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Legal and Economic Incentives for Foreign Direct Investment in the Southeastern United States

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LEGAL AND ECONOMIC INCENTIVES FOR FOREIGN DIRECT INVESTMENT IN THE SOUTHEASTERN UNITED STATES

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I. Introduction

The United States of America may well be the most attractive area for investment in the entire world.[1] Foreign investment, although failing to play a dominant role in the American economy, has nevertheless enjoyed a substantial and significant growth in recent years. This contemporary acceleration may be attributed to a number of factors, including, for example: (a) America's enormous pool of skilled and well educated labor; (b) the narrowing of the gap between the cost of United States and foreign labor; (c) the abundance of domestic energy and other raw materials; and (d) the relative docility of the United States rate of inflation. But by far the most significant economic incentive is the overwhelming attraction of the American consumer market. It is the largest, most complex and most competitive market in the world; it is an integrated, coordinated market which is unified by a common language and a common legal accounting system.[2] As Hans Schudel, president of a German-owned United States corporation, emphasized, "[T]he U.S. market is the most attractive in the world. In terms of how liberally you can conduct your business. In terms of political stability and safety. In terms of return on your investment. In any terms you can name."[3] Indeed, the United States has long had a history of political stability and a devoted respect for economic free enterprise. The first portion of this discussion shall

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1. *The New Immigration*, Forbes, November 1, 1975, at 28.

2. *Id.* at 30. The American market can easily be reached by manufacturing facilities located in the Southeast over an extensive network of motor, rail, and water routes provided by common and contract carriers comprising the world's finest system of transportation. Location in the Southeast accords to the involved facility the pecuniary benefits of lower land, labor, tax, and construction costs than are available elsewhere within the United States.

3. *Id.* at 31.

endeavor to analyze the economic impact of foreign direct investment[4] in the United States and the national policy of this Government with respect to international investment.

II. Foreign Direct Investment in the United States

A. *Foreign Participation in the United States Economy*

The recent acceleration of foreign direct investment in the United States can be attributed to a number of factors. One factor encouraging its growth was probably the introduction of the Eurodollar market. Foreign companies that are discouraged by exchange controls from using national currency to invest abroad may tap the unregulated Eurodollar market in order to finance such investments. The action of the Securities and Exchange Commission in 1967 in modifying its rules concerning financial reporting of foreign-owned United States firms may have also stimulated foreign investment.[5] The devaluations of the United States dollar in December 1971 and February 1973 against a number of major currencies made investments of dollar assets less costly in terms of foreign currencies. The equity prices of many corporations have declined so substantially on major United States stock exchanges that many firms have become attractive candidates for takeovers by foreign investors.[6] The price of stocks when measured against earnings was recently at its lowest level since 1950. In fact, excluding the period of 1948-50, the price-to-earnings ratio was never lower in the past half century.[7] During the first three quarters of 1975, however, United States stock prices rose 23.9 per cent, as compared to a world-index gain of 21.4 per cent.[8] It is, therefore, not surprising that in 1973 foreigners purchased 4.7 billion dollars

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4. Initially, it may be helpful to distinguish between two distinct kinds of foreign investment in the United States—portfolio and direct. Portfolio investment concerns the purchase of securities, the transfer of which is facilitated by the major stock exchanges. Direct investment includes the purchase of real estate, the establishment of subsidiaries by foreign companies and the acquisiton of 25% or more of the voting stock of existing United States companies. *See*, *Who Will Own America?*, FORTUNE, Oct. 1974, at 116.

5. These new regulations permit the accounting systems utilized by foreign-owned United States firms to deviate from those commonly employed by United States firms in order that such procedures may be better coordinated with those employed by their foreign parents. Leftwich, *Foreign Direct Investments in the United States, 1962-71*, 53 SURVEY OF CURRENT BUS. 29, 32 (1973) [hereinafter cited as Leftwich].

6. *Supra* note 4, at 8.

7. The price-to-earnings ratio as of January, 1975 stood at a level that is barely half of the average of the last fifty years. *Bargains In Stocks—If Profits Hold Up*, U.S. NEWS & WORLD REP., Jan. 20, 1975, at 37.

8. *Business Around the World*, U.S. NEWS & WORLD REP., Oct. 6, 1975, at 49.

in United States securities. During fiscal 1974 tender offers by foreigners for controlling interests in United States firms tripled, to twenty-five.[9]

One source has succinctly set forth a number of pragmatic reasons for the establishment of production facilities in the United States: (1) facilities in the United States put non-United States firms within the world's richest market and enhance their ability to compete for United States business; (2) United States plantsite land costs are lower than in many areas located in more densely populated nations, and numerous industralizing communities in the United States have programs to encourage new industry by assisting in its financing; (3) firms with facilities in the United States have more ready access to the large equity and debt markets of the country than those in overseas locations; (4) it is easier for such firms to keep abreast of and to incorporate new technology developed in the United States, and they are in a better position to benefit from the extensive research being done by United States academic institutions; (5) overseas firms can become privy to and utilize management and marketing techniques originating here; (6) these firms have a close-up look at methods being formulated to respond to the environmental and consumer-protection concerns now arising in the United States, which may aid overseas management to prepare for the time when these issues will be primary considerations in their home countries; (7) while a trade war is not anticipated, if protectionist sentiment should succeed in insulating world trading blocs, foreign subsidiaries located in the United States would not be subject to United States import restrictions and thus would maintain their access to the market.[10]

Despite the acceleration of foreign direct investment in recent years, the national origin of investment capital has changed little since 1962 (Chart 1). European nations continue to hold the major share of foreign direct investments in the United States, accounting for 69 per cent of the total in 1962[11] and 68 per cent in 1973. Direct European investment in United States industry during 1974 increased $1.6 billion to a total of $14 billion. Five principle reasons are cited by European bankers and industrialists for the continued acceleration of such investment:

9. Takeovers, of course, are the most controversial of direct investments. The 1974 increase was probably due to the bargain prices of stocks. However, none of the tenders was made by a company controlled by Arab interests. *Supra* note 4.

10. BANK OF AMERICA, DIRECT FOREIGN INVESTMENT IN THE UNITED STATES 5 (1973).

11. Leftwich, *supra* note 5, at 32.

1. Labor costs in most of Europe in the early 1960's were 25 to 35 per cent of American levels. Today, wages in Europe are about the same as in the United States, and in Scandinavia actually higher.
2. Throughout the 1960's, Europe's economic expansion was greater than in America. But Europe's dynamic business mood has evaporated. Prospects are for a 2 or 3 per cent growth over the next decade, not much more than half the rate expected in the United States.
3. Sharp cost increases and slower growth have exposed Europe to a severe profit squeeze. Soaring welfare costs are a burden, and it is getting difficult and costly to lay off workers.

In West Germany, the Netherlands, and Scandinavia, labor unions are pressing for compulsory profit sharing and for a major role in management decisions, including investment planning.

4. American multinationals benefited in the 1960's from an "overvalued" dollar which made it relatively inexpensive to buy control of European businesses and to finance expansion. But the drastic cut in the dollar's value means that Europeans can now afford to expand their business interests in the United States.
5. American executives once were impressed by the social and political stability of the "new Europe." Their confidence has been weakening in recent years. The Common Market is torn by disputes. Governments generally still put their national interests first, and the dream of a "United States of Europe" as a powerful and independent factor in world affairs has faded away.[12]

The significance of the investment of foreign capital is perhaps most profound in a seven state region in the Southeastern United States—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee [hereinafter collectively referred to as the Southeast]. The Southeast, in order to spur industrial growth and employment, maintains active programs to attract foreign investment. The determination with which the Southeast seeks foreign direct investment is surpassed only by its success in securing such investment.

For example, the State of Georgia, which operates industrial development offices in Brussels and Tokyo and has employed special trade and investment representatives in Toronto and Sao Paolo,[13] acquired $217 million in foreign investment capital during 1974.[14] Foreign investment in South Carolina represented $300

12. *Hard Times in Europe Driving Out U.S. Companies*, U.S. NEWS & WORLD REP., Dec. 15, 1975, at 38.
13. *Georgia Knocks at the World's Door*, ATLANTA, Jan. 1974, at 59.
14. In contrast, in 1973, foreign direct investment in Georgia represented only

million during 1974—more than 50 per cent of total investment in that state for the year.[15] Foreign ownership of the State's manufacturing facilities now exceeds $1,424 million[16] and provides employment for 19,300 South Carolinians.[17]

German investors represent the largest foreign investment group in South Carolina manufacturing: they have invested more capital in South Carolina than in any other place outside Germany.[18] The Kuwait Investment Company paid $17.4 million to purchase Kiawah Island, south of Charleston, South Carolina, upon which it intends to construct a hotel-resort development.[19] This Persian Gulf nation also invested $10 million in an Atlanta, Georgia hotel, shopping, and office complex.[20] Thirty-eight Japanese firms, ten of which were manufacturers, located in Georgia in a recent fifteen month period, providing an investment of more than $65 million and potential employment of two thousand Georgians.[21] In recent years, twenty-two foreign firms have located manufacturing facilities in Tennessee, representing an investment of over $175 million.[22] Alabama, which maintains an office in Bern, Switzerland,[23] received almost 10 per cent of all foreign direct investment in the United States during 1973.[24] North Carolina, which recently opened an office in Dusseldorf, West Germany,[25] received $15 million in foreign capital during 1974.[26] Mississippi, which recently opened an office in Brussels, publishes several

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$145.3 million. Hightower, *Southeast Looked Abroad Despite Slumping Economy*, ATLANTA JOURNAL & CONSTITUTION, Jan. 5, 1975, at 3-H, col. 1.

15. *Id.*

16. SOUTH CAROLINA STATE DEVELOPMENT BOARD, VALUE OF FOREIGN INVESTMENTS BY YEAR (1974).

17. SOUTH CAROLINA STATE DEVELOPMENT BOARD, MANUFACTURING EMPLOYMENT BY FOREIGN FIRMS (1974).

18. Tunley, *In Spartanburg, the Accent is On Business*, READER'S DIGEST, Jan. 1974, at 165.

19. Reitze & Reitze, *Whose Camel Is Hamstrung Now?*, ENVIRONMENT, Sept. 1975, at 29.

20. *Higher Prices for Mideast Oil*, U.S. NEWS & WORLD REP., Sept. 29, 1975, at 72.

21. *Supra* note 13.

22. Letter from Chander Kanal to Paul Dempsey, Nov. 8, 1974. Foreign direct investment in Tennessee for 1974 totaled $12.5 million. *Supra* note 13.

23. Letter from William Griffin to Paul Dempsey, Jan. 2, 1975.

24. *Supra* note 14.

25. Letter from Thomas Broughton to Paul Dempsey, Jan. 17, 1975.

26. This, however, was considerably less than the $46 million which North Carolina received in 1973. *Supra* note 14.

industrial brochures in German and Japanese,[27] enticing numerous foreign manufacturing facilities into the State. Florida, however, promoted additional international trade activities in 1974, rather than emphasizing heavy industrial investment from foreign sources.[28] In fact, eighteen states have already established foreign trade and investment offices in Europe, fifteen of which were opened in the past three years. Half of these offices are located in Brussels, headquarters of the European Economic Community. And, forty-two states have now hired specialists in international trade, compared with fifteen only five years ago.[29] The discussion will now focus on the national policy toward foreign direct investment, which has aided the states in their pursuit of foreign industry.

B. *United States Economic Policy on Foreign Investment*

From the earliest days of the Republic, Americans have maintained a generally hospitable attitude toward the establishment of foreign owned businesses and the acquisition by aliens of such local assets as were necessary to conduct those businesses.[30] A combination of the American dedication to the free enterprise system, and its pluristic society embodying traditions from many nations, have deterred the spread of a view of the alien investor as a threat to ideology, traditional values or national identity.[31] As long ago as 1791, Secretary of the Treasury Alexander Hamilton stated, "[foreign investment] instead of being viewed as a rival . . . ought to be considered as a most valuable auxiliary, conducing to put in motion a greater quantity of portion of useful enterprise than could exist without it."[32]

The economic policy of the United States has traditionally emphasized maximum freedom for United States investors to invest abroad and for foreign investors to invest in the United States and enjoy nondiscriminatory treatment. This policy is based upon the

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27. Letter from William McGinnis, Jr. to Paul Dempsey, Oct. 29, 1974.

28. *Supra* note 14.

29. *Business Around the World*, U.S. NEWS & WORLD REP., Apr. 21, 1975, at 43.

30. H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 37 (1968).

31. Ellis, *United States Multinational Corporations: The Impact of Foreign Direct Investment on United States Foreign Relations* 11 SAN DIEGO L. REV. 1, 6 (1973).

32. Robinson, *Department Discusses Foreign Policy Aspects of Foreign Investment Act of 1975*, 72 DEP'T STATE BULL. 378 (1975).

proposition that world output would be optimized if capital and management skills were free to travel wherever they could be employed most efficiently—from areas of low return to areas of high return.[33] It is further assumed that permitting the operation of free market forces to determine the direction of world-wide investment flows will maximize the efficient utilization and allocation of capital resources in the international economy.[34] As early as 1961, the United States Department of Commerce established an "Invest in America" program to serve as an intermediary between United States firms and foreign investors. Under President Lyndon Johnson, the United States opened an office for industrial development in Paris and instructed the Economic Development and Small Business Administrations to facilitate resolution of the credit problems encountered by foreign investors. And, in 1969, President Nixon directed the Commerce Department's Bureau of International Commerce to initiate activity with respect to the promotion of foreign investment in this nation.[35]

In accordance with this free market policy, the United States has sought to minimize barriers to investment and to encourage the unrestrained international movement of goods and capital. For example, the United States was instrumental in the development of the Code of Liberalization of Capital Movement by the members of the Organization for Economic Cooperation and Development (OECD). Moreover, the United States is currently engaged in the formulation within the OECD of agreements of consultation regarding departures from national treatment of foreign investors or the institution of incentives or disincentives for foreign investment. Additionally, the United States commitment to generally

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33. Katz, *Department Discusses International Economic Policy*, 73 DEP'T STATE BULL. 707, 709 (1975).

34. *Hearings on S. 425 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs*, 94th Cong., 1st Sess. 71 (1975) [hereinafter cited as *Senate Hearings*]. The recent relaxation of controls on United States direct investment in foreign nations exemplifies the Government's adherence to this policy. In January 1974, the Interest Equalization Tax was reduced to zero, the Commerce Department's Office of Foreign Direct Investment revoked the Foreign Direct Investment Regulations, and the Board of Governors of the Federal Reserve System ended its Voluntary Foreign Credit Restraint Guidelines. These controls were designed to improve the United States balance of payments by restricting the outflow of dollars. 6 L. & POLICY IN INT'L BUS. 1263 (1974); *see* McDermott, *The Foreign Direct Investment Controls*, 11 HARV. INT'L L.J. 490 (1970).

35. Eimer & Johnson, *Legal Obstacles to Foreign Acquisitions of U.S. Corporations*, 30 BUS. LAWYER 681, 683 (1975).

non-restrictive treatment of foreign investment is embodied in an extensive network of friendship, commerce, and navigation treaties.[36]

The basic policy of the United States is to admit and treat foreign capital investments on a basis of equality or parity with domestic capital. Specific restrictions at the federal level apply to certain categories of enterprises that have national security significance, or include the exploitation of certain natural resources, or involve particular fiduciary relationships.[37]

Existing federal statutes and regulations do not in general inhibit foreign investment, prohibiting acquisitions in only a few industries and under a few circumstances.[38] Congress has restricted alien ownership of enterprises that are engaged in certain exempted activities, such as domestic radio communications,[39] coastal or inland shipping,[40] and the production of atomic energy.[41] Federal legislation also requires that firms involved in air transpor-

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36. Robinson, *Department Discusses Foreign Policy Aspects of Foreign Investment Act of 1975*, 72 DEP'T STATE BULL. 378 (1975). *See* Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present U.S. Practice*, 5 AM. J. COMP. L. 229 (1956).

37. *Senate Hearings, supra* note34, at 84-5.

38. For a detailed explanation and evaluation of such legislation, see *supra* note 34.

39. Foreign-owned or controlled corporations are prohibited from receiving licenses to operate an instrument for the transmission of communications. A corporation is defined as foreign-owned if any director or officer is an alien, or if more than one-fifth of its capital stock is owned by aliens, a foreign government, or a corporation organized under the laws of a foreign country. Additionally, a corporation is generally considered as foreign-controlled if it is directly or indirectly controlled by any other corporation, at least one-fourth of whose capital stock is owned by foreign interests. 47 U.S.C. § 310 (1970).

40. The Jones Act of 1920 requires that any shipping of passengers or of property between points in the United States or its territories must be accomplished in vessels constructed and registered in the United States and owned by United States citizens. A ship may not be registered in the United States unless the corporation's principal officers are United States citizens and 75% of the stock is owned by United States citizens. Any vessel that is at any time registered in a foreign country permanently loses these United States shipping rights. Moreover, any eligible vessel weighing more than 500 gross tons that is later rebuilt outside the United States also forfeits these privileges. However, vessels registered in foreign nations granting reciprocal privileges to United States vessels may perform intercoastal transportation of empty items, such as cargo vans, barges, shipping tanks, and equipment utilized therewith. 46 U.S.C. § 883 (1970).

41. No licenses for the operation of atomic energy utilization or production facilities may be issued to aliens or to foreign-owned or foreign-controlled corporations. 42 U.S.C. § 2133 (1970).

tation,[42] mining on federal lands,[43] and the development of hydroelectric power on navigable streams[44] be organized and chartered under United States law, but has not prohibited foreign control of such companies. Neither foreign nor domestic investors are required to apply to governmental authorities for permission to engage in United States business transactions, except in those fields of special regulation and supervision, such as insurance, public utilities, and banking.[45]

Although some states restrict alien ownership of real property, most states impose no restrictions on foreign investment whatsoever, particularly investments in commercial or manufacturing enterprises.[46] Several states limit the entry of corporations controlled outside the state into the fields of banking and insurance in order to insure that such financial institutions can effectively be held to account for their fiduciary responsibilities.[47] In recent years, however, an apparant erosion of the traditional *laissez faire* economic policy of the United States vis-a-vis foreign investment has transpired. The massive transfer of wealth from oil-consuming to oil-producing nations, and the investments by petroleum-exporting countries in the economies of western industrialized nations have led to the emergence of a protectionist paranoia in the United States. Numerous pieces of legislation introduced on the floors of Congress were designed to prohibit, curb, or regulate foreign investment (both direct and portfolio) in the United States. For example, Senator Harrison Williams, Jr., (D-N.J.) introduced

42. Eligibility to register aircraft in the United States is limited to: (a) United States citizens; (b) partnerships in which all partners are United States citizens, and (c) United States corporations in which at least two-thirds of the directors are United States citizens and at least 75% of the stock is owned by United States citizens. Moreover, the right to enter into cabotage (trade or transport between two points within the United States) is limited to domestically registered aircraft. 49 U.S.C. §§ 1378, 1401, 1508 (1970).

43. 30 U.S.C. §§ 22, 24, 71, 181, 352 (1970).

44. Hydroelectric power sites on navigable streams located within the United States may be developed only by United States citizens or domestically organized corporations. 16 U.S.C. § 797(e) (1970).

45. *Senate Hearings*, *supra* note 34, at 85.

46. *See* Forry, *Planning Investments From Abroad in United States Real Estate*, 9 INT'L LAWYER 239 (1975); *see also* Feinschreiber & Feinschreiber, *Foreign Investment in U.S. Real Estate: The Federal Tax Considerations*, 3 REAL ESTATE L.J. 144 (1974).

47. *Senate Hearings*, *supra* note 34, at 85; *see* Edwards, *Regulation of Foreign Banking in the United States: International Reciprocity and Federal-State Conflicts*, 13 COLUM. J. TRANSNAT'L L. 239 (1974).

the Foreign Investment Act of 1975, which proposed an amendment to the Securities Exchange Act of 1934 requiring notification by foreign investors of proposed acquisitions of equity securities of United States companies, and authorizing the President to prohibit such acquisitions as he deemed appropriate for purposes of national security, foreign policy, or domestic economy.[48] Probably the most extreme measure introduced was the Dent-Gaydos Bill, which would have amended the Securities Exchange Act of 1934 "to restrict persons who are not citizens of the United States from acquiring more than 35 per centum of the non-voting securities or more than 5 per centum of the voting securities of any issuer whose securities are registered under such Act."[49]

It is fortunate that such extreme measures were rejected. Prohibitions or severe restrictions upon foreign investment in the United States might well make the dollar less attractive relative to other currencies and therefore contribute to its decline in value. A nationalistic approach to foreign investment could also provoke similar retaliation against United States investment abroad, which involves a far greater commitment of capital than does foreign investment in the United States. Finally, a need exists to encourage an inflow of foreign capital not only to balance the outflow of dollars spent for petroleum imports, but also to provide funds for United States domestic capital markets.[50]

Congressional examination of foreign investment in the United States revealed no actual necessity for change in the present United States policy of unlimited admission of foreign capital ex-

48. S. 425, 94th Cong., 1st Sess. (1975) (see *supra* note 34). It has been argued that such legislation imposes more regulation than is necessary to protect the national interests of the United States from undesirable foreign investments and might well have the effect of discouraging desirable investments. Moreover, it would call into question the United States commitment to an international economic system that provides for maximum freedom in the movement of trade and investment flows and would thus tend to undermine United States world leadership in the area. Robinson, *Department Discusses Foreign Policy Aspects of the Foreign Investment Act of 1975*, 72 DEP'T STATE BULL. 378, 379-80 (1975).

49. H.R. 8951, 93d Cong., 1st Sess. (1973); H.R. 11265, 93d Cong., 1st Sess. (1974). For an examination of this proposal and an evaluation of the argument that such legislation would violate the equal protection provisions of the United States Constitution, see Fenton, *Proposed Limitations on Alien Purchases of United States Securities*, 9 J. INT'L L. & ECON. 267 (1974).

50. *See*, *Petrodollars Are Dollars*, NAT'L REV., Apr. 11, 1975, at 384. The United States has recorded a balance-of-payments deficit for twenty-three of the past twenty-four years. *See* McDermott, *The Foreign Direct Investment Controls*, 11 HARV. INT'L L.J. 490, 492 (1970).

cept insofar as such investment violates existing statutory prohibitions and limitations, which were enacted primarily for national security reasons. But congressional investigation also revealed a severe and disturbing lack of detailed information regarding the nature and extent of foreign direct investment in the United States. Thus, despite the plethora of legislation introduced in the 93rd and 94th Congresses,[51] only one bill was signed into law, The Foreign Investment Study Act of 1974,[52] which authorizes a 3 million dollar benchmark study of foreign investment in the United States by the Departments of Treasury and Commerce.

III. Incentives for Industrial Investment in the Southeast

A number of individual states actively encourage the investment of foreign capital, through participation in the numerous programs sponsored by the United States Chamber of Commerce, through independent solicitation of foreign investors, or through both these means. The packages of investment incentives offered by particular states may vary considerably, from tax exemptions, to the cost-free training of labor, to low interest investment loans. This section will examine the industrial investment incentives offered by the seven states of the Southeast. Legislation in these states is herein divided into three categories, which correspond roughly to the three primary considerations an industrial investor may have, namely: (1) how will I finance the facility; (2) how will I acquire skilled, low-cost labor; and (3) what will be the cost of taxation when I begin production? Certainly, these may not be the primary considerations for certain types of investors. For example, particular industries may be more interested in the location of certain raw materials,[53] or transportation facilities,[54] or low-cost hydroelectric

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51. Approximately two dozen such bills were introduced during 1974. *All About the New Oil Money*, NEWSWEEK, Feb. 10, 1975, at 62. For an excellent examination of the legislation introduced during the 93d and 94th Congresses, see Note, *U.S. Regulation of Foreign Direct Investment: Current Developments and the Congressional Response*, 15 VA. J. INT'L L. 611 (1975); see also Note, *An Evaluation of the Need for Further Statutory Controls on Foreign Direct Investment in the United States*, 8 VAND. J. TRANSNAT'L L. 145 (1974).

52. Pub. L. No. 93-479, 1 *United States Code Congressional and Administrative News* 1661 (1974). When President Ford signed the bill into law, he emphasized, "We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restriction on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest." *Senate Hearings*, *supra* note 34, at 21-2.

53. Alabama's Birmingham and Gadsden areas with its vast deposits of iron

power.[55] This discussion shall not examine *all* of the investment incentives offered in the Southeast, but shall provide a general discussion of what the author perceives to be the primary industrial investment incentives offered in the Southeast.[56]

Finally, it should be noted that the incentives discussed herein are available not only to alien investors, but to any out-of-state investor. Although some of the legislation in the Southeast was actually promulgated specifically for the purpose of attracting

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ore, coal, and limestone is the only area in the world where these three principal ingredients for making steel are found in close proximity. Reserves of iron ore inside the twenty-five mile radius are estimated at eight billion tons. Alabama's reserves of natural resources are estimated to be 10% of the nation's total. ALABAMA DEVELOPMENT OFFICE, ALABAMA INDUSTRIAL DEVELOPMENT GUIDE (1974). The recent discovery of massive natural-gas and oil fields in southern Alabama and northwestern Florida will expedite the attraction of heavy industry into the area. *A Giant Oil Find*, TIME, May 26, 1975, at 68.

54. For example, every year fifteen million tons of cargo pass through the thirty-eight foot channel of the natural harbor of Jacksonville, Florida, the largest port on the southern Atlantic Ocean. *Jacksonville, Florida*, FLORIDA COMMENTARY, 1974-75, at 22. Savannah, Georgia, the leading container port on the southern Atlantic Ocean, today ranks fourteenth among the ports of the nation in dollar value of international trade. GEORGIA PORTS AUTHORITY, INTERNATIONAL TRADE—GEORGIA'S BILLION DOLLAR A YEAR INDUSTRY 9 (1974). The State of Alabama ranks third in the nation in miles of navigable waterways.

55. The cost of electricity in Tennessee and in the entire region served by the Tennessee Valley Authority is among the lowest in the nation. INDUSTRIAL DEVELOPMENT DIVISION, DEP'T OF ECONOMIC & COMMUNITY DEVELOPMENT, TENNESSEE WELCOMES INDUSTRY (1974).

56. Readers who desire more detailed information, or information not contained herein, should consult the following individuals and governmental agencies: Mr. William J. Griffin, International Representative, Alabama Development Office, State Office Building, Montgomery, Alabama, 36104; Mr. Otto Juan Reich, Representative, Bureau of International Development, Division of Economic Development, State of Florida Department of Commerce, Collins Building, Tallahassee, Florida, 32304; Miss Virginia M. Kimball, International Trade Representative, International Division, Georgia Department of Community Development, P.O. Box 38097, Atlanta, Georgia, 30334; Mr. William A. McGinnis, Jr., Assistant Manager, Mississippi Marketing Council, Mississippi Agricultural and Industrial Board, P.O. Box 849, Jackson, Mississippi, 39205; Mr. Thomas B. Broughton, Assistant Director, Economic Development Division, Division of Commerce and Industry, North Carolina Department of Natural and Economic Resources, P.O. Box 27687, Raleigh, North Carolina, 27611; State Development Board, P.O. Box 927, Columbia, South Carolina, 29202; and Mr. Chander Kanal, Director of Marketing Research, Department of Economic and Community Development, 1012 Andrew Jackson State Office Building, Nashville, Tennessee, 37219. All of the above were extremely helpful in providing much of the material upon which this article is based.

alien investment, the acts do not distinguish between foreign (out-of-country) and foreign (out-of-state) investors. Thus, a Delaware corporation would be as eligible for certain tax exemptions offered by the State of Mississippi as a French firm. Moreover, many in-state firms are eligible for incentives available to "new or *expanding* industries."

A. *Industrial Financing*

Conventional sources of industrial financing available in the Southeast for accounts receivable, equipment, inventories, and industrial land and buildings include commercial banks and trust companies, insurance companies, investment banks, finance companies, savings and loan associations, credit unions, pension funds, and capital goods suppliers. This discussion, however, shall examine only the comparative programs of *public* financing of industrial construction available to new or expanding firms by each Southeastern state and the Federal limitations thereon. These programs have generally been designed to assist small and medium size firms that often experience difficulty in raising equity funds. Most of the revenue bond financing programs provide capital to new or expanding industries at an interest rate generally lower than that offered by conventional sources.

A great deal of industrial expansion has been undertaken with the assistance of public financing through industrial revenue programs. For example, in 1971 almost $220 million worth of industrial revenue bonds were issued in twenty-six states, primarily by county and city governments. This method of industrial financing is most prevalent in the southeastern area, with Alabama, Arkansas, Georgia, Kentucky, and Louisiana accounting for two-thirds of all revenue bond activity.[57]

Two federal statutes place limitations upon the issuance of industrial revenue bonds: the "One Million Dollar Act"[58] and the "Five Million Dollar Act."[59] The One Million Dollar Act permits a municipality to issue tax-free industrial development bonds of up to $1 million, for any one company in any one county, and the Act allows this capital to be supplemented with unlimited additional financing from other (taxable) sources. The proceeds derived from the issuance of the bond may be utilized to acquire

57. *Supra* note 10, at 16.
58. INT. REV. CODE OF 1954, § 103(c)6A.
59. INT. REV. CODE OF 1954, § 103(c)6D.

land and to construct and equip industrial facilities that will be leased by the companies involved.[60]

Under the Five Million Dollar Act, tax-free industrial development bonds may be issued by a municipality for any one company in any one county for projects totaling $5 million in capital expenditures. The primary point for consideration by foreign corporations is the six year capital expenditure test. The six year period extends from three years prior to the date of the bond issuance to three years after that date. Total capital expenditures in the involved local area may not exceed the $5 million limit within this six year period. Thus, a "violation" will occur whenever the capital expenditures of the lessee company during the six year period exceed the $5 million limit, whereupon the bond interest becomes taxable, and the bonds become callable.[61] Financing of pollution control facilities, however, is exempt from these restrictive dollar limitations.[62]

Alabama—Alabama asserts that it is the *only* state that will structure a financial package to include a combination of normal debt certificates and tax-free revenue bonds when a company's total investment exceeds the $5 million tax-exempt limitation. Thus, Alabama offers one hundred per cent financing, regardless of the cost of the project.[63]

Alabama offers two plans of public industrial financing. Under the Wallace Act,[64] the Alabama legislature authorized municipalities to finance the acquisition, construction, and equipping of industrial property through the issuance of revenue bonds payable solely out of the revenues produced from the lease of the properties. The second plan, promulgated under the Cater Act,[65] authorizes the incorporation by municipalities of nonprofit public corporations to acquire, own, lease, and dispose of industrial property, and to finance these acquisitions through the issuance of bonds payable

60. The company must not, however, be the principal tenant of any other facility within the county which was financed with industrial bonds subsequent to May 1, 1968.

61. All capital expenditures of the lessee company or a related person in that county are taken into consideration without regard to the source of the funds. *Supra* note 59.

62. FLORIDA DEP'T OF COMMERCE, ECONOMIC DEVELOPMENT OF FLORIDA 25 (1974).

63. The project would retain the advantage of an exemption on all property taxes. *Supra* note 23.

64. CODE OF ALA. tit. 37, §§ 511(20)-(32) (1958).

65. CODE OF ALA. tit. 37, §§ 815-830(1) (1958).

solely from the revenues and receipts derived from the acquired properties.

Under both plans, the costs of a new facility may be underwritten through a municipality or its local industrial development agency.[66] Once a mutual agreement is negotiated between the new industry and the municipal government or industrial development agency, the municipality or its local agency will finance the project by issuing revenue bonds, and the company will pay only that amount of debt service accruing during the maturity of the bonds to cover amortization and interest. These bonds may be issued with maturity periods of ten to thirty years. Once the bond is retired, the new industry may rent the plant for as little as one dollar for the next forty years. Of course, the company may purchase the plant after the bonds are redeemed; however, no real property taxes need be paid as long as title to the property is held by the municipality or its agent corporation.[67]

The advantages of these industrial revenue bond financing plans are considerable. For example, the foreign corporation would pay a lower interest rate than that obtainable under conventional financing arrangements. Whereas conventional real estate loans offer only fifty to sixty per cent financing, these municipal bond programs provide one hundred per cent financing of the project. If the new facility is acquired with the proceeds derived from the sale of municipally issued bonds, it will be exempt from ad valorem taxation. Finally, building materials used in construction of the new facility may be exempted from state and local sales taxation.[68]

Florida—Florida has offered tax-free industrial revenue bond financing since 1969. Securities are issued by municipalities and other authorized local governmental bodies for the purposes of purchasing land, and constructing and equipping industrial or manufacturing facilities for lease or sale to responsible companies.[69] Tax-free industrial bonds may provide one hundred per cent of the financing and development costs of the project. Because the interest received is exempt from federal and state income taxation,

66. In order to qualify for these plans, the foreign corporation must have a record of successful operation and have a sound financial basis. ALABAMA INDUSTRIAL DEVELOPMENT GUIDE, *supra* note 53.

67. Pollution abatement equipment may also be financed under these programs. *Id.*.

68. Franchise tax savings may also be available. *Id.*

69. Interest and principal on these bonds are paid from the debt service payment of the company pursuant to a repayment schedule that is tailored to conform to its financial structure. *Supra* note 62.

the cost of capital to the firm is as much as seventy-five per cent less than conventional sources of financing.[70]

Moreover, the Florida Industrial Development Corporation, a statewide private corporation that operates on capital which it pools from banks, utilities, savings and loan associations, and insurance companies, provides loans to industries unable to secure conventional financing. Lending money typically for working capital, the corporation charges an interest rate of roughly 3.5 per cent above the prime rate. These loans are made for a level principal amortization and provide for the payment of interest over periods of up to ten years.[71]

Georgia—Georgia has created three programs that have the ability to underwrite part or all of the construction and equipping costs of a new industrial facility. Moreover, construction costs in Georgia have averaged seventeen per cent below those of the nation as a whole in recent years.[72]

Georgia's Local Development Corporations, with stock subscribed by local citizens, are authorized to lend and borrow capital for construction, land, and equipment. They may build for specific clients, and may erect speculative shell or standard industrial buildings for lease or sale.[73] Over 150 Georgia communities have already established corporations to erect buildings for responsible firms on mutually agreeable lease or lease-purchase arrangements.[74]

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70. Interest rates depend upon the credit worthiness of the firm and may be amortized over a medium-to-long period of time. The bond issue may be underwritten by investment bankers, and the agreement can usually be consummated within ninety days. *Id.*

71. FLA. STAT. ANN. §§ 289.011-.201 (1962). *See* Turnbull, *The International Bureau*, 1974 FLORIDA COMMENTARY 15.

72. *Industry: Right Place, Right People*, 1974 GEORGIA NOW 10. The Georgia Chamber of Commerce attributes these low costs to lower labor costs, higher efficiency, and less construction time lost to inclement weather. Additionally, most types of building materials are produced locally, resulting in lower transportation costs. GEORGIA CHAMBER OF COMMERCE, 1974 INDUSTRIAL SURVEY OF GEORGIA 6 (1974).

73. *Industry: Right Place, Right People*, 1974 GEORGIA NOW 15. These local development corporations are composed of local civic and business leaders with no expectation of direct personal gain, whose interest is in increasing employment in their region. These corporations will construct buildings according to the manufacturer's specifications on long-term lease or amortization plans, with an option to purchase or renew. GEORGIA CHAMBER OF COMMERCE, 1974 INDUSTRIAL SURVEY OF GEORGIA 5 (1974).

74. GEORGIA CHAMBER OF COMMERCE, 1974 INDUSTRIAL SURVEY OF GEORGIA 4 (1974).

All of Georgia's cities and counties, through Industrial Development Authorities, are now empowered to issue tax-free revenue anticipation bonds for industrial development.[75] These industrial revenue bonds may finance virtually all costs of a new plant. The two primary advantages of this form of financing are: (1) interest rates generally average 1 to 1.5 per cent lower than those available from conventional sources; and (2) "110 per cent financing" can be effected by including costs of land, buildings, equipment and machinery, bond issuance expenses, and interest costs that arise during construction.[76]

Finally, with the recent creation of Georgia's Business Development Corporation, virtually any type of building financing can be obtained in the State. This is a private corporation composed of participating financial institutions that will lend capital in amounts generally less than $500,000 even when conventional lending sources are prohibited by law from making such loans.[77]

Mississippi—Mississippi offers two primary financing plans for industrial location or expansion in the State. Mississippi's Balance Agriculture with Industry Act of 1944[78] (hereinafter BAWI) permits municipalities to sell bonds for the purpose of acquiring sites and constructing plants for lease to new or expanding industries.[79] Under this program, the proceeds derived from the annual rental of the industrial property are sufficient to retire the bonds. Interest rates are generally two per cent lower than the corporation could obtain through conventional sources.[80] Because title to the property remains with the municipality issuing the bonds, no taxes are assessed on the land, building, or fixtures acquired with the pro-

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75. Colchester, *Industrial Schemes Overcome Old Prejudices*, THE FINANCIAL TIMES, Nov. 19, 1973, at G-3; GA. CODE ANN. tit. 69, §§ 1501-1513 (1974).

76. These bonds may be marketed through investment bankers or sold through local sources. *Supra* note 74. They are sold only with a firm, long-term commitment from a corporation with proven financial stability. GA. CODE ANN. tit. 69, § 1510 (1974). Bonds issued by such authorities do not constitute an indebtedness on the state, county, or municipal government. GA. CODE ANN. tit. 69 § 1512 (1974).

77. GA. CODE ANN. tit. 41A, §§ 3401-3419 (1974).

78. MISS. CODE ANN. §§ 57-1-1 to 57-3-33 (1972).

79. The land, buildings, utility connections, wiring, plumbing, and similarly attached realty fixtures may be included in BAWI issues. The municipality can construct the industrial facility, or the industry may construct and convey it to the municipality. MISSISSIPPI AGRICULTURE & INDUSTRIAL BOARD, MISSISSIPPI-STATITICAL INFORMATION ON AMERICA'S NEW INDUSTRIAL FRONTIER F-3 (1974).

80. BAWI bonds are full faith and credit (general obligation) tax exempt bonds that may be amortized over a maximum period of twenty-five years. *Id.*

ceeds of the bonds.[81] BAWI requires an election in which more than thirty per cent of the qualified electors in the community vote and sixty per cent of those voting approve the issue.[82]

Mississippi's Revenue Bond Act of 1960,[83] designed for well-financed companies that are interested in financing land, buildings, fixtures, equipment, and machinery, permits bonds to be issued in any amount.[84] These industrial revenue (hereinafter I.R.) bonds possess the identical tax exemptions that other municipal, county or state revenue bonds carry.[85] No referendum is required for the issuance of the I.R. bonds unless twenty per cent of the electors in the community protest in writing.[86]

Several differences between the two bond programs should be noted. Only I.R. bonds may be employed to finance equipment. While BAWI bonds may be amortized over a maximum period of only twenty-five years, I.R. bonds may be amortized over a thirty year period.[87] Because I.R. bonds are backed solely by the rentals from the facility and do not constitute an indebtedness on the part of the issuing municipality, interest rates are slightly higher than on BAWI bonds.[88] While issuance of BAWI bonds must always be approved by referendum, issuance of I.R. bonds requires electoral approval only if twenty per cent of the community's electors protest in writing. Finally, the maximum amount of the BAWI issue must not exceed twenty per cent of the assessed valuation of property on the tax rolls of the issuing municipality. No such limitation exists with respect to I.R. bonds.[89]

North Carolina—North Carolina is the only state in the Southeast and, in fact, one of only two states in the entire nation, where public industrial revenue bonds are not available.[90]

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81. Moreover, the lease payments that retire the BAWI bonds are deductible as operating costs. *Id.*

82. MISS. CODE ANN. § 57-1-25 (1972). Mississippi's communities have generally approved such issues whenever they have been afforded the opportunity to do so. *Supra* note 79, at F-3.

83. MISS. CODE ANN. §§ 57-3-1 to 57-3-33 (1972).

84. Bonds issued by a municipality pursuant to this Act may be amortized over a period of thirty years and sold at public or private sales. When used for the purchase of machinery, however, the term of the bonds is restricted to the useful life of the machinery. MISS. CODE ANN. § 57-3-19 (1972).

85. MISS. CODE ANN. § 57-3-33 (1972).

86. MISS. CODE ANN. § 57-3-11 (1972).

87. *Supra* note 79, at F-4.

88. *Id.* at F-3.

89. *Id.* at F-4.

90. Letter from Thomas Broughton to Paul Dempsey, Jan. 17, 1975.

South Carolina—South Carolina has had the lowest or second lowest construction costs in the nation for a number of years.[91] The State's counties are authorized to issue revenue bonds to finance construction of new facilities or the expansion of existing facilities.[92] Under this industrial financing program, each county, working with an industrial firm, may apply to the State fiscal authority for approval to issue revenue bonds.[93] These bonds may provide financing for the purchase of land, buildings, machinery for manufacturing, warehousing and distribution facilities, and research and development facilities.[94] The public bonds, which are exempt from federal and state taxation,[95] offer interest rates that compare favorably to rates offered by private financial sources. Generally, one per cent of interest can be saved. Thus, this one per cent would save a company $140,000 on the issuance of $1 million in revenue bonds for a twenty year period.[96]

Tennessee—Tennessee has promulgated three plans that make local financing available to new or expanding industries. Under the

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91. Warehouse construction costs in the State average around $6.00 to $7.00 per square foot. Annual lease agreements average around $.70 to $.90 per square foot. SOUTH CAROLINA STATE DEVELOPMENT BOARD, SOUTH CAROLINA: RESOURCE FOR INDUSTRY 7.2 (1974).

92. CODE OF S.C. §§ 14-399.21 to 399.35 (1962).

93. CODE OF S.C. § 14-399.34 (1962). State approval for the issuance of such revenue bonds is based upon an examination of the corporation's financial history and its capabilities to meet the terms of a proposed lease. The corporation must lease the proposed facilities for an amount sufficient to cover the costs of interest and retirement of the bonds. The corporation would be offered an option to renew or purchase the facilities after the bonds are paid. Renewal of the lease or purchase of the property need not require payment by the lessee of the full market value, but may be fixed at any lower consideration which the county determines to be in its best interests. SOUTH CAROLINA STATE DEVELOPMENT BOARD, INDUSTRIAL FINANCING IN SOUTH CAROLINA 3 (1974).

94. Revenue bond financing is available for the purchase of land, buildings, and other improvements thereon, including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery and equipment necessary by any of the following: (1) any enterprise engaged in manufacturing, assembling, or processing any agricultural or manufactured product; (2) any commercial enterprise engaged in storing, warehousing, distributing, or selling products of agriculture, mining, or industry; (3) any enterprise engaged in research in connection with the foregoing or for the purpose of developing or improving products or processes; and (4) any enlargement, expansion, or improvement of any existing enterprise in the above items. *Supra* note 10, at 11.

95. However, the bonds are not exempt from inheritance, estate, and transfer taxes. CODE OF S.C. § 14-399.33 (Supp. III, 1975).

96. SOUTH CAROLINA STATE DEVELOPMENT BOARD, INDUSTRIAL FINANCING IN SOUTH CAROLINA 3 (1974).

State's Industrial Development Corporations Act of 1955,[97] municipalities are authorized to establish public industrial development corporations to acquire and dispose of buildings and properties to private industrial concerns.[98] The public corporation may issue bonds payable from the revenue derived from the lease or sale of industrial property. The issuance of these bonds does not require a public referendum.[99] The industrial development corporations may also issue bonds that pledge the full faith and credit of the municipality. Such bonds must receive approval by at least a three-fourths majority of registered electors participating in a public referendum.[100]

Tennessee's Industrial Building Revenue Bond Act of 1951[101] permits municipalities to issue revenue bonds for the acquisition or construction of industrial buildings,[102] and to finance the purchase of equipment and machinery.[103] The industrial property is leased or rented on terms providing for the retirement of the principal and payment of interest.[104] While these revenue bonds must also receive approval by a three-fourths majority of the qualified residents voting in a public referendum,[105] they do not constitute a financial obligation to the community.[106] In the decade between

97. TENN. CODE ANN. §§ 6-2801 to 6-2820 (1971).

98. TENN. CODE ANN. §§ 6-2801, 2802 (1971).

99. Maturities may be established up to forty years from the date of issuance of the bonds. TENN. CODE ANN. § 6-2809 (1971).

100. TENN. CODE ANN. § 6-2812 (1971). Additionally, a certificate of public purpose and necessity must be obtained from the State, signifying approval of a pledge of credit. The rate of interest may not exceed 10% per annum. TENN. CODE ANN. § 6-2813 (1971); *see* INDUSTRIAL DEVELOPMENT DIVISION, DEP'T OF ECONOMIC & COMMUNITY DEVELOPMENT, BOND LAWS IN TENNESSEE 3-14 (1972).

101. TENN. CODE ANN. §§ 6-1701 to 6-1716 (1971).

102. TENN. CODE ANN. § 6-1704 (1971).

103. TENN. CODE ANN. § 6-1702 (1971).

104. TENN. CODE ANN. § 6-1715 (1971). The terms of the lease or rental agreement must also be sufficient to create and maintain reserves for insurance coverage and repair on the industrial buildings.

105. TENN. CODE ANN. § 6-1710 (1971). The bonds may not have maturity dates exceeding forty years from the date of issuance. TENN. CODE ANN. 6-1706 (1971).

106. A statement to this effect must be printed on each bond. No bondholder may compel the municipality to exercise its taxing power to pay the bonds or their interest. TENN. CODE ANN. § 6-1709 (1971). However, the bonds have a lien upon rentals received from the property. TENN. CODE ANN. § 6-1708 (1971). Except for inheritance, transfer, and estate taxes, the instruments are exempt from municipal, county, and state taxation. TENN. CODE ANN. § 6-1714 (1971); *see* 5 INDUSTRIAL DEVELOPMENT DIVISION, DEP'T OF ECONOMIC & COMMUNITY DEVELOPMENT, BOND LAWS IN TENNESSEE 15-20 (1972).

1963 and 1973 revenue bonds representing almost $400 million were issued by the cities and counties of Tennessee.[107]

Tennessee's final plan, promulgated in the Industrial Building Bond Act of 1955,[108] authorizes cities and counties to issue full faith and credit bonds to finance the construction or purchase of buildings for lease to private industrial concerns.[109] These general obligation bonds must also receive approval by at least three-fourths of the qualified voters of the community voting in the referendum.[110] Between 1963 and 1973 over $26 million in general obligation bonds were issued by Tennessee's cities and counties.

Federal Financing—Finally, two federal programs of public financing should be noted. The United States Economic Development Administration (hereinafter EDA) provides financial assistance to locations that have been designated "depressed areas." For example, sixty-nine of Mississippi's eighty-two counties qualify for this assistance. The EDA has designated twelve other Mississippi counties as "growth centers" that are eligible for the same assistance as depressed areas. EDA can make long-term business loans of up to twenty-five years in order to encourage location or expansion by manufacturers in areas qualifying for EDA assistance.[111]

The United States Small Business Administration (hereinafter SBA) may guarantee as much as ninety per cent or $350,000,

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107. Industrial Development Division, Dep't of Economic & Community Development, Economic Statistics on Tennessee 5 (1974).

108. Tenn. Code Ann. §§ 6-2901 to 6-2916 (1971).

109. The rental income of the property must be pledged to the full retirement of the bonds, which may be issued for a term of more than forty years. Additionally, this rental income must provide for the maintenance and operation of the depreciation reserves. The bonds may not bear interest rates in excess of 10% per annum. Industrial Development Division, Dep't of Economic & Community Development, Bond Laws in Tennessee 21 (1972).

110. Tenn. Code Ann. § 6-2907 (1971). A Certificate of Public Purpose and Necessity must also be issued by the State Building Finance Committee. The bond indebtedness incurred for municipal buildings must not exceed 10% of the total valuation of all property in the community. Tenn. Code Ann. §§ 6-2905 to 6-2906 (1971). The bonds and their incomes are exempted from all municipal, county, and state taxation, except estate, transfer, and inheritance taxes. Tenn. Code Ann. § 6-2913 (1971).

111. EDA permits second lien positions and can lend up to 65% of the cost of equipment, machinery, buildings, and land. Generally, the loan percentages for the total cost are 50% EDA, 10% corporation (equity capital), 5% community or local development corporation, and 35% supplied by the State or local lending institution. *Supra* note 79, at F-4.

whichever is less, of a bank loan to a small firm.[112] Community development loans, which are awarded for the construction of new or expanded facilities by local community development organizations in sums not exceeding $350,000, are also available under the SBA assistance programs. Most large or medium size foreign corporations, however, will find that they do not qualify for SBA capital.[113] Another important restriction on the agency's financial assistance is that no loan may be made by the SBA if the business can obtain funds on reasonable terms from a bank or other private source. Therefore, the new or expanding firm must first seek private financing before consulting the SBA.[114]

B. *Labor*

Agricultural employment has declined in the Southeast, where farming was once the basic industry. Greater mechanization has freed many farm workers in the region, while at the same time, productivity and farm income have increased. For example, since 1940 Georgia's cash income from farm produce rose 600 per cent, while its farm workforce declined by eighty per cent.[115] Moreover, the region is growing faster industrially than is the United States as a whole. Between 1960 and 1970, 921,000 industrial jobs were created in the Southeastern states—more than thirty-six per cent of the national growth.[116]

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112. *Id.*

113. The agency defines a small business as one which is independently owned and operated, non-dominant in its field, and meets the particular sales or employment standards developed by SBA. While the standards may sometimes differ, the standards for most manufacturing industries are as follows: the industry is small if average employment during the preceding four calendar quarters did not exceed 250, including employees of affiliates; if employment was between 250 and 1,000, the SBA bases its determination on the specific size standard for that particular industry; if average employment exceeded 1,000, the industry is designated large. ALABAMA INDUSTRIAL DEVELOPMENT GUIDE *supra* note 53.

114. *Id.*

115. Poultry, peanuts, and eggs now dominate the State's agricultural output. Cotton no longer plays the dominant role in Georgia's agriculture that it once did, accounting for only 3% of farm output. Colchester, *Prosperity in the South*, THE FINANCIAL TIMES, Nov. 19, 1973, at G-1, col. 4.

116. During this period, the State of Georgia gained 121,000 industrial workers. GEORGIA CHAMBER OF COMMERCE, 1974 INDUSTRIAL SURVEY OF GEORGIA 11 (1974). During the past twenty years Mississippi has also undergone a radical transition from a predominantly agricultural to a predominantly manufacturing state. Although in 1950, 43% of its workforce was engaged in agriculture and 13% in manufacturing, by 1970 only 7% was agriculturally employed as opposed to

The availability, productivity, and cost of American labor are proving to be powerful incentives for foreign direct investment by overseas firms. For example, many German executives publicly complain about the shortage of labor in their nation.[117] When a German worker's social security and other fringe benefits are added to his salary, the cost of labor in the Southeast is comparatively lower than that in Germany.[118] The concurrent decline of the dollar and rise of the D-Mark on world money markets has made wage rates in the United States increasingly attractive to foreign manufacturers.

Apart from the cost of wages and fringe benefits, growing labor militancy in Germany is proving to be a powerful incentive for the move of manufacturing facilities abroad. The Social Democratic government, which draws substantial political support from labor, has placed two proposals before the German Bundestag that deal with *mitbestimmung* and *vermoegensbildung*, meaning, respectively, codetermination or a worker voice in management, and wealth formation, or a deduction from company profits for deposit in employee's mutual funds. The most recent codetermination proposal would reduce shareholder representation from two-thirds to one-half of the board of directors, giving the other half to worker representatives.

26% employed in manufacturing. *See*, *Commercial Zones and Terminal Areas*, 124 M.C.C. 130, 146 (1975).

117. In November of 1973, the German Government prohibited new immigration of guest workers from outside the Common Market nations. The "guest workers" (Italians, Turks, Greeks, and Yugoslavs) now number 2.5 million and comprise over 10% of the entire German work force. The avowed reason for the decision to prohibit immigration was an anticipated oil-crisis recession. The real reason was fear of social problems. *Amerika Heil and Banzai*, FORBES, Aug. 15, 1974 at 57.

118. The Federal Republic of Germany has recently decreed a 50% increase in employer and employee payments to the workers' unemployment insurance fund. Thus, in 1976, 32% of a worker's pay will be earmarked for social security funding, with management and labor sharing the cost equally. Federal regulations in Germany also require an employer to pay its workers full wages for six weeks after he has been dismissed. *Business Around the World*, U.S. NEWS & WORLD REP., Oct. 6, 1975, at 50. Steeply rising wages and realtively aggressive rates of inflation have eroded the former advantages of producing manufactured goods in Europe and Japan and exporting to foreign markets. European and Japanese investors are often motivated by the necessity of establishing production facilities inside protected markets. The rising United States protectionist sentiment makes it important to manufacture within American tariff and quota walls. *See* Fenton, *Proposed Limitations on Alien Purchases of United States Securities*, 9 J. INT'L L. & ECON. 267, 278-79 (1974).

The second proposal would deduct ten per cent from the net earnings of every large company for direct transfer to workers.[119] Moreover, the radical Social Democrats, although still a minority, are demanding nationalization of German industry.[120]

In contrast, legislation in the Southeast, designed to encourage industrial investment, has done little to facilitate the unionization of workers, and the concomitant increase in labor costs and work stoppages that ordinarily results therefrom. In fact, all of the States in the Southeast have enacted Right-to-Work legislation, permitted under Section 14(b) of the Taft-Hartley Act,[121] which removes Federal restrictions upon state legislation prohibiting the union shop.[122] While a Right-to-Work law does not guarantee anyone the right to employment,[123] the announced intention of this legislation is usually the abolition of the evils of compulsory unionism.[124]

The Right-to-Work act promulgated by the Alabama legislature typifies those passed by each State in the Southeast. Essentially, the law provides:

1. The right of any person to work shall not be denied or abridged on account of membership or non-membership in any union;
2. Any agreement denying any person employment because of nonmembership in any union is illegal;
3. No person shall be required to become or remain a member of any union as a condition of employment or continuation of employment, nor shall any person be required to abstain or refrain from membership in any union as a condition of employment or continuation of employment;
4. No employer shall require as a condition of employment or con-

119. *Supra* note 117.

120. *West Germany: The Push to Make Products Overseas*, BUS. WEEK, Mar. 1974, at 31. The rise of the German mark on international capital markets, the increasing direct and indirect costs of German labor, and a rising demand for socialization of German industry has prompted a number of industries to construct manufacturing facilities outside the Federal Republic. For example, the management of Volkswagen (a company whose United States sales have, in recent years, been dwindling) has been authorized by the company's board of supervisors to re-open negotiations with respect to construction of an assembly plant in the United States. *World: VW's U.S. Plant*, WASHINGTON POST, Jan. 27, 1976, at D-6, col. 1. *See also*, *Beyond the Beetle*, TIME, Feb. 2, 1976, at 54.

121. Labor-Management Relations Act (Taft-Hartley Act) § 14(b), 29 U.S.C. § 164(b) (1947).

122. J. DEMPSEY, THE OPERATION OF THE RIGHT-TO-WORK LAWS § 13 (1961).

123. *Id.* at 74.

124. *Id* at 110.

tinuation of employment the payment of any dues, etc., to any union;
5. Any person who may be denied employment in violation of the act may recover for such damages as he may have sustained.[125]

Union membership in the Southeast has traditionally been lower than that of the nation as a whole. For example, in 1972 Alabama led the Southeast in unionized non-agricultural workers with 19.2 per cent, but was far surpassed by the national average of 27.2 per cent. Two States in the Southeast, North Carolina with 7.5 per cent, and South Carolina with 9 per cent, ranked lowest and second-lowest in the nation in terms of unionized non-agricultural labor. In fact, of the nineteen states with Right-to-Work laws, only one, Nevada with 33.6 per cent, exceeded the 1972 national average of 27.2 per cent for unions, or 30.6 per cent when associations are added.[126] Moreover, recent evidence suggests that unionization of labor in the Southeast may be declining.[127]

In 1973 two States in the Southeast had the lowest average hourly earnings for manufacturing and production workers in the nation. Mississippi's $2.95, and North Carolina's $2.99, contrasted sharply with the national average of $4.07 per hour paid to manufacturing and production workers. In fact, Florida's $3.46, the highest average in the Southeast, was still among the lowest in the nation.[128]

Although accurate employment data will not be available until later this year,[129] the United States Department of Commerce estimates that 650,000 Americans are employed by foreign-owned firms.[130] A recent unofficial survey estimates, however, that foreign-owned companies in the United States provide employment for almost one million American workers.[131]

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125. ALABAMA INDUSTRIAL DEVELOPMENT GUIDE, *supra* note 50. CODE OF ALA. tit. 26, § 375 (1958).

126. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, DIRECTORY OF NATIONAL UNIONS AND EMPLOYEE ASSOCIATIONS 84 (1974).

127. In fact, less than 10% of the South's 656,000 textile workers are members of labor unions. *When Unions Try to Gain in Southern Textile Mills*, U.S. NEWS & WORLD REP., Dec. 22, 1975, at 60.

128. *See*, BUREAU OF INT'L COMMERCE, U.S. DEP'T OF COMMERCE, MISCELLANEOUS ECONOMIC DATA, BY STATES AND REGIONS (1974).

129. Letter from Gregory Fouch to Paul Dempsey, Dec. 12, 1974.

130. Letter from Frank Sheaffer to Paul Dempsey, Nov. 27, 1974.

131. These figures were reported by Professors Jeff Arpan, of Georgia State University, and by David Ricks, of Ohio State University. Letter from Thomas Pierpoint to Paul Dempsey, Dec. 2, 1974.

Alabama—Alabama's Industrial Development Training Program will furnish every industry planning to locate or expand in the State with trained labor at little or no cost.[132] The object of the program is to train the labor force simultaneously with plant construction, thereby providing trained workers upon completion of the plant.[133]

Upon request, the State's industrial training specialists survey the new or expanding industry's manpower needs and devise a program designed to fit its unique manpower requirements.[134] Because no two companies are identical, no two training programs are the same.[135] Once the manpower, training, and recruiting needs of the new facility have been evaluated, a complete plan is formulated for recruiting, selecting, and training labor and is submitted to the company for approval. On the basis of this approved program, the recruitment and testing of applicants is conducted by the State. Facilities for training are made available by the local community in which the new facility is to be located.[136] Whenever possible, company instructors are used with remuneration made by the State.[137] If specialized machinery must be "borrowed" from the manufacturer, the State will reimburse the company for wear and tear on the equipment.[138] Trainees attend on their own time and at their own expense. The State will pay all negotiated instructional costs until the plant is fully staffed.[139]

Florida—Florida was one of the first states in the nation to incorporate a Right-to-Work provision into its State constitution.[140] The constitutional provision provides that no one shall be denied the

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132. The anticipated operation must, however, meet the criteria established by the State Industrial Development Board. Once the manufacturer's plans for a new plant or expansion have matured to the point where job opportunities are a reasonable certainty, the training program can be planned. ALABAMA INDUSTRIAL DEVELOPMENT GUIDE. *See* CODE OF ALA. tit. 37, §§ 815-30(1) (1958).

133. *Id.* The structure of the Alabama training program is outlined in ALABAMA INDUSTRIAL DEVELOPMENT TRAINING PROGRAM, A COMMITMENT BY THE STATE OF ALABAMA (1975).

134. ALABAMA INDUSTRIAL DEVELOPMENT TRAINING PROGRAM, STATE OF ALABAMA INDUSTRIAL DEVELOPMENT TRAINING PROGRAM (1975).

135. Thus each training program must be developed around a particular style of management, types of machinery and tooling, and manufacturing techniques. *Supra* note 133.

136. *Supra* note 53.

137. *Supra* note 134.

138. *Supra* note 53.

139. *Supra* note 133.

140. *Supra* note 122, at 24. *See* FLA. CONST. art. 1, § 6.

right to work because of his membership or non-membership in a labor union. Florida prohibits the closed shop, the union shop, and the maintenance of membership provisions. Union membership in the State represents only 13.9 per cent of non-agricultural employment, a rate that is almost one-half the national rate. According to recent labor statistics, very little work time is lost in Florida due to work stoppages and strikes.[141]

Manufacturing wages in Florida, although the highest in the Southeast,[142] are nevertheless 15 per cent below the national average, or only $3.50 per hour, compared to $4.13 nationally.[143] Florida's public vocational and technical training program provides to applicants additional training needed to meet employment requirements. This system is capable of assisting both manufacturers opening a new facility and those expanding an existing operation.[144]

Georgia—Georgia was also one of the first States in the nation to adopt Right-to-Work legislation, which bans the closed shop and allows the individual worker the option of accepting or rejecting union membership. Georgia's labor costs are significantly below national averages. The low cost of labor results in part from the related factors of a lower cost of living, and moderately lower wage scales.[145] However, according to the Georgia Chamber of Commerce, "'cheap labor' is not offered as an inducement, for there is no cheap labor. Rather, it is the proven determination of Georgia workers to produce an honest hour's work for an honest hour's pay that offers one of the strongest possible attractions as an industrial location."[146] The State's manufacturing labor force is

141. In 1971 only one-tenth of 1% of all lost work days could be attributed to labor disputes, compared to a national average of 26%. *Supra* note 62, at 15.

142. *Supra* note 128.

143. *Supra* note 62, at 14.

144. This service is available through the Florida Department of Education at local educational facilities and, when required, includes on-the-job training. *Id.* at 15.

145. *Industry: Right Place, Right People*, 1974 GEORGIA NOW 19. Average weekly earnings in manufacturing were $133.39 in September, 1973. Average weekly hours were 41.1, and average hourly earnings were $3.39. *Supra* note 74, at 28. The Georgia "wage-hour" law requires payment of $1.25 per hour to certain employees not covered by the Federal Minimal Wage Law. Child labor laws prohibit employment of any person under sixteen years of age in an industrial plant. Georgia's Health and Safety Laws require every employer to provide a safe place in which to work and to use such safeguards, safety devices and methods as are required to protect the life, health, and safety of employees. *Id.* at 14.

146. *Supra* note 74, at 14.

primarily employed in clothing, textiles, wood products, and food processing, industries that together account for 260,000 out of a manufacturing workforce of 454,000.[147]

The most important of Georgia's investment incentives is in the area of workforce education. Under Georgia's Quick Start program, the State will train the labor required by a foreign corporation free of charge to the company's specifications. Furthermore, if proper instructors are not available in Georgia, the State will pay company employees to train the labor. This educational subsidy will continue until the plant has opened and the foreign corporation is satisfied with the workforce.

The operation of Georgia's Quick Start program is similar to those manpower training programs offered to new or expanding industries by the other Southeastern States. Under Quick Start, when a company decides to build or expand its facilities in Georgia, the industrial training coordinator from the appropriate Area Vo-Tech School and the State Training Coordinator from the Department of Education consult with the company's officials to determine the company's manpower needs, job requirements, and start-up schedule. When these factors have been discussed and agreed upon, the coordinators will create a training plan and submit it to the company for approval. The plan will spell out all costs to be borne by the State, the contents and projected goals of each course, location and dates of training, and the methods to be employed in recruiting trainees. Training facilities are then equipped with production machinery comparable to that of the company. Qualified instructors are recruited from Area Vo-Tech Schools or from the company. Prospective employees are then recruited, tested, and screened in accordance with the company's specifications. The first phase of training begins when the approved applicants are given pre-employment instruction at the training facility. The second phase, a step that is usually recommended, consists of on-the-job training under the guidance of State-paid instructors. Once maximum employment levels are attained, Georgia can provide other cost-free job retraining and upgrading services.[148] Since its inception in 1966, the Quick Start program has

147. The Georgia Department of Community Development would like to expand industrial development in order to raise the State's income level, to acquire the security of diversification, and to shift the wealth back into the rural regions of the State. Colchester, *Industrial Schemes Overcome Old Prejudices*, THE FINANCIAL TIMES, Nov. 19, 1973, at G-2, col. 6.

148. GEORGIA DEP'T OF COMMUNITY DEVELOPMENT, MANPOWER TRAINING IN GEORGIA (1971).

assisted in opening 350 plants and secured employment for 50,000 trainees.[149]

Mississippi—Mississippi is one of only seven states in the nation that has incorporated a Right-to-Work law into its State constitution. Only 13.2 per cent of the State's non-agricultural employees are members of labor unions. Mississippi was the only state in the Southeast to have no growth in union membership from 1968 to 1970, despite the increase in non-farm employment by 5.2 per cent. For the last several years working time lost due to strikes has been considerably lower than the national average and among the lowest in the Southeast.[150] In most years, time lost from strikes has been only 0.01 per cent of total hours. Furthermore, Mississippi labor possesses lower absenteeism and turn-over rates than that of workers in the United States as a whole.[151] Labor costs in Mississippi are extremely low. In fact the State's average hourly wage rate for manufacturing production workers is the lowest in the United States. The national hourly rate has averaged forty-one per cent higher than Mississippi's, and in recent years the gap has been widening.[152]

Industries desiring to locate or expand their operations in Mississippi are eligible for the State's Start-Up training program, which recruits and trains the necessary labor at little or no expense to the industry.[153] Each of the State's fifty-eight vocational training centers is fully equipped with modern machinery and equipment for pre-employment training. To meet specific requirements, the program can draw from the State's computerized inventory of $20 million of equipment.[154] Moreover, the state-wide computerized

149. *Industry: Right Place, Right People*, 1974 GEORGIA NOW 22.

150. *Supra* note 79, at L-5. *See* MISS. CONST. art. 7, § 198-A.

151. MISSISSIPPI MARKETING COUNCIL, MISSISSIPPI 7.

152. *Supra* note 79, at L-6. An employer's costs of an employee's fringe benefits are lower in the Southeast than in the rest of the nation, and in Mississippi they are generally the lowest in the Southeast. In 1971 the average hourly fringe benefits cost per manufacturing worker Mississippi was $0.64 compared to $1.08 for the nation. These low costs in Mississippi can be attributed to lower wage rates and less job seniority, to lower medical and hospital costs, and to less expensive fringe-benefit practices in the State. *Id.* at L-7.

153. The structure of Mississippi's Start-Up industrial training program is described *supra* note 79, at L-8.

154. If special equipment is required, the State will make arrangements to train the new workers with the foreign corporation's equipment. Whether the equipment is the state's or the industry's, the training is conducted at no expense to the industry. VOCATIONAL-TECHNICAL DIVISION, MISSISSIPPI AGRICULTURAL & INDUSTRIAL BOARD, START-UP IN MISSISSIPPI.

job bank, which lists all jobs available in the State and their locations, facilitates the recruitment of prospective trainees and skilled workers.[155] In addition to the vocational-technical programs offered by Mississippi's area vocational schools and junior colleges, the State participates in a number of federal programs designed to upgrade the disadvantaged and unemployed for gainful employment.[156]

North Carolina—North Carolina's 7.5 per cent is the lowest percentage of unionized non-agricultural employees in the United States.[157] Moreover, the State's $2.99 average hourly earnings for manufacturing workers is the second lowest in the nation.[158] The State's Industrial Services Division of the Department of Community Colleges will train workers for new or expanding industries at little or no cost to the industry. The State will provide instructors, standard industrial equipment, and classroom materials. Special purpose equipment indigenous to the company's particular products or processes must be furnished by the new or expanding industry. The company may elect to use either a pre-employment or post-employment training program.[159]

South Carolina—South Carolina's Right-to-Work law, amended to the State constitution in 1954, provides that the right to work shall not be denied or abridged because of membership or nonmembership in any labor union or labor organization.[160] Only 9.6 per cent of South Carolina's non-agricultural employees are members of labor unions, compared to the national average of 28 per cent.[161] This is the second lowest percentage of union membership in the nation. Average hourly earnings for manufacturing workers of $3.03 are the third lowest in the Southeast.[162]

The State's "Special Schools Division" of the Board for Technical and Comprehensive Education provides an industrial training program that enables a recently located company to obtain specially trained labor at no cost to the employer. The State's sixteen technical education centers also offer training programs designed

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155. *Id.*

156. Over twenty-five such programs currently operate in Mississippi, serving over 84,000 people. *Supra* note 79, at L-8.

157. *Supra* note 122. *See* GEN. STAT. N.C. §§ 95-78 to 95-84 (1975).

158. *Supra* note 128.

159. INDUSTRIAL SERVICES DIVISION, NORTH CAROLINA DEP'T OF COMMUNITY COLLEGES, GLAD YOU ASKED THAT.

160. *Supra* note 91, at 2.4.

161. *Supra* note 79, at L-5.

162. *Supra* note 128.

to update and upgrade those already employed by industry. These programs are individually tailored to meet the company's specific production and manpower requirements.[163] The State recruits, tests, and selects candidates and then trains the applicants according to standards established by the employer. Trainees attend the special school on their own time and without compensation. Materials used in the special schools are paid for by the State. Equipment and machinery is furnished by the State, except for highly specialized units, which must be provided by the corporation. Instructors are usually recruited from the supervisory staff of the locating company on a lend-lease arrangement. Working closely with the foreign company's managment, the Special Schools Division establishes a carefully planned schedule that provides for the completion of training prior to the opening of the new facility. Thus the employer is freed from the ordeal of employee screening, selection, and training. Moreover, the company is not required to hire trainees following their completion of the program.[164]

Tennessee—Tennessee has the second highest percentage of unionized non-agricultural employees in the Southeast. In 1972, 18.4 per cent of the State's non-agricultural workers were members of labor unions.[165] Average hourly earnings of Tennessee's manufacturing employees was $3.30, in 1973, the third highest average in the Southeast.[166]

The State's Industrial Training Service will train any work force of twenty-five or more for any new or expanding manufacturing industry within Tennessee. Once commitments are made to establish or expand a plant in Tennessee, the service will begin training workers at little or no cost to the industry. By the time the new facility is prepared to begin production, trained workers will be available for employment. These services continue until the plant is completely staffed.[167] In addition, Tennessee's Vocational-Technical Education Program, which consists of twenty-seven vo-

163. SOUTH CAROLINA STATE DEVELOPMENT BOARD, TECHNICAL TRAINING IN SOUTH CAROLINA 4.

164. *Supra* note 91, at 3.2.

165. *Supra* note 126. *See* TENN. CODE ANN. § 50-208 (1971).

166. *Supra* note 128.

167. Tennessee will pay all negotiated instructional costs incurred both in training and development until the plant is fully staffed. INDUSTRIAL TRAINING SERVICE, DIVISION OF VOCATIONAL-TECHNICAL EDUCATION, TENNESEE DEP'T OF EDUCATION, TENNESSEE INDUSTRIAL TRAINING SERVICE.

cational schools with a total enrollment of 121,998, provides a continuous supply of skilled labor.[168]

C. *Comparative Tax Costs*

A recent analysis demonstrates that twelve of the nineteen nations that are members of the Organization for Economic Cooperation and Development levy a larger share of market price GNP in taxes than does the United States. France, the heaviest tax levier of the nations surveyed, takes 37.6 per cent, and Britain 28.8 per cent. The United States, however, takes only 24.5 per cent through taxation. Of the countries surveyed, only Switzerland and Japan exact smaller tax burdens than does the United States.[169]

These figures may not represent what an individual firm will pay in taxes; they are intended only as a general guide to the degree of taxation that a firm should expect. For many industries the more important consideration may be how tax costs affect consumer buying power. In the United Kingdom the purchase tax ranged from 11 to almost 28 per cent in 1967. Japan imposed commodity taxes ranging from 5 to 50 per cent.[170] In contrast, no national sales tax exists in the United States, and in the Southeast, no state levies a sales tax higher than Mississippi's 5 per cent.

Corporate profit taxes in the United States are, however, comparatively high. The federal corporate tax rate is 48 per cent, and an additional State corporate tax of 6 per cent is levied by Georgia, North Carolina, South Carolina, and Tennessee.[171] Nevertheless, total rates in the aggregate are lower than those of Austria, Canada, France, Germany, and Sweden.[172]

Because tax rates in the Southeast are generally designed to be favorable to industrial development, average business and industrial taxation in the Southeast is significally lower than that of the nation as a whole. The Southeast levies only 9.96 per cent of its total State tax revenue directly on business and industry, while the national average is 16.11 per cent.[173]

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168. Additional programs have been scheduled under the new Comprehensive Vocational Education Act. Each year 60,000 students graduate from high schools in Tennessee, and 22% of all high school students in the State receive vocational training. *Supra* note 55.

169. *Supra* note 10, at 15.

170. *Id.*

171. *Id.* at 14.

172. *Id.* at 15.

173. Comparison of individual states in many instances accentuates the favorable tax treatment of business and industry in the Southeast. For example, Flor-

Of the seven states in the Southeast, only Alabama and Florida offer a corporate income tax exemption and only Alabama offers an excise tax exemption. A review of the other primary tax incentives for new or expanding industrial facilities in the Southeast shows that only Florida, Georgia, and North Carolina offer *no* tax exemption or moratorium on land, equipment, machinery, or capital improvements,[174] and only Alabama and Georgia provide *no* inventory tax exemption for goods in transit.[175] Only Georgia and North Carolina offer *no* tax exemption on manufacturer's inventories. And, of the seven States in the Southeast, only Florida provides *no* sales or use tax exemption on new equipment. All states in the Southeast offer a tax exemption on raw materials used in manufacturing.[176] We now turn to an examination of significant industrial taxes and tax exemptions offered by each of these States.

Alabama—Alabama requires that foreign corporations pay a minimum admissions tax of $25. This entrance fee is exacted by the State only once.[177] An annual permit tax,[178] franchise tax,[179] and

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ida's 8.88% is significantly lower than California's 13.97%, New York's 17.65%, or Ohio's 21.46%. *Supra* note 62, at 22.

174. In Tennessee, however, this tax incentive is offered only at the local level. *Foreign Investors Eying U.S. Despite Growth-Stifling Crisis*, INDUSTRIAL DEVELOPMENT, Nov. 1973, at 9.

175. This incentive is known as the "Free Port" exemption. In North Carolina this exemption is applicable to goods stored in bonded warehouses. *Id.*

176. In Florida raw materials are assessed at 25% and most other personal property is assessed at 100%. In North Carolina leaf tobacco is allowed an exemption of 60%, peanuts 20%, and bales of cotton 50%. Only Florida and Tennessee offer tax credits for use of specified State products. In Tennessee these tax credits are allowed for products from State soil. *Id.*

177. The tax rate is 25% of the first $100, plus 5% of the next $900, plus one-tenth of 1% on all above $1,000 of actual capital employed in the State. This admissions tax will not exceed $500 for a foreign corporation that (1) locates its principal office, distribution or manufacturing facility, or place of business in Alabama, or (2) acquires a substantial portion of the taxable property within the State of a corporation qualified to transact business in Alabama. Other initial charges include the Secretary of State charter filing fee of $10 and the Certificate Designating Agent fee of $10. CODE OF ALA. tit. 51, §§ 339-44 (1958).

178. The annual permit fee for foreign corporations is $5 if the capital employed in Alabama is less than $1,000; $10 from $1,000 to $10,000; $20 for $10,000 to $25,000; $50 from $25,000 to $50,000; and $100 if more than $50,000. CODE OF ALA. tit. 51, § 345 (1958).

179. The annual franchise tax for foreign corporations is $3 per $1,000 of annual capital employed in Alabama. Corporations qualifying after July 1 need only pay a one-half year's tax. CODE OF ALA. tit. 51, § 348 (1958).

privilege license tax[180] must also be paid by foreign corporations. The Alabama corporate income tax is only 5 per cent of the net income derived from business conducted within the State.[181] Machinery used for manufacturing is taxed at 1.5 per cent of its selling price.[182] A state sales tax of 4 per cent must be paid by all consumers on items purchased outside the State, but consumed or used within the State. Here again, machinery used for manufacturing is taxed at 1.5 per cent of selling price.[183] A state sales tax of 4 per cent must be paid by all consumers on items purchased within the State for consumption or use.[184]

The State's primary incentive for industrial development lies in its grant of ad valorem tax exemptions of up to ten years for new or expanding industries that invest a minimum of $50,000. This exemption does not, however, apply to school taxes.[185] Another important investment incentive allows all manufactured articles that are stored by the manufacturer in Alabama to be exempted from ad valorem taxation for twelve months after their production.[186]

All employers must pay an unemployment compensation tax under an experience rating plan on the first $4,200 in wages paid to any employee during the calendar year.[187] Workmen's Compensation Insurance or qualification as a self-insurer is compulsory to all Alabama employers with four or more regular employees.[188]

180. This annual tax varies according to the nature of the enterprise. The basis for this tax may be a flat rate, population, volume of business, or capital invested. CODE OF ALA. tit. 51, §§ 450-617 (1958).

181. CODE OF ALA. tit. 51, §§ 373-427 (1958).

182. CODE OF ALA. tit. 51, §§ 752-786 (1958).

183. CODE OF ALA. tit. 51, §§ 787-805 (1958).

184. *Supra* note 182.

185. Moreover, manufacturers of calcium cyanamide, aluminum, and aluminum products are exempt from all state, county, and municipal property taxes for ten years. CODE OF ALA. tit. 51, §§ 3, 6, 10 (1958). The state property tax rate for non-exempted facilities is 6.5 mills. Most manufacturing plants are subject to an assessment ratio of 25%. ALA. CONST. art. 11. § 217 (1901). See CODE OF ALA. tit. 52, §§ 1-141 (1958).

186. *Supra* note 53.

187. Tax rates normally range from one-half of 1% to 2.7%, but the upper limit moves to 3.6% whenever the "Trust Fund" falls below a statutory level. Upon reinstatement of employee withholding the rate is one-half of 1%. CODE OF ALA. tit. 26, §§ 180-252 (1958).

188. The cost of such insurance is generally lower in the Southeast than in other parts of the nation due to lower benefits and lower charges for medical services. *See supra* note 53.

Florida—Florida ranks below both the United States and the Southeast in the percentage of total state tax revenue levied directly on business and industry.[189] The State's corporate income tax is levied at a rate of 5 per cent on income derived from business transacted within the State.[190] Foreign corporations must pay a charter tax based on the amount of capital employed or to be employed in Florida.[191] The State's primary incentive for industrial development in Florida is the absence of franchise and ad valorem taxes.[192]

Georgia—Georgia exacts an initial $100 admissions fee upon foreign corporations that desire to conduct business within the State.[193] A corporate income tax of 6 per cent is levied on income derived from the transaction of business or the ownership of property in the State.[194] The Federal Tax Reform Act of 1969 permits accelerated depreciation of certified pollution control facilities. The Georgia corporate income tax reflects this savings because the federal tax is the base for computing the state tax.[195] Although the

189. *Supra* note 62, at 22.

190. "Florida Net Income" is based on federal taxable income with certain modifications. A deduction of $5,000 per taxpayer is permitted. The tax is allocated to Florida with use of the following three factors: (1) ratio of total sales in Florida to total United States sales (weight coefficient, 50%); (2) ratio of salaries, wages, and other compensations paid in the United States (weight coefficient, 25%) and; (3) ratio of the average value of real and tangible personal property rented or owned in Florida to real and tangible personal property rented or owned or used in the United States during the taxable year (weight coefficient, 25%). Florida's corporate income tax law provides different treatment for financial, insurance, and transportation industries. *Id.* at 23.

191. FLA. STAT. ANN. §§ 613.02-.11 (1962).

192. In Florida tangible and real property is taxed locally. While the tax rates and assessment ratios vary in the different localities, the true tax rates of Florida localities are usually well below the average for the nation as a whole. Property valuation is established by the tax assessor at "just value." For inventories the valuation for tax purposes is 25% of the "just value." In 1971 the average property tax millage for Florida counties was almost 50% less than the national average. Land, equipment, machinery, and buildings expressly used to control pollution are assessed at the market salvage value. *Id.* See also FLA. CONST. art. 9, § 12.

193. This tax is nonrecurring. Domestic and foreign corporations pay a $5 annual registration fee. *Supra* note 74, at 21.

194. The tax is applicable only to that portion of adjusted net income earned in Georgia. The portion earned in the State is determined by multiplying adjusted net income by the average of the following three ratios: (1) wages and salaries paid in Georgia to the total payroll; (2) sales in Georgia to the total sales; and (3) property in Georgia to the total property. RESEARCH DIVISION, GEORGIA DEP'T OF COMMUNITY DEVELOPMENT, GEORGIA PRINCIPAL INDUSTRIAL TAXES 10 (1973).

195. *Id.* at 11.

State levies a tax on real and tangible personal property, the tax is negligible.[196] An annual local property tax exemption is provided for facilities installed or constructed for the purpose of eliminating or reducing air or water pollution.[197] Corporations deriving income from property located in Georgia or business transacted in the State must pay an annual franchise tax.[198] A general 3 per cent sales-use tax is levied by the State of Georgia. Exempted from the sales tax are raw materials used in the manufacture of products for resale, air and water pollution control machinery and equipment, and all machinery used directly in product manufacture.[199] Under the Georgia Workmen's Compensation Act, firms having three or more employees must obtain insurance or be self-insured.[200] A 2.7 per cent unemployment tax on the first $4,200 of each employee's earnings is levied on industries with no prior employment record in Georgia.[201]

Foreign merchandise in transit is deemed to have acquired no situs for the purposes of ad valorem taxation.[202] Foreign merchandise in transit is defined as personal property that originates outside the United States and is imported by waterborne commerce through any Georgia port, and on which United States customs duties are paid.[203] Such merchandise acquires no situs for purposes of property taxation if it is assembled, processed, broken in bulk,

196. The state ad valorem tax is only $.25 per $1,000 of the assessed value according to local assessments. *Supra* note 74, at 21. The property tax is, however, the principal source of revenue for Georgia's counties and municipalities. This tax on real and tangible personal property is levied on all inventories, including raw materials, work-in-progress, and finished goods. *Supra* note 194, at 3.

197. Such pollution control facilities must be certified by the Georgia Water Quality Control Board and/or the Department of Human Resources. *Id.* at 5.

198. The license tax is based on net worth. Foreign corporations pay according to that portion of net worth employed in Georgia. GA. CODE ANN. tit. 92, §§ 2401-2412 (1974).

199. GEORGIA DEP'T OF REVENUE, STATE OF GEORGIA TAX GUIDE 56 (1972).

200. Insurance rates with private insurance companies generally range from $.08 to $9.00 per $100 of payroll. Self-insured companies prove their financial ability to the State Workmen's Compensation Board, which may require the posting of a bond. *Supra* note 194, at 15.

201. This 2.7% unemployment tax rate continues until an employment record is established (generally eighteen months). On the basis of the employment record, the tax rate may vary from 3/100 of 1% to 4.5% of taxable wages. *Id.* at 14.

202. GA. CODE ANN. tit. 92, § 186 (1974).

203. GA. CODE ANN. tit. 92, § 187 (1974). Wilner, Dempsey & Smith, Planning a System of Incentives and Regulatory Legislation with Respect to Foreign Investment and Trade in Georgia, 1975 (unpublished study of the Georgia Institute of Government).

repackaged, or in any other way changed while it is located in a warehouse.[204] Although a comprehensive no-situs bill providing a property tax exemption for goods in transit was considered by a recent session of the Georgia General Assembly, it was rejected in favor of a constitutional amendment exempting certain agricultural products from ad valorem taxation.[205]

Georgia offers no tax exemption on inventories, equipment, machinery, or raw materials used in manufacturing, no exemption from corporate income taxes, no moratorium or tax exemption on land and capital improvements, no free port law, and no accelerated depreciation of industrial equipment. Dick Allen, of the Georgia Department of Community Development, noted, "We're better off. Say South Carolina gets ten new factories that pay no taxes for ten years. Then assume we get two factories that *do* pay all those taxes. We're better off."[206] This analysis, however, apparently fails to recognize the state revenue created by income taxes levied on employee's salaries, ad valorem taxes levied on their homes, and sales taxes levied on their purchases. Furthermore, the above analysis overlooks the tax revenue stimulated from related wholesale and retail industries and from suppliers of raw materials, as well as the reduction in state unemployment expenditures. If each of ten new factories employs 500 workers, the community would lose taxes on land and capital improvements in the initial years, but would benefit from the addition of a large payroll, the creation of non-manufacturing employment, an increase in retail sales, a rise in banking and construction, and a higher tax digest. Encouraging industry to settle in Georgia's rural counties by offering tax incentives would assist equalization of the urban-rural imbalance in economic power and growth and arrest out-migration.[207]

Mississippi—Mississippi, its counties, and its municipalities levy ad valorem taxes on business property, including land, equip-

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204. GA. CODE ANN. tit. 92, § 186 (1974).

205. Under the amendment, harvested agricultural products that have a planting-to-harvest cycle of twelve months or less, are customarily cured and aged for more than one year, and are held in Georgia for manufacturing or processing purposes, are exempt from ad valorem taxation. GA. CODE ANN. tit. 2, § 5404 (1973).

206. *Supra* note 13, at 80.

207. Wilner, Dempsey & Smith, Planning a System of Incentives and Regulatory Legislation with Respect to Foreign Investment and Trade in Georgia, 1975 (unpublished study of the Georgia Institute of Government).

ment, vehicles, and inventories.[208] The manufacturer's property of a new establishment may, however, be exempted from all county and municipal taxation for a period of ten years.[209] If a company employs a Mississippi bond program to build or to equip a plant, the property is automatically exempt from state and local property taxation because it is publically owned and leased to the manufacturer.[210] A manufacturer, by establishing a licensed "Free Port Warehouse" and consigning finished goods thereto, may avoid both state and local property taxes on the portion of finished goods that are shipped outside the State.[211] Mississippi's manufacturers sales tax rates vary depending upon the type of property sold and its intended use.[212]

The State of Mississippi also levies a corporate franchise tax based on the corporation's net worth, and the amount of capital employed in the State.[213] The corporate income tax is only 3 per

208. The basis of these taxes is the assessed value of the property, which is usually 25% to 30% of its true value. The average local tax rate is sixty mills within a municipality and fifty mills outside a municipality. The state tax rate is two to four mills. *Supra* note 79, at F-1.

209. Finished goods, inventory, and highway vehicles do not fall within this tax exemption. Land, buildings, furniture, fixtures, machinery, raw materials, and miscellaneous tangible property are exempt. Most municipalities and counties will grant this tax exemption upon request, sometimes with the exception of school taxes. MISSISSIPPI AGRICULTURAL & INDUSTRIAL BOARD, A SYNOPSIS OF THE PRINCIPAL TAX LAWS OF MISSISSIPPI RELATING TO MANUFACTURING 5 (1970).

210. Thus, if BAWI or Revenue Bonds are employed to finance a plant, no taxes will be assessed on the building, land, equipment, or machinery obtained with the proceeds of the bond. *Supra* note 151, at 4.

211. The exemption applies only when at least 50% of the total goods are subsequently shipped outside Mississippi. Sixteen of Mississippi's counties grant permanent tax exemptions on finished goods; four counties grant exemptions of up to ten years. *Supra* note 79, at F-1; also see MISS. CODE ANN. §§ 31-51 to 31-61 (1972).

212. A manufacturer's purchases of furniture and non-manufacturing supplies receive a tax of 5%; his purchases of machinery of more than $500, fuel, and electricity are taxed at 1%. Raw materials, except sand, gravel, and natural gas, are exempt from taxation. A manufacturer's sales to consumers are taxed at 5%; his sales to another manufacturer for use as machinery (over $500) are taxed at 1%; and his sales to a building contractor or retailer are taxed at 1.8%. However, sales to a manufacturer or retailer are taxed at 1.8%. However, sales to a manufacturer for use as raw materials or to a wholesaler for resale at wholesale are not taxed. *Supra* note 209, at 8.

213. The basis of the corporate franchise tax is the book value of capital (net worth). Foreign corporations apportion capital using the arithmetic average of three-factor formula based on gross receipts, tangible personal property, and real property. The minimum base is the assessed value of real and tangible property

cent on the first $5,000 and 4 per cent on all income over $5,000.[214] This is the lowest corporate tax rate in the Southeast. The maximum rate which must be paid under the state unemployment compensation tax is 2.7 per cent.[215] Most employers must either purchase workmen's compensation insurance, or qualify as a self-insurer.[216]

North Carolina—North Carolina's primary annual corporate taxes are a franchise tax, an annual income tax, and a sales (or use) tax, which insofar as it affects manufacturers is relatively light. The only significant local tax which must be paid by manufacturers is the county and municipal levy on real and tangible personal property.[217]

The maximum charter or entrance tax levied on a foreign corporation is $500.[218] The State also levies a franchise tax on business corporations.[219] The State's corporate income tax provides a greater proportion of total state and local government revenues

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in Mississippi. The tax rate is $2.50 per $1,000 of capital employed in the State. *Id.* at 6; also see MISS. CODE ANN. § 27-13-7 (1972).

214. Manufacturers who produce products in Mississippi and sell them outside the State, or who produce products without and sell within, use an "apportionment formula" to determine income. This formula is based on the three following equally weighted factors: (1) payroll; (2) property; and (3) sales as related to those for the entire operation. MISS. CODE ANN. § 27-7-23 (1972).

215. The minimum rate will vary each year depending upon the general experience factor in the State. *Supra* note 79, at F-2.

216. Employers with fewer than four employees are exempt from this law. *Id.*

217. DIVISION OF ECONOMIC DEVELOPMENT, DEP'T OF NATURAL & ECONOMIC RESOURCES, NORTH CAROLINA STATE AND LOCAL TAXES 8 (1974).

218. The tax rate is $.40 per $1,000 of the authorized capital stock with a minimum tax of $40. *Id.* at 2. A filing fee of $5 must be paid for the filing of certificates of authority, articles of incorporation, and amendments thereto. DIVISION OF ECONOMIC DEVELOPMENT, DEP'T OF NATURAL & ECONOMIC RESOURCES, NORTH CAROLINA LEGAL ASPECTS OF DOING BUSINESS 15 (1974); also see GEN. STAT. N.C. § 55-155(a)(4) (1965).

219. The franchise tax rate is $1.50 per $1,000 of the largest of three alternate bases. These bases are (1) the amount of capital stock, surplus, and undivided profits apportionable to North Carolina, or (2) 55% of the appraised value of property in North Carolina subject to taxation, or (3) the book value of tangible and real personal property in North Carolina less any debt outstanding that was created to acquire or improve real property in North Carolina. The formula used by foreign corporations to determine the amount of "capital" apportionable to North Carolina is the arithmetic average of (1) the ratio of payrolls in North Carolina to total payrolls, (2) the ratio of the value of tangible property used in North Carolina to the value of all tangible property used, wherever located, and (3) the ratio of sales of merchandise shipped to North Carolina customers to total sales. *Supra* note 214, at 2; also see GEN. STAT. N.C. §§ 105-114 to 129.1 (1975).

that almost any other state in the nation.[220] The 6 per cent tax is levied on that portion of net taxable income allocable and apportionable to the State.[221] The State retail sales tax is levied at the rate of 3 per cent[222] and allows an exemption for purchases of raw materials, containers, and packaging and shipping materials.[223]

One significant statute designed to benefit corporations engaged in international trade provides an exemption for one year from property taxation of any property that is stored in North Carolina while awaiting shipment to a foreign country. Moreover, property that has been imported from a foreign country and is stored at the terminal while awaiting shipment is exempt from property taxation for the first year of storage. North Carolina's "free port" law exempts from taxation certain property stored in public warehouses while awaiting further shipment.[224] Property utilized to reduce air or water pollution is also exempt from taxation.[225]

South Carolina—South Carolina offers what is probably the largest package of tax incentives for industrial development in the Southeast. It is the only state on the Eastern seaboard with a *no-situs* law. This law was designed to benefit warehouse and distribution operations and to provide an exemption from all inventory taxes on stored goods moving in interstate commerce.[226] Moreover,

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220. *Supra* note 218, at 15.

221. *Id.* at 16. The apportionment of net income to North Carolina is determined according to the allocation formula described in note 219 for franchise tax purposes. However, when a corporation believes that the statutory formula results in allocation to North Carolina of a greater portion of its net income than is reasonably attributable to business or earnings within the State, it may petition the Tax Revenue Board for authorization to use a method of allocation that will more accurately reflect the income attributable to North Carolina. Petition may be made by a foreign corporation prior to commencement of operations in North Carolina based on contemplated business. *Supra* note 217, at 4; also see GEN. STAT. N.C. §§ 105-130 to 130.21 (1975).

222. A 2% sales and use tax on motor vehicles, airplanes, boats, and locomotives is levied by the State. Purchases of the following items by manufacturers are taxable at the rate of 1%: coke, coal, and fuel oil used in manufacturing; equipment and machinery; and parts and accessories to manufacturing machinery. The maximum tax of $80 is levied on single articles of equipment or machinery. *Supra* note 217, at 5.

223. GEN. STAT. N.C. § 105-164.3(5) (1975).

224. *Supra* note 217, at 7. *Compare* GEN. STAT. N.C. § 105-274 (1975).

225. Such exemption is dependent upon compliance with requirements established by the North Carolina Board of Water and Air Resources. *Id.*

226. Thus, goods may be assembled, processed, bound, joined, divided, disassembled, cut, broken in bulk, relabled or repackaged and still be exempted from inventory taxation. Furthermore, there is no time limit on how long such goods may be warehoused. *Supra* note 91, at 6.2.

South Carolina imposes no manufacturer's inventory taxes[227] and no state real or personal property tax.[228] All pollution control and abatement equipment is exempted from local property taxation.[229] Each county in the State may exempt new or newly expanded manufacturing facilities for five years from all property taxes, except those levied for the operation of public schools.[230] The State levies no wholesale sales tax and provides a sales tax exemption for all manufacturing production machinery, industrial electricity, repair parts, and materials that become an integral part of the finished product.[231]

The state corporate income tax is, however, 6 per cent of net taxable income.[232] Corporations qualifying to do business in South Carolina pay a qualification tax at a rate of 40 mills for each $1,000 of the aggregate value of authorized shares.[233] Annual corporate license fees must be paid as well.[234] Finally, most employers must contribute to employee's unemployment compensation funds.[235]

Tennesee—Tennessee has an initial admissions fee for foreign corporations of $305.[236] Investors should note that the State levies neither a state property tax nor a personal income tax.[237] While

227. All inventories, including raw materials, goods in process, or finished goods, are exempt from taxation. This exemption exists whether or not the inventory was produced in South Carolina. SOUTH CAROLINA STATE DEVELOPMENT BOARD, TAXES IN SOUTH CAROLINA 4.

228. *Id.*

229. *Id.* at 5.

230. *Id.* at 4.

231. The State levies a 4% retail sales tax. Items which change the chemical or physical characteristics of a finished product are exempt from taxation. *Id.* at 8.

232. Foreign corporations are taxed only on that income derived or earned within South Carolina. The portion of income that is taxed is usually computed by taking the arithmetic average of the three following ratios: (1) the value of South Carolina real estate and tangible personal property to the value of the firm's entire real estate and tangible personal property holdings; (2) South Carolina sales to total sales; and (3) South Carolina payrolls to total company payrolls. *Supra* note 91, at 6.2.

233. The tax is paid only once. The minimum fee is $40 and the maximum fee is $1,000. For purposes of fee computation, no-par shares are assigned a value of $10. *Id.* at 6.3.

234. The tax rate is one mill upon each dollar of a corporation's total paid-in capital and paid-in surplus. This proportion is determined in the same manner as that used in the computation of the State income tax. *Id.*

235. *Supra* note 227, at 8.

236. INDUSTRIAL DEVELOPMENT DIVISION, TENNESSEE DEP'T OF ECONOMIC & COMMUNITY DEVELOPMENT, PRINCIPAL TAXES ON CORPORATIONS IN TENNESSEE (1974).

237. Indeed, the tax burden on personal income in Tennessee is the lowest in

cities and counties levy ad valorem taxes on real and personal property within the State, they exempt inventories of finished goods and air and water pollution abatement equipment from this taxation.[238] The State levies an excise tax of 6 per cent on corporate net earnings arising from business transacted within Tennessee, or on state apportionment of total earnings from interstate operations.[239] A state franchise tax is levied, based on the outstanding stock, surplus, and undivided profits apportioned to the State.[240] All domestic and foreign corporations must file an annual informational report and pay an annual tax, in addition to all other taxes.[241] Most manufacturers in Tennessee are exempt from the 3.5 per cent state sales tax because the tax is not levied on goods held for resale.[242] The state use tax on machinery used directly in manufacturing is 1 per cent.[243] Unemployment compensation taxes in Tennessee are imposed up to a maximum rate of 2.7 per cent for new employers.[244]

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the Southeast. In the region, Tennessee ranks last in state taxes as a percentage of personal income, with only 6.44%. Georgia possesses the second lowest percentage of 7.26%. *Supra* note 107, at 6.

238. Assessments with certain exceptions are made as follows: industrial and commercial real property, 40%; industrial and commercial personal property, 30%; residential and farm real property, 25%; and residential and farm personal property, 5%. The tax rates of local governments vary widely. In 1973 the city tax rate was $1.35; among counties, the median rate was $2.87 per $100 of assessed value. *Supra* note 236.

239. All taxes except income taxes paid to the federal government or to a foreign government are deductible in determining the state excise tax base. Exemptions are the same as those for the franchise tax. In determining tax liability, a corporation having a net loss in any year may carry the loss forward two subsequent years. However, losses may not be carried back. TENN. CODE ANN. §§ 67-2701 to 2715 (1971).

240. The franchise tax basis is determined at the close of the last fiscal year and cannot be less than the book value of property owned, plus the value of property rented. The tax rate is $.15 per $100. The minimum tax is $10. TENN. CODE ANN. §§ 67-2901 to 2931 (1971).

241. Banks and insurance and trust companies are exempt from these requirements. The corporation is offered an optional basis of paying on capital stock or intrastate gross receipts. The tax rate is one-half of 1% on gross receipts from intrastate business during the corporation's preceeding fiscal year with a minimum tax of $25; in lieu thereof, the tax rate may be based on actual outstanding capital stock of $25,000 or less, or, a maximum tax of $150 to those corporations having capital stock of $1 million or more. *Supra* note 236.

242. The sales tax is based on the sale prices of each item of tangible personal property leased or sold at retail. Local sales taxes may consist of an additional 1, 1½, or 1¾%. TENN. CODE ANN. §§ 67-3001 to 3048 (1971).

243. In addition, there may be an optional local tax of one-half of 1%. *Id.*

244. This 2.7% maximum rate is allowed for the first thirty-six months of

IV. Prospects for the Future

In the future, foreign investment in the United States may well be dominated by Arabic capital. Mideast oil revenues in excess of $12 billion have already been invested in the United States.[245] Most of this sum has been placed in short-term and highly liquid portfolio investment, although some petrocapital, including a $10 million investment in an Atlanta hotel and shopping complex,[246] and the purchase of an entire island off the coast of South Carolina,[247] has been placed in long-term direct investments. Because the price of oil has escalated from $2.10 per barrel in late 1973, to a cost that presently exceeds $10.25 per barrel, petroleum producing nations have accumulated enormous cash reserves. The cost of imported oil to the United States alone increased from $7.7 billion in 1973 to $24 billion in 1974.[248] Robert S. McNamara, President of the World Bank, has estimated that OPEC nations have already accumulated a surplus of $60 billion in investment capital and will eventually hold as much $750 billion.[249] Before the recent oil price increases, former Commerce Secretary Peter Peterson estimated that Arab oil producers could hold dollar surpluses of $300 billion by 1980—a sum equal to twenty times the value of General Motors. If these transfers of wealth continue, one source estimates that seventy per cent of the world's monetary reserves could eventually be held by Arab oil producers.[250] By 1985 oil producing nations may well have accumulated cash reserves of $1.2 trillion.

In order to reverse the outward flow of this massive amount of capital, the Ford administration is formulating a policy aimed at luring Arab investments into the United States. The present thrust of this policy appears to be the promotion of minimal governmental restraints in most areas, and maximum safeguards in areas

employment. The minimum rate is 0.3%. The average tax rate is only 0.8%. The tax base is the first $4,200 of each employee. *Supra* note 236.

245. *Is There Any Way to Beat the Arabs at Their Money Game*?, U.S. NEWS & WORLD REP., Dec. 16, 1974, at 61.

246. *Supra* note 4.

247. Miller, *The Buying of America*, THE PROGRESSIVE, May 1974, at 44.

248. *Pay More, Get Less: Oil-Gas Outlook*, U.S. NEWS & WORLD REP., Jan. 27, 1975, at 35. In fact, the current price of approximately $11.50 per barrel is expected to rise despite the inflationary and balance of payments problems created in a number of nations. *See*, *Why Price of Mideast Oil is Likely to Go Up Again*, U.S. NEWS & WORLD REP., Jan. 12, 1976, at 51.

249. *Washington Whispers*, U.S. NEWS & WORLD REP., Dec. 23, 1974, at 5.

250. *Supra* note 247, at 43.

relating to defense and national security.[251] A number of individual states are also attempting to attract Arab capital. For example, the State of Georgia recently placed an advertisement soliciting Mid-east investment in the Arabic language edition of *Forbes*. The Governor of Tennessee recently toured Arab nations in an attempt to lure petrocapital investment into his State. Moreover, it is clearly in the interests of our nation for the Arabs to move out of volatile bank deposits and into long-term investments. Capital placed in direct investment must be on its best behavior because it becomes, to some degree, hostage.[252] The depressed American economy requires massive amounts of investment capital in order to lower unemployment. As long as the stability of the United States dollar is threatened by substantial deficits in our nation's balance of payments, the American economy will need the short-run alleviation acquired by the injection of petrodollars.

As foreign investment in the United States continues to grow, as it certainly shall, the future may bring more legal and economic incentives for the investment of foreign capital. Most states in the Southeast already recognize the beneficial economic impact that accompanies industrial investment and actively encourage and solicit such investments. For example, per capita income and the quality of services in Tennessee ranks in the bottom tenth of the fifty states.[253] Between 1960 and 1970 over 78,000 persons in the 20-29 age group left the State. Unless the development effort is accerated to create more employment, a projected 60,000 persons in the 20-29 age group will leave Tennessee between 1970 and 1980.[254] In order to acquire the substantial funds necessary to improve services and increase job opportunities, which should halt migration and raise the per capita income level, Tennessee is attempting to

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251. Hornig, *U.S. Moves to Lure Oil Cash from Arabs*, Chicago Tribune, Jan. 1, 1975, at 1, cols. 6, 7 (midwest ed). *See* Note, *U.S. Regulation of Foreign Direct Investment: Current Developments and the Congressional Response*, 15 VA. J. INT'L L. 611, 633-34 (1975).

252. *See* Bradley, *A Long Term Look at Petro-dollars*, NAT'L REV., May 23, 1975, at 557.

253. MIDWEST RESEARCH INSTITUTE, THE QUALITY OF LIFE IN THE UNITED STATES (1973).

254. DEP'T OF ECONOMIC AND COMMUNITY DEVELOPMENT, DIVISIONS & ACTIVITIES 1. Legislation designated to encourage foreign industrial or commercial investment in Tennessee has in some instances been specifically promulgated in order to "relieve the emergency created by the continuing migration from Tennessee of a large number of its citizens in order to find employment elsewhere." TENN. CODE ANN. § 6-2802 (1971).

expand its economic base by stimulating industrial development.[255] Per capita income in the Southeast is among the lowest in the nation. Mississippi, Alabama, and South Carolina ranked first, third, and fifth lowest in the nation in per capita personal income in 1974.[256]

Because the packages offered by the states in the Southeast are so varied and complex, it is quite difficult to compare and contrast the different incentive plans. Some states, such as Alabama, Georgia, Mississippi, and Tennessee, offer several alternative programs for industrial financing with public capital. The extent of unionization and the cost of labor in the Southeast is comparatively low, and all of the states in the region are apparently willing to train workers at their own expense. South Carolina, which has been the most successful state in the Southeast (and, indeed, one of the most successful states in the nation) in attracting foreign investment, can probably attribute much of its success to its aggressive policy of soliciting potential investors and to its program of offering liberal tax incentives. South Carolina offers what is probably the most comprehensive package of tax exemptions in the Southeast, although Alabama and Mississippi offer substantial tax exemptions as well.

Moreover, the packages are considerably broader than the three categories discussed herein and include a number of other substantial signficant incentives. For example, incentives exist in a number of states in the fields of transportation, markets, utility costs, living conditions, climate, research capabilities, and natural resources.

As more state executives and legislators become aware of the potentially vast amount of investment capital available from foreign sources, competition in the development of investment incentives will certainly grow keener. The momentum is already apparent in many state legislatures where, at each session, new legislative incentives are introduced and enthusiastically promoted. In the Southeast, no doubt, this trend will continue for some time.

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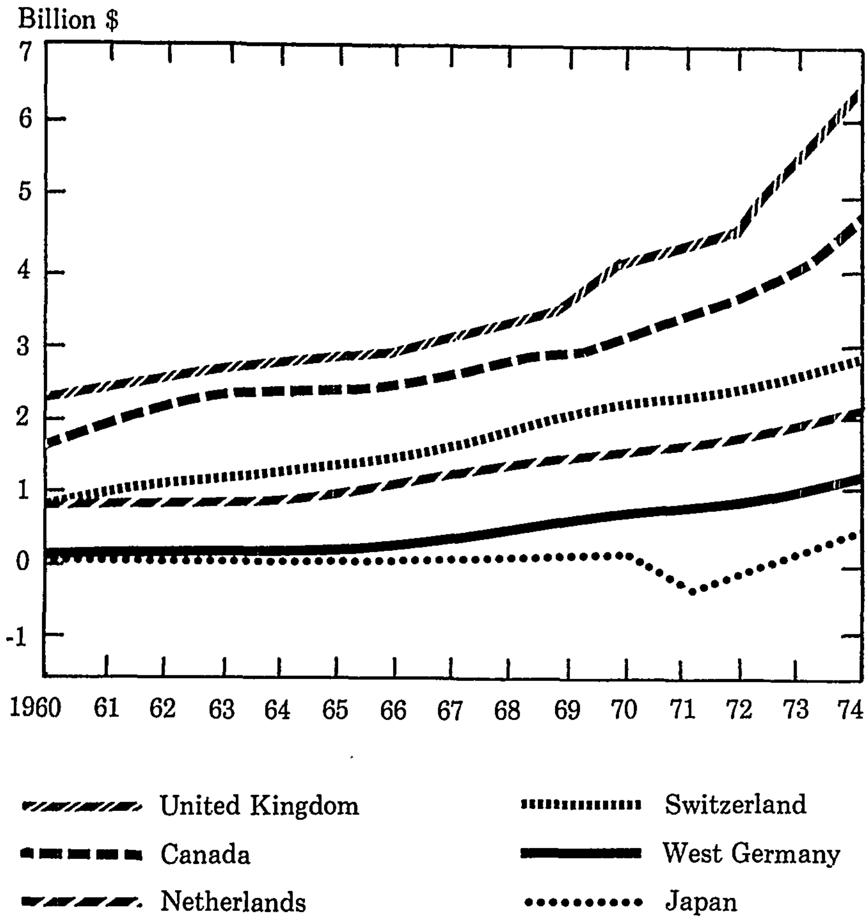
255. *Id.* at 3. Every $100 million of new private risk capital investment in the State of Tennessee generates annually an additional $8 million of new state and local tax revenues. *Id.* at 4.

256. *Cyclical Development in State Personal Income*, 55 SURVEY OF CURRENT BUS. 18, 19 (April 1975).

CHART 1

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES BY SOURCE NATION



Sources: Leftwich, *Foreign Direct Investments in the United States, 1962-71*, 53 SURVEY OF CURRENT BUS. 29, 30 (1973).

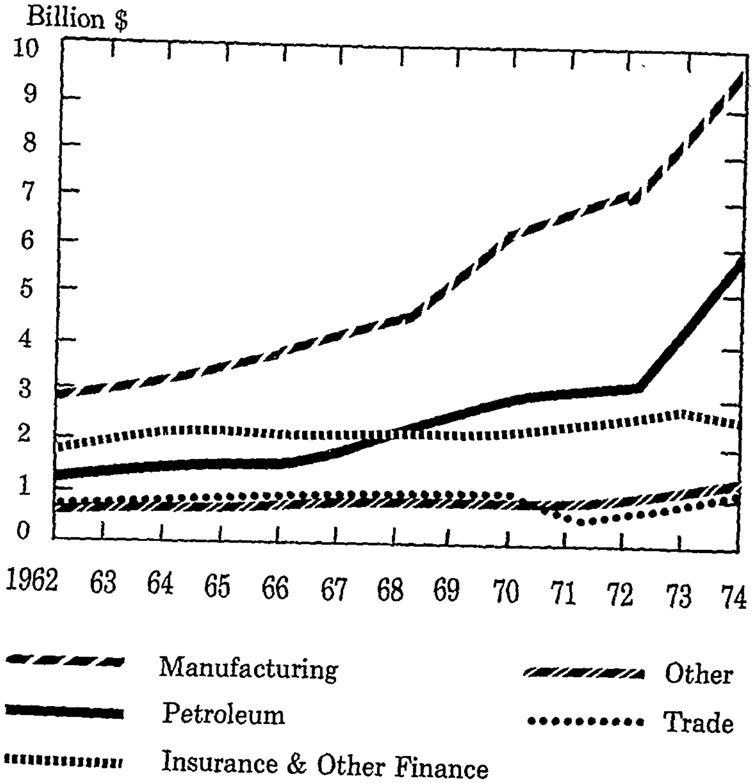
Leftwich & Boyke, *Foreign Direct Investments in the United States in 1972*, 53 SURVEY OF CURRENT BUS. 50 (1973).

Leftwich, *Foreign Direct Investments in the United States in 1973*, 54 SURVEY OF CURRENT BUS. 7 (1974).

Mantel, *Foreign Direct Investment in the United States in 1974*, 55 SURVEY OF CURRENT BUS. 36 (1975).

CHART 2

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES BY INDUSTRY



Sources: Leftwich, *Foreign Direct Investments in the United States, 1962-71*, 53 SURVEY OF CURRENT BUS. 29, 30 (1973).

Leftwich & Boyke, *Foreign Direct Investments in the United States in 1972*, 53 SURVEY OF CURRENT BUS. 50 (1973).

Leftwich, *Foreign Direct Investments in the United States in 1973*, 54 SURVEY OF CURRENT BUS. 7 (1974).

Mantel, *Foreign Direct Investments in the United States in 1974*, 55 SURVEY OF CURRENT BUS. 36 (1975).