# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1045　　　　　　Amendment Number: H2**
**Bill Subtitle: TO ENHANCE ECONOMIC COMPETITIVENESS BY PHASING OUT THE THROWBACK RULE.**

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**Basic Change :**

**Sponsors: Reps. Beaty, Ray, Achor, Andrews, Barker, Beck, Bentley, M. Berry, Brooks, K. Brown, Burkes, Joey Carr, Cavenaugh, C. Cooper, Cozart, Crawford, Dalby, Duffield, Eaves, Eubanks, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gramlich, Haak, Hawk, G. Hodges, Holcomb, Hollowell, Jean, L. Johnson, Ladyman, Long, Lundstrum, Lynch, Maddox, McAlindon, McClure, McCollum, B. McKenzie, S. Meeks, Miller, Milligan, J. Moore, K. Moore, Painter, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, M. Shepherd, Steimel, Tosh, Underwood, Unger, Vaught, Walker, Wardlaw, Warren, Watson, Womack, and Wooten**

**Sens. Gilmore, Hester, Hill, and B. Johnson**

**House Amendment No. 2** --- HB1045-H2 alters the rate at which the phaseout of the throwback rule will occur. Under HB1045-H2, a taxpayer would source sales subject to the throwback rule as both Arkansas sales and sales occurring elsewhere based on the following statutory percentages:

| Tax Year | Arkansas Sales | Elsewhere Sales |
|---|---|---|
| 2024 | 85.71% | 14.29% |
| 2025 | 71.42% | 28.58% |
| 2026 | 57.13% | 42.87% |
| 2027 | 42.84% | 57.16% |
| 2028 | 28.55% | 71.45% |
| 2029 | 14.26% | 85.74% |
| 2030 | 0% | 100% |

Beginning in tax year 2030, a taxpayer would not source to Arkansas any sales for delivery outside of the state if the taxpayer is taxable in the state of the purchaser.

**House Amendment No. 1** --- HB1045-H1 (engrossed H3/28/23) amends HB1045 as originally introduced by gradually phasing out the throwback rule instead of an immediate and complete repeal.

HB1045-H1 also eliminates any distinction to be made based on whether the sale is made to the federal government or another purchaser. Instead, the sole consideration when deciding if a sale is subject to the throwback rule would be whether the taxpayer is taxable in the state of the purchaser, including if the purchaser is the federal government.

Under the bill, the income from the sale of property delivered into another state would be sourced to Arkansas only if the taxpayer (seller) is not taxable in the state of the purchaser. A taxpayer is taxable in another state if: (1) the taxpayer is subject to a tax measured by income or measure of business activity and the taxpayer files a tax return in the other state; or (2) the state has no tax measured by income or measure of business activity and the taxpayer has activities in that state that go beyond the protections of 15 U.S.C. §§ 381-384.

**Original Bill** --- HB1045, concerning apportionment of business income for income tax purposes, repeals the "throwback rule" by amending §§ 26-5-101 and 26-51-716. Under current law, a multistate

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corporation that conducts business in Arkansas must calculate Arkansas income tax through a formula based on the total sales of the taxpayer in the state. A multistate business is required to include "unreported" out-of-state sales in its sales in this state. Stated differently, all sales must be reported somewhere or else a taxpayer would have untaxed "nowhere" income. "Nowhere" sales are recaptured under § 26-51-716.

Under § 26-51-716, for the purposes of calculating corporate income tax, sales of tangible personal property are "in this state" if the property is delivered to a purchaser within Arkansas. Sales are also considered to be "in this state" if the tangible personal property is shipped from an office, store, warehouse, factory or other place of storage in this state and: (1) the purchaser is the United States Government; or (2) the taxpayer is not taxable in the state of the purchaser. This is known as the "throwback rule." HB1045 repeals the throwback rule for sales shipped from Arkansas for tax years beginning on or after January 1, 2024. Beginning in tax year 2024, sales of tangible personal property would be "in this state" only if the property is delivered to a purchaser in Arkansas.

HB1045 is effective for tax years beginning on or after January 1, 2024.

**Revenue Impact :**

**FY2024** - $10.6 million General Revenue Reduction.
**FY2025** - $21.1 million General Revenue Reduction.
**FY2026** - $31.7 million General Revenue Reduction
**FY2027** - $42.3 million General Revenue Reduction
**FY2028** - $52.9 million General Revenue Reduction
**FY2029** - $63.4 million General Revenue Reduction
**FY2030 and after** - $74 million General Revenue Reduction

**Taxpayer Impact :**

The throwback rule would be phased out beginning in the 2024 tax year.

**Resources Required :**

Tax forms and instructions will need to be updated. The Arkansas Integrated Revenue System (AIRS) will require programming at an estimated cost of $16,000.

**Time Required :**

Adequate time is provided for implementation.

**Procedural Changes :**

Department employees will need to be educated as well as the tax community.

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**Other Comments :**

None.

**Legal Analysis :**

None.