Department of Finance and Administration

Legislative Impact Statement

Bill: SB38
Bill Subtitle: TO AMEND THE INCOME TAX PROVISIONS CONCERNING THE APPORTIONMENT OF BUSINESS INCOME; AND TO REPEAL THE THROWBACK RULE.

Basic Change :

Sponsor: Sen. Dotson

Repeal of Throwback Rule --- SB38 amends § 26-51-716 to repeal the "throwback rule." Under current law, a multistate 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." SB38 repeals the throwback rule for sales shipped from Arkansas for tax years beginning on or after January 1, 2023. Beginning in tax year 2023, sales of tangible personal property would be "in this state" only if the property is delivered to a purchaser, other than the United States Government, in Arkansas.

Revised Definition of "Taxable in Another State" --- A taxpayer must apportion income from business activities that is taxable both in Arkansas and in another state. The more income that is apportioned to a state other than Arkansas, the lower a taxpayer's Arkansas income will be. Under current law, income is "taxable in another state" and therefore apportionable, if:

- The taxpayer is subject to a tax measured by income or other measure of business activity in the state and the taxpayer files a return in that state; or
- The other state has no tax measured by income or other measure of business activity and the taxpayer has activities in the state that go beyond the solicitation of orders for sales of tangible personal property to be filled and shipped from outside that state.

The effect of current law is that a taxpayer can apportion income to states where income is not actually taxed, as long as they have a requisite minimum amount of activity in that state that exceeds mere solicitation of sales orders. SB38 removes the requirement that the taxpayer have a certain level of activity in the other state, which would effectively allow a taxpayer to apportion income to a state that imposes no income tax regardless of the amount of activity the taxpayer has in that state.

The bill is effective for tax years beginning on or after January 1, 2023.

Revenue Impact :

FY2023 - $42M General Revenue Reduction
FY2024 - $84M General Revenue Reduction

Department of Finance and Administration

Legislative Impact Statement

Bill: SB38
Bill Subtitle: TO AMEND THE INCOME TAX PROVISIONS CONCERNING THE APPORTIONMENT OF BUSINESS INCOME; AND TO REPEAL THE THROWBACK RULE.

Taxpayer Impact :

For purposes of apportionment of income to Arkansas under § 26-51-701 *et seq*, a taxpayer will no longer be required to report sales to Arkansas that are not taxable in other states or sales to the U.S. Government.

Resources Required :

Computer programs, tax forms, and instructions will need to be updated.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

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

Other Comments :

None.

Legal Analysis :

SB38 should likely be amended to remove the throwback rule from the Multistate Tax Compact, § 26-5-101, Article IV, paragraph 16.