for related purposes.

- **House Bill 1618 – Killed in the Senate Finance Committee**

Revise regulatory laws for commercial and residential builders - The home builder licensing law has to be re-enacted due to the sunset clause in the law. The bill makes the following changes:

- Clean up language throughout the bill such as the leading old dates that are no longer applicable and changing the executive director language from executive secretary.

- Gives the Board the authority to issue citation for working without a certificate of responsibility or a license. It also gives the board the authority to stop work for contractors building without a license. This will help the Board with out of state contractors and con-artist working in Mississippi without a license.
- Changes the commercial fee from \$100 to \$200. It also changes the fee from \$50 to \$100 for an additional license.
- New languages added to clarify the appeal language.
- Changes from \$25 to \$50 to replace a lost or destroyed license.
- Deletes the waiting time for someone to apply for a license.
- Allows the Board to have continuing education for new residential contractors and as a penalty for residential contractors. No more than 2 hours per year is allowed.
- Clarifying language for a person building their own home and an employee working for a licensed builder.
- Clarifies exemption for the 7,500 square foot minimum. Someone must have a residential or commercial license to build a commercial structure that is under 7,500 square feet

➤ **Senate Bill 2508 – Signed by the Governor**

Catastrophe Savings Accounts - Authorizes the establishment of catastrophe savings accounts and exempt contributions and distributions from tax. This bill would authorize taxpayers to establish catastrophe savings accounts to pay the amount of insurance policy deductibles and other uninsured portions of risks of loss to the taxpayer's legal residence from a hurricane, flood, windstorm or other catastrophic event. Enactment of this measure will help homeowners afford increasing insurance premiums as a result of additional risks. Through these savings accounts, homeowners will be allowed to have higher deductibles on their policies.

- **House Bill 1134 – On its way to the Governor**

Tax Credits for Historic Structures - Legislation to authorize an income tax credit for costs and expenses incurred for the rehabilitation of certain historic structures, to increase the maximum aggregate amount of tax credits that may be awarded. Also, establishes that the aggregate amount of tax credits that may be awarded under this section shall not exceed One Hundred 140 Million Dollars and will extend the date to December 31, 2030 for those eligible to apply for the credit.

- **House Bill 155 – Died in Conference**

Tax equity for Mississippi's Self-Employed - The goal is for Tax equity for Mississippi's Self-Employed by allowing a self-employment tax deduction on the Mississippi State income tax return, similar to the current adjustment allowed on the federal return; and as similarly allowed for corporations on the Mississippi State return for the employer-paid portion of federal Medicare and FICA taxes. The state's self-employed deserve equal tax treatment with corporations in being able to deduct for state income tax purposes one-half of their self-employment tax in figuring one's adjusted gross income, being the employer-equivalent portion of one's self-employment tax, and also the same as allowed on the federal return for the employer portion of Medicare and Social Security tax payments paid by a corporation. This is a

very important job-creating and tax-equity issue and deserves to be passed and these first-line entrepreneurs need to be given the same state tax rights as other businesses.

- **House Bill 1629 – Voted down in the House of Representatives**

Eliminating the Franchise Tax - Eliminating the Franchise Tax will make MS more attractive for businesses to relocate to MS or encourage existing businesses to expand. The franchise tax hits companies in the state for capital or property at a rate of \$2.50 per \$1,000 of capital or property, whichever is greater. The state's franchise tax rate is sixth-highest in the nation and is one of the few without limits on the maximum payment. Mississippi is one of 18 states with a franchise tax. Eliminating the franchise tax could help Mississippi's tax climate for business. The franchise tax is paired with a corporate income tax, making it more onerous. Unlike in New York, Rhode Island and Connecticut, where a company pays only the higher charge of the two taxes, Mississippi whacks companies with both taxes every year.

- **House Bill 1629 – Voted down in the House of Representatives**