

# PUBLICATION

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## Mississippi Extends Important Sales Tax Incentive Program to Casino Industry

May 18, 2009

On March 17, 2009, Mississippi Governor Haley Barbour signed into law House Bill 1467 to extend the sales tax incentives of the Mississippi Tourism Rebate Program to casino developers that build non-gambling-related amenities such as theme parks, water parks, golf courses, hotels, spas, convention facilities and other non-gambling attractions. The program, administered by the Mississippi Development Authority (MDA), is designed to provide the owner of a qualified tourism project with a rebate equal to 80% of the sales approximately one year); (2) does not require employees who sue under this claim to file a charge of discrimination with the Equal Employment Opportunity Commission or administrative agencies before instituting such an action in court (unlike Title VII); (3) has no requirement for a minimum number of employees (unlike Title VII); and (4) has unlimited compensatory and punitive damages (unlike Title VII), while still providing for an award of attorney fees. Therefore, plaintiffs' employment lawyers began to add Section 1981 claims to their Title VII race claims, at a minimum, to pursue greater damages than would otherwise be available under just Title VII.

Casino companies were previously excluded from participating in the rebate program. However, under the new law, casino-owned tourism projects may be eligible for the sales tax incentives if the project is in excess of development that the Mississippi State Gaming Commission requires for the issuance or renewal of a gaming license and is not part of a licensed gaming establishment in which gaming activities are conducted.

Tourism projects that qualify for the program include any of the following as may be approved by the MDA:

- 1 Theme parks, water parks, entertainment parks or outdoor adventure parks, cultural or historical interpretive educational centers or museums, motor speedways, indoor or outdoor entertainment centers or complexes, convention centers, professional sports facilities, spas, attractions created around a natural phenomenon or scenic landscape and marinas open to the public with a minimum private investment of not less than \$10 million;
- 2 A hotel with a minimum private investment of \$40 million in land, buildings, architecture, engineering, fixtures, equipment, furnishings, amenities and other related costs approved by the MDA. There must be a minimum private investment of \$150,000 per guest room; or
- 3 A public golf course with a minimum private investment of \$10 million.

In the past, the Mississippi Tourism Rebate Program also excluded any facility within a project whose primary business is retail sales, with the exception of pro shops, souvenir shops, gift shops, concessions and similar retail activities. House Bill 1467 expands on these exceptions to include retail activities that are part of a "resort development." A "resort development" is defined as a travel destination development with a minimum private investment of \$100 million and which consists of (a) a hotel with a minimum of 200 guest rooms or suites and having a minimum private investment of \$200,000 per guest room or suite, and (b) guest amenities such as restaurants, golf courses, spas, fitness facilities, entertainment activities and other amenities as determined by the MDA. Not more than 40% of the private investment may be expended for facilities that house businesses whose inventory consists primarily of upscale name brands or their equivalent. Developers who wish to take advantage of the "resort development" exception to the prohibition against retail sale developments must

submit their application prior to July 1, 2014. The MDA will not approve any application submitted after June 30, 2014 for a project that includes a resort development.