

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 482

5 By: Senator J. Dismang  
6 By: Representative Eaves  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE INCOME TAX ACT OF 1929; TO  
10 PROVIDE AN APPORTIONMENT FORMULA FOR THE INCOME OF  
11 RAILROADS; TO AMEND THE MULTISTATE TAX COMPACT AND  
12 THE DIVISION OF INCOME FOR TAX PURPOSES ACT  
13 CONCERNING THE DIVISION OF INCOME FOR RAILROADS; AND  
14 FOR OTHER PURPOSES.

## Subtitle

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18 TO AMEND THE INCOME TAX ACT OF 1929; AND  
19 TO PROVIDE AN APPORTIONMENT FORMULA FOR  
20 THE INCOME OF RAILROADS.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

26 (a) The General Assembly finds that:

27 (1) The Department of Finance and Administration promulgated  
28 Corporation Income Tax Rule 1.26-51-204 to require a railroad to apportion  
29 its net operating income attributable to this state by multiplying the net  
30 income by a fraction, the numerator of which is the property factor plus the  
31 payroll factor plus the sales factor doubled and the denominator of which is  
32 four (4); and

33 (2) Acts 2019, No. 822, §§ 2 and 7, amended the Multistate Tax  
34 Compact, § 26-5-101 et seq., and the Uniform Division of Income for Tax  
35 Purposes Act, § 26-51-701 et seq., to adopt sales factor apportionment for  
36 purposes of calculating Arkansas corporate income tax liability and



1 eliminated inclusion of the property and payroll factors for tax years  
2 beginning on or after January 1, 2021.

3 (b) It is the intent of the General Assembly that, for tax years  
4 beginning on or after January 1, 2023, a railroad shall apportion and  
5 allocate its income using one (1) of the apportionment methods provided in  
6 this act.

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8 SECTION 2. Arkansas Code § 26-5-101, Article IV, paragraph 2,  
9 concerning the division of income under the Multistate Tax Compact, is  
10 amended to read as follows:

11 2. Any taxpayer having income from business activity which is  
12 taxable both within and without this state, other than activity as a railroad  
13 or public utility or the rendering of purely personal services by an  
14 individual, shall allocate and apportion his net income as provided in this  
15 article. If a taxpayer has income from business activity as a public utility  
16 but derives the greater percentage of his income from activities subject to  
17 this article, the taxpayer may elect to allocate and apportion his entire net  
18 income as provided in this article.

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20 SECTION 3. Arkansas Code § 26-51-204 is amended to read as follows:

21 26-51-204. Railroads and public utilities - Apportionment.

22 (a) Every railroad or other public utility, whether organized under  
23 the laws of this state or any other state or the federal government, shall be  
24 subject to the provisions of the Income Tax Act of 1929, § 26-51-101 et seq.,  
25 and shall pay the state income tax levied by this subchapter upon that  
26 proportion of its entire net income applicable to the State of Arkansas.

27 (b)(1) An organization operating a railroad partly within this state  
28 and partly without this state shall apportion the net operating income  
29 attributable to this state by multiplying the organization's income by:

30 (A) The sales factor described in subdivision (b)(2) of  
31 this section; or

32 (B) A fraction, the numerator of which is the sum of the  
33 property factor described in subdivision (b)(3) of this section, the payroll  
34 factor described in subdivision (b)(4) of this section, and two (2) times the  
35 sales factor described in subdivision (b)(2) of this section, and the  
36 denominator of which is four (4).

1           (2) The sales factor is a fraction, the numerator of which is  
2 the sum of the taxpayer's gross revenue from within this state and the  
3 proportionate part of the taxpayer's interstate revenues determined on the  
4 basis of the taxpayer's miles operated within this state compared to the  
5 taxpayer's total miles operated within the railway system, and the  
6 denominator of which is the total operating revenues of the taxpayer.

7           (3)(A) The property factor is a fraction, the numerator of which  
8 is the average value of the taxpayer's real and tangible personal property  
9 owned or rented and used in this state during the tax year, and the  
10 denominator of which is the average value of all the taxpayer's real and  
11 tangible personal property owned or rented and used during the tax year.

12           (B) The average value of the taxpayer's operating  
13 equipment, including without limitation locomotives, freight and passenger  
14 cars, and work and miscellaneous equipment, shall be apportioned to this  
15 state in the ratio of the total miles the taxpayer's property is operated  
16 within this state to the total miles the taxpayer's property is operated  
17 throughout the railway system.

18           (C) The average value of the taxpayer's real and tangible  
19 personal property owned in this state is the average of the original cost of  
20 the real and tangible personal property at the beginning and the end of the  
21 tax year.

22           (D) The taxpayer's real and tangible personal property  
23 rented and used in this state is valued at eight (8) times the net annual  
24 rental amount.

25           (4) The payroll factor is a fraction, the numerator of which is  
26 the sum of the compensation paid by the taxpayer for services performed  
27 entirely within the state and a proportionate part of the compensation paid  
28 by the taxpayer for services performed both within and without the state  
29 based on the ratio of the taxpayer's total miles traveled within the state to  
30 the taxpayer's total miles traveled, and the denominator of which is total  
31 compensation paid by the taxpayer during the tax year.

32           (5) As used in this subsection:

33           (A) "Nonoperating income" means all income other than  
34 operating income; and

35           (B) "Operating income" means income arising from  
36 transactions and activity in the regular course of the taxpayer's trade or

1 business and includes income from tangible and intangible property if the  
2 acquisition, management, and disposition of the property constitute integral  
3 parts of the taxpayer’s regular trade or business operations.

4 (c) The Secretary of the Department of Finance and Administration may  
5 promulgate rules to administer this section.

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7 SECTION 4. Arkansas Code § 26-51-702 is amended to read as follows:  
8 26-51-702. Apportionment of net income authorized.

9 Any taxpayer having income from business activity which is taxable both  
10 within and without this state, other than activity as a railroad or public  
11 utility or the rendering of purely personal services by an individual, shall  
12 allocate and apportion his net income as provided in this Act.

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14 SECTION 5. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

15 Any rules or provisions of rules adopted by the Department of Finance  
16 and Administration that conflict with this act are void, including without  
17 limitation the conflicting provisions of Corporation Income Tax Rule 1.26-51-  
18 204.

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20 SECTION 6. EFFECTIVE DATE. Sections 1-5 of this act are effective for  
21 tax years beginning on or after January 1, 2023.

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24 **APPROVED: 4/11/23**