

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

ACT 495 OF 1995
HOUSE BILL 1477

4 By: Representatives Cunningham, Mullenix, Brown, Allen, and Miller

5
6
7

For An Act To Be Entitled

8 "AN ACT TO ADOPT A FORMULA FOR THE APPORTIONMENT AND
9 ALLOCATION OF NET INCOME OF FINANCIAL INSTITUTIONS; AND
10 FOR OTHER PURPOSES."

11

Subtitle

12
13 "FORMULA FOR THE APPORTIONMENT AND
14 ALLOCATION OF NET INCOME OF FINANCIAL
15 INSTITUTIONS."

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. Title 26, Chapter 51 of the Arkansas Code is amended by
20 adding a new subchapter to read as follows:

21 "26-51-1401. Apportionment and Allocation.

22 (a) Except as otherwise specifically provided, a financial institution
23 whose business activity is taxable both within and without this state shall
24 allocate and apportion its net income as provided in this subchapter. All
25 items of nonbusiness income (income which is not includable in the
26 apportionable income tax base) shall be allocated pursuant to the provisions
27 of Ark. Code Ann. §§ 26-51-704 through 26-51-708. A financial institution
28 organized under the laws of a foreign country, the Commonwealth of Puerto
29 Rico, or a territory or possession of the United States whose effectively
30 connected income (as defined under the Federal Internal Revenue Code, as in
31 effect January 1, 1995) is taxable both within this state and within another
32 state, other than the state in which it is organized, shall allocate and
33 apportion its net income as provided in this subchapter.

34 (b) All business income (income which is includable in the
35 apportionable income tax base) shall be apportioned to this state by
36 multiplying such income by the apportionment percentage. The apportionment

1 percentage is determined by adding the taxpayer's receipts factor (as
2 described in 26-51-1403), property factor (as described in 26-51-1404), and
3 payroll factor (as described in 26-51-1405) together and dividing the sum by
4 three. If one of the factors is missing, the two remaining factors are added
5 and the sum is divided by two. If two of the factors are missing, the
6 remaining factor is the apportionment percentage. A factor is missing if both
7 its numerator and denominator are zero, but it is not missing merely because
8 its numerator is zero.

9 (c) Each factor shall be computed according to the method of accounting
10 (cash or accrual basis) used by the taxpayer for the taxable year.

11 (d) If the allocation and apportionment provisions of this subchapter
12 do not fairly represent the extent of the taxpayer's business activity in this
13 state, the taxpayer may petition for or the Director of the Department of
14 Finance and Administration may require, in respect to all or any part of the
15 taxpayer's business activity, if reasonable:

- 16 (1) separate accounting;
- 17 (2) the exclusion of any one or more of the factors,
- 18 (3) the inclusion of one or more additional factors which will
19 fairly represent the taxpayer's business activity in this State; or
- 20 (4) the employment of any other method to effectuate an equitable
21 allocation and apportionment of the taxpayer's income.

22 26-51-1402. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

24 (a) Billing address means the location indicated in the books and
25 records of the taxpayer on the first day of the taxable year (or on such later
26 date in the taxable year when the customer relationship began) as the address
27 where any notice, statement and/or bill relating to a customer's account is
28 mailed.

29 (b) Borrower or credit card holder located in this state means:

- 30 (1) a borrower, other than a credit card holder, that is engaged
31 in a trade or business which maintains its commercial domicile in this state;
32 or
- 33 (2) a borrower that is not engaged in a trade or business or a
34 credit card holder whose billing address is in this state.

35 (c) Commercial domicile means:

1 (1) the headquarters of the trade or business, that is, the place
2 from which the trade or business is principally managed and directed; or

3 (2) if a taxpayer is organized under the laws of a foreign
4 country, or of the Commonwealth of Puerto Rico, or any territory or possession
5 of the United States, such taxpayer's commercial domicile shall be deemed for
6 the purposes of this subchapter to be the state of the United States or the
7 District of Columbia from which such taxpayer's trade or business in the
8 United States is principally managed and directed. It shall be presumed,
9 subject to rebuttal, that the location from which the taxpayer's trade or
10 business is principally managed and directed is the state of the United States
11 or the District of Columbia to which the greatest number of employees are
12 regularly connected or out of which they are working, irrespective of where
13 the services of such employees are performed, as of the last day of the
14 taxable year.

15 (d) Compensation means wages, salaries, commissions and any other
16 form of remuneration paid to employees for personal services that are
17 included in such employee's gross income under the Federal Internal Revenue
18 Code, as in effect January 1, 1995. In the case of employees not subject to
19 the Federal Internal Revenue Code, as in effect January 1, 1995, e.g., those
20 employed in foreign countries, the determination of whether such payments
21 would constitute gross income to such employees under the Federal Internal
22 Revenue Code, as in effect January 1, 1995, shall be made as though such
23 employees were subject to the Federal Internal Revenue Code, as in effect
24 January 1, 1995.

25 (e) Credit card means credit, travel or entertainment card.

26 (f) Credit card issuer's reimbursement fee means the fee a taxpayer
27 receives from a merchant's bank because one of the persons to whom the
28 taxpayer has issued a credit card has charged merchandise or services to the
29 credit card.

30 (g) Employee means, with respect to a particular taxpayer, any
31 individual who, under the usual common-law rules applicable in determining the
32 employer-employee relationship, has the status of an employee of that
33 taxpayer.

34 (h) Financial institution means:

35 (1) Any corporation or other business entity registered under

1 state law as a bank holding company or registered under the Federal Bank
2 Holding Company Act of 1956, as amended and in effect January 1, 1995, or
3 registered as a savings and loan holding company under the Federal National
4 Housing Act, as amended and in effect January 1, 1995;

5 (2) A national bank organized and existing as a national bank
6 association pursuant to the provisions of the National Bank Act, 12 U.S.C.
7 §§21 et seq., as in effect January 1, 1995;

8 (3) A savings association or federal savings bank as defined in
9 the Federal Deposit Insurance Act, 12 U.S.C. § 1813(b)(1), as in effect January
10 1, 1995;

11 (4) Any bank or thrift institution incorporated or organized
12 under the laws of any state;

13 (5) Any corporation organized under the provisions of 12 U.S.C.
14 §§611 to 631, as in effect January 1, 1995.

15 (6) Any agency or branch of a foreign depository as defined in 12
16 U.S.C. §3101, as in effect January 1, 1995;

17 (7) A production credit association organized under the Federal
18 Farm Credit Act of 1933, as in effect January 1, 1995, all of whose stock held
19 by the Federal Production Credit Corporation has been retired;

20 (8) Any corporation whose voting stock is more than fifty percent
21 (50%) owned, directly or indirectly, by any person or business entity
22 described in subsections (1) through (7) above other than an insurance company
23 taxable under Ark. Code Ann. § 26-57-601, et seq.;

24 (9) A corporation or other business entity that derives more than
25 fifty percent (50%) of its total gross income for financial accounting
26 purposes from finance leases. For purposes of this subsection, a finance
27 lease shall mean - any lease transaction which is the functional equivalent
28 of an extension of credit and that transfers substantially all of the benefits
29 and risks incident to the ownership of property. The phrase shall include any
30 direct financing lease or leverage lease that meets the criteria of
31 Financial Accounting Standards Board Statement No. 13, Accounting for
32 Leases, as in effect January 1, 1995, or any other lease that is accounted
33 for as a financing by a lessor under generally accepted accounting principles.

34 For this classification to apply,

35 (A) the average of the gross income in the current tax year

1 and immediately preceding two tax years must satisfy the more than fifty
2 percent (50%) requirement; and

3 (B) gross income from incidental or occasional transactions
4 shall be disregarded; or

5 (10) Any other person or business entity, other than insurance
6 companies, real estate brokers, or securities dealers taxable under Ark. Code
7 Ann. § 26-51-205, which derive more than fifty percent (50%) of its gross
8 income from activities that a person described in subsections (2) through (7)
9 and (9) above is authorized to transact. For the purpose of this subsection,
10 the computation of gross income shall not include income from non-recurring,
11 extraordinary items.

12 (11) The Director of the Department of Finance and Administration
13 is authorized to exclude any person from the application of subsection (10)
14 upon such person proving, by clear and convincing evidence, that the income-
15 producing activity of such person is not in substantial competition with those
16 persons described in subsections (2) through (7) and (9) above.

17 (i) Gross rents means the actual sum of money or other consideration
18 payable for the use or possession of property. Gross rents shall include,
19 but not be limited to:

20 (1) any amount payable for the use or possession of real property
21 or tangible property whether designated as a fixed sum of money or as a
22 percentage of receipts, profits or otherwise,

23 (2) any amount payable as additional rent or in lieu of rent,
24 such as interest, taxes, insurance, repairs or any other amount required to be
25 paid by the terms of a lease or other arrangement, and

26 (3) a proportionate part of the cost of any improvement to real
27 property made by or on behalf of the taxpayer which reverts to the owner or
28 lessor upon termination of a lease or other arrangement. The amount to be
29 included in gross rents is the amount of amortization or depreciation allowed
30 in computing the taxable income base for the taxable year. However, where a
31 building is erected on leased land by or on behalf of the taxpayer, the value
32 of the land is determined by multiplying the gross rent by eight and the value
33 of the building is determined in the same manner as if owned by the taxpayer.

34 (4) The following are not included in the term gross rents:

35 (A) reasonable amounts payable as separate charges for

1 water and electric service furnished by the lessor;

2 (B) reasonable amounts payable as service charges for
3 janitorial services furnished by the lessor;

4 (C) reasonable amounts payable for storage, provided such
5 amounts are payable for space not designated and not under the control of the
6 taxpayer; and

7 (D) that portion of any rental payment which is applicable
8 to the space subleased from the taxpayer and not used by it.

9 (j) Loan means any extension of credit resulting from direct
10 negotiations between the taxpayer and its customer, and/or the purchase, in
11 whole or in part, of such extension of credit from another. Loans include
12 participations, syndications, and leases treated as loans for federal income
13 tax purposes, under the Federal Internal Revenue Code, as in effect January 1,
14 1995. Loans shall not include: properties treated as loans under Section 595
15 of the Federal Internal Revenue Code, as in effect January 1, 1995; futures or
16 forward contracts; options; notional principal contracts such as swaps; credit
17 card receivables, including purchased credit card relationships; non-interest
18 bearing balances due from depository institutions; cash items in the process
19 of collection; federal funds sold; securities purchased under agreements to
20 resell; assets held in a trading account; securities; interests in a REMIC, as
21 defined by the Federal Internal Revenue Code, as in effect January 1, 1995, or
22 other mortgage-backed or asset-backed security; and other similar items.

23 (k) "Loan secured by real property" means that fifty percent or more
24 of the aggregate value of the collateral used to secure a loan or other
25 obligation, when valued at fair market value as of the time the original loan
26 or obligation was incurred, was real property.

27 (l) Merchant discount means the fee (or negotiated discount) charged
28 to a merchant by the taxpayer for the privilege of participating in a program
29 whereby a credit card is accepted in payment for merchandise or services sold
30 to the card holder.

31 (m) Participation means an extension of credit in which an undivided
32 ownership interest is held on a pro rata basis in a single loan or pool of
33 loans and related collateral. In a loan participation, the credit originator
34 initially makes the loan and then subsequently resells all or a portion of it
35 to other lenders. The participation may or may not be known to the borrower.

1 (n) Person means an individual, estate, trust, partnership, limited
2 liability company, corporation and any other business entity.

3 (o) Principal base of operations with respect to transportation
4 property means the place of more or less permanent nature from which said
5 property is regularly directed or controlled. With respect to an employee,
6 the principal base of operations means the place of more or less permanent
7 nature from which the employee regularly (1) starts his or her work and to
8 which he or she customarily returns in order to receive instructions from his
9 or her employer or (2) communicates with his or her customers or other
10 persons, or (3) performs any other functions necessary to the exercise of his
11 or her trade or profession at some other point or points.

12 (p) "Real property owned" and "tangible personal property owned" mean
13 real and tangible personal property, respectively, (1) on which the taxpayer
14 may claim depreciation for federal income tax purposes, pursuant to the
15 Internal Revenue Code , as in effect January 1, 1995, or (2) property to which
16 the taxpayer holds legal title and on which no other person may claim
17 depreciation for federal income tax purposes, pursuant to the Internal Revenue
18 Code, as in effect January 1, 1995, (or could claim depreciation if subject
19 to federal income tax, pursuant to the Internal Revenue Code, as in effect
20 January 1, 1995). Real and tangible personal property do not include coin,
21 currency, or property acquired in lieu of or pursuant to a foreclosure.

22 (q) Regular place of business means an office at which the taxpayer
23 carries on its business in a regular and systematic manner and which is
24 continuously maintained, occupied and used by employees of the taxpayer.

25 (r) State means a state of the United States, the District of
26 Columbia, the Commonwealth of Puerto Rico, any territory or possession of the
27 United States or any foreign country.

28 (s) Syndication means an extension of credit in which two or more
29 persons fund and each person is at risk only up to a specified percentage of
30 the total extension of credit or up to a specified dollar amount.

31 (t) Taxable means either:

32 (1) that a taxpayer is subject in another state to a net income
33 tax, a franchise tax measured by net income, a franchise tax for the privilege
34 of doing business, a corporate stock tax (including a bank shares tax), a
35 single business tax, or an earned surplus tax, or any tax which is imposed

1 upon or measured by net income; or

2 (2) that another state has jurisdiction to subject the taxpayer
3 to any of such taxes regardless of whether, in fact, the state does or does
4 not.

5 (u) Transportation property means vehicles and vessels capable of
6 moving under their own power, such as aircraft, trains, water vessels and
7 motor vehicles, as well as any equipment or containers attached to such
8 property, such as rolling stock, barges, trailers or the like.

9 26-51-1403. Receipts Factor.

10 (a) General. The receipts factor is a fraction, the numerator of which
11 is the receipts of the taxpayer in this state during the taxable year and the
12 denominator of which is the receipts of the taxpayer within and without this
13 state during the taxable year. The method of calculating receipts for
14 purposes of the denominator is the same as the method used in determining
15 receipts for purposes of the numerator. The receipts factor shall include
16 only those receipts described herein which constitute business income and are
17 included in the computation of the apportionable income base for the taxable
18 year.

19 (b) Receipts from the lease of real property. The numerator of the
20 receipts factor includes receipts from the lease or rental of real property
21 owned by the taxpayer if the property is located within this state or receipts
22 from the sublease of real property if the property is located within this
23 state.

24 (c) Receipts from the lease of tangible personal property.

25 (1) Except as described in paragraph (2) of this subsection, the
26 numerator of the receipts factor includes receipts from the lease or rental of
27 tangible personal property owned by the taxpayer if the property is located
28 within this state when it is first placed in service by the lessee.

29 (2) Receipts from the lease or rental of transportation property
30 owned by the taxpayer are included in the numerator of the receipts factor to
31 the extent that the property is used in this state. The extent an aircraft
32 will be deemed to be used in this state and the amount of receipts that is to
33 be included in the numerator of this state's receipts factor is determined by
34 multiplying all the receipts from the lease or rental of the aircraft by a
35 fraction, the numerator of which is the number of landings of the aircraft in

1 this state and the denominator of which is the total number of landings of the
2 aircraft. If the extent of the use of any transportation property within
3 this state cannot be determined, then the property will be deemed to be used
4 wholly in the state in which the property has its principal base of
5 operations. A motor vehicle will be deemed to be used wholly in the state in
6 which it is registered.

7 (d) Interest from loans secured by real property.

8 (1) The numerator of the receipts factor includes interest and
9 fees or penalties in the nature of interest from loans secured by real
10 property if the property is located within this state. If the property is
11 located both within this state and one or more other states, the receipts
12 described in this subsection are included in the numerator of the receipts
13 factor if more than fifty percent of the fair market value of the real
14 property is located within this state. If more than fifty percent of the fair
15 market value of the real property is not located within any one state, then
16 the receipts described in this subsection shall be included in the numerator
17 of the receipts factor if the borrower is located in this state.

18 (2) The determination of whether the real property securing a
19 loan is located within this state shall be made as of the time the original
20 agreement was made and any and all subsequent substitutions of collateral
21 shall be disregarded.

22 (e) Interest from loans not secured by real property. The numerator of
23 the receipts factor includes interest and fees or penalties in the nature of
24 interest from loans not secured by real property if the borrower is located in
25 this state.

26 (f) Net gains from the sale of loans. The numerator of the receipts
27 factor includes net gains from the sale of loans. Net gains from the sale of
28 loans includes income recorded under the coupon stripping rules of Section
29 1286 of the Internal Revenue Code, as in effect January 1, 1995.

30 (1) The amount of net gains (but not less than zero) from the
31 sale of loans secured by real property included in the numerator is determined
32 by multiplying such net gains by a fraction the numerator of which is the
33 amount included in the numerator of the receipts factor pursuant to subsection
34 (d) of this section and the denominator of which is the total amount of
35 interest and fees or penalties in the nature of interest from loans secured by

1 real property.

2 (2) The amount of net gains (but not less than zero) from the
3 sale of loans not secured by real property included in the numerator is
4 determined by multiplying such net gains by a fraction the numerator of which
5 is the amount included in the numerator of the receipts factor pursuant to
6 subsection (e) of this section and the denominator of which is the total
7 amount of interest and fees or penalties in the nature of interest from loans
8 not secured by real property.

9 (g) Receipts from credit card receivables. The numerator of the
10 receipts factor includes interest and fees or penalties in the nature of
11 interest from credit card receivables and receipts from fees charged to card
12 holders, such as annual fees, if the billing address of the card holder is in
13 this state.

14 (h) Net gains from the sale of credit card receivables. The numerator
15 of the receipts factor includes net gains (but not less than zero) from the
16 sale of credit card receivables multiplied by a fraction, the numerator of
17 which is the amount included in the numerator of the receipts factor pursuant
18 to subsection (g) of this section and the denominator of which is the
19 taxpayer's total amount of interest and fees or penalties in the nature of
20 interest from credit card receivables and fees charged to card holders.

21 (i) Credit card issuer's reimbursement fees. The numerator of the
22 receipts factor includes all credit card issuer's reimbursement fees
23 multiplied by a fraction, the numerator of which is the amount included in the
24 numerator of the receipts factor pursuant to subsection (g) of this section
25 and the denominator of which is the taxpayer's total amount of interest and
26 fees or penalties in the nature of interest from credit card receivables and
27 fees charged to card holders.

28 (j) Receipts from merchant discount. The numerator of the receipts
29 factor includes receipts from merchant discount if the commercial domicile of
30 the merchant is in this state. Such receipts shall be computed net of any
31 cardholder charge backs, but shall not be reduced by any interchange
32 transaction fees or by any issuer's reimbursement fees paid to another for
33 charges made by its card holders.

34 (k) Loan servicing fees.

35 (1)(A) The numerator of the receipts factor includes loan

1 servicing fees derived from loans secured by real property multiplied by a
2 fraction the numerator of which is the amount included in the numerator of the
3 receipts factor pursuant to subsection (d) of this section and the denominator
4 of which is the total amount of interest and fees or penalties in the nature
5 of interest from loans secured by real property.

6 (B) The numerator of the receipts factor includes loan
7 servicing fees derived from loans not secured by real property multiplied by a
8 fraction the numerator of which is the amount included in the numerator of the
9 receipts factor pursuant to subsection (e) of this section and the denominator
10 of which is the total amount of interest and fees or penalties in the nature
11 of interest from loans not secured by real property.

12 (2) In circumstances in which the taxpayer receives loan
13 servicing fees for servicing either the secured or the unsecured loans of
14 another, the numerator of the receipts factor shall include such fees if the
15 borrower is located in this state.

16 (1) Receipts from services. The numerator of the receipts factor
17 includes receipts from services not otherwise apportioned under this section
18 if the service is performed in this state. If the service is performed both
19 within and without this state, the numerator of the receipts factor includes
20 receipts from services not otherwise apportioned under this section, if a
21 greater proportion of the income-producing activity is performed in this state
22 based on cost of performance.

23 (m) Receipts from investment assets and activities and trading assets
24 and activities.

25 (1) Interest, dividends, net gains (but not less than zero) and
26 other income from investment assets and activities and from trading assets and
27 activities shall be included in the receipts factor. Investment assets and
28 activities and trading assets and activities include but are not limited to:
29 investment securities; trading account assets; federal funds; securities
30 purchased and sold under agreements to resell or repurchase; options; futures
31 contracts; forward contracts; notional principal contracts such as swaps;
32 equities; and foreign currency transactions. With respect to the investment
33 and trading assets and activities described in subparagraphs (A) and (B) of
34 this paragraph, the receipts factor shall include the amounts described in
35 such subparagraphs.

1 (A) The receipts factor shall include the amount by which
2 interest from federal funds sold and securities purchased under resale
3 agreements exceeds interest expense on federal funds purchased and securities
4 sold under repurchase agreements.

5 (B) The receipts factor shall include the amount by which
6 interest, dividends, gains and other income from trading assets and
7 activities, including but not limited to assets and activities in the matched
8 book, in the arbitrage book, and foreign currency transactions, exceed amounts
9 paid in lieu of interest, amounts paid in lieu of dividends, and losses from
10 such assets and activities.

11 (2) The numerator of the receipts factor includes interest,
12 dividends, net gains (but not less than zero) and other income from investment
13 assets and activities and from trading assets and activities described in
14 paragraph (1) of this subsection that are attributable to this state.

15 (A) The amount of interest, dividends, net gains (but not
16 less than zero) and other income from investment assets and activities in the
17 investment account to be attributed to this state and included in the
18 numerator is determined by multiplying all such income from such assets and
19 activities by a fraction, the numerator of which is the average value of such
20 assets which are properly assigned to a regular place of business of the
21 taxpayer within this state and the denominator of which is the average value
22 of all such assets.

23 (B) The amount of interest from federal funds sold and
24 purchased and from securities purchased under resale agreements and securities
25 sold under repurchase agreements attributable to this state and included in
26 the numerator is determined by multiplying the amount described in
27 subparagraph (A) of paragraph (1) of this subsection from such funds and such
28 securities by a fraction, the numerator of which is the average value of
29 federal funds sold and securities purchased under agreements to resell which
30 are properly assigned to a regular place of business of the taxpayer within
31 this state and the denominator of which is the average value of all such funds
32 and such securities.

33 (C) The amount of interest, dividends, gains and other
34 income from trading assets and activities, including but not limited to assets
35 and activities in the matched book, in the arbitrage book and foreign currency

1 transactions, (but excluding amounts described in subparagraphs (A) or (B) of
2 this paragraph), attributable to this state and included in the numerator is
3 determined by multiplying the amount described in subparagraph (B) of
4 paragraph (1) of this subsection by a fraction, the numerator of which is the
5 average value of such trading assets which are properly assigned to a
6 regular place of business of the taxpayer within this state and the
7 denominator of which is the average value of all such assets.

8 (D) For purposes of this paragraph, average value shall be
9 determined using the rules for determining the average value of tangible
10 personal property set forth in subsections (c) and (d) of 26-51-1404.

11 (3) In lieu of using the method set forth in paragraph (2) of
12 this subsection, the taxpayer may elect, or the Director of the Department of
13 Finance and Administration may require in order to fairly represent the
14 business activity of the taxpayer in this state, the use of the method set
15 forth in this paragraph.

16 (A) The amount of interest, dividends, net gains (but not
17 less than zero) and other income from investment assets and activities in the
18 investment account to be attributed to this state and included in the
19 numerator is determined by multiplying all such income from such assets and
20 activities by a fraction, the numerator of which is the gross income from such
21 assets and activities which are properly assigned to a regular place of
22 business of the taxpayer within this state and the denominator of which is the
23 gross income from all such assets and activities.

24 (B) The amount of interest from federal funds sold and
25 purchased and from securities purchased under resale agreements and securities
26 sold under repurchase agreements attributable to this state and included in
27 the numerator is determined by multiplying the amount described in
28 subparagraph (A) of paragraph (1) of this subsection from such funds and such
29 securities by a fraction, the numerator of which is the gross income from such
30 funds and such securities which are properly assigned to a regular place of
31 business of the taxpayer within this state and the denominator of which is the
32 gross income from all such funds and such securities.

33 (C) The amount of interest, dividends, gains and other
34 income from trading assets and activities, including but not limited to assets
35 and activities in the matched book, in the arbitrage book and foreign currency

1 transactions (but excluding amounts described in subparagraphs (A) or (B) of
2 this paragraph), attributable to this state and included in the numerator is
3 determined by multiplying the amount described in subparagraph (B) of
4 paragraph (1) of this subsection by a fraction, the numerator of which is the
5 gross income from such trading assets and activities which are properly
6 assigned to a regular place of business of the taxpayer within this state and
7 the denominator of which is the gross income from all such assets and
8 activities.

9 (4) If the taxpayer elects or is required by the Director of the
10 Department of Finance and Administration to use the method set forth in
11 paragraph (3) of this subsection, it shall use this method on all subsequent
12 returns unless the taxpayer receives prior permission from the Director of the
13 Department of Finance and Administration to use, or the Director of the
14 Department of Finance and Administration requires a different method.

15 (5) The taxpayer shall have the burden of proving that an
16 investment asset or activity or trading asset or activity was properly
17 assigned to a regular place of business outside of this state by demonstrating
18 that the day-to-day decisions regarding the asset or activity occurred at a
19 regular place of business outside this state. Where the day-to-day decisions
20 regarding an investment asset or activity or trading asset or activity occur
21 at more than one regular place of business and one such regular place of
22 business is in this state and one such regular place of business is outside
23 this state, such asset or activity shall be considered to be located at the
24 regular place of business of the taxpayer where the investment or trading
25 policies or guidelines with respect to the asset or activity are established.
26 Unless the taxpayer demonstrates to the contrary, such policies and
27 guidelines shall be presumed to be established at the commercial domicile of
28 the taxpayer.

29 (n) All other receipts. The numerator of the receipts factor includes
30 all other receipts pursuant to the rules set forth in Ark. Code Ann. §§ 26-51-
31 715 through 26-51-717.

32 (o) Attribution of certain receipts to commercial domicile. All
33 receipts which would be assigned under this section to a state in which the
34 taxpayer is not taxable shall be included in the numerator of the receipts
35 factor, if the taxpayer's commercial domicile is in this state.

1 26-51-1404. Property Factor

2 (a) General. The property factor is a fraction, the numerator of which
3 is the average value of real property and tangible personal property rented to
4 the taxpayer that is located or used within this state during the taxable
5 year, the average value of the taxpayer's real and tangible personal property
6 owned that is located or used within this state during the taxable year, and
7 the average value of the taxpayer's loans and credit card receivables that are
8 located within this state during the taxable year, and the denominator of
9 which is the average value of all such property located or used within and
10 without this state during the taxable year.

11 (b) Property included. The property factor shall include only property
12 the income or expenses of which are included (or would have been included if
13 not fully depreciated or expensed, or depreciated or expensed to a nominal
14 amount) in the computation of the apportionable income base for the taxable
15 year.

16 (c) Value of property owned by the taxpayer.

17 (1) The value of real property and tangible personal property
18 owned by the taxpayer is the original cost or other basis of such property for
19 Federal income tax purposes without regard to depletion, depreciation or
20 amortization.

21 (2) Loans are valued at their outstanding principal balance,
22 without regard to any reserve for bad debts. If a loan is charged-off in
23 whole or in part for Federal income tax purposes, the portion of the loan
24 charged off is not outstanding. A specifically allocated reserve established
25 pursuant to regulatory or financial accounting guidelines which is treated as
26 charged-off for Federal income tax purposes shall be treated as charged-off
27 for purposes of this section.

28 (3) Credit card receivables are valued at their outstanding
29 principal balance, without regard to any reserve for bad debts. If a credit
30 card receivable is charged-off in whole or in part for Federal income tax
31 purposes, the portion of the receivable charged-off is not outstanding.

32 (d) Average value of property owned by the taxpayer. The average value
33 of property owned by the taxpayer is computed on an annual basis by adding the
34 value of the property on the first day of the taxable year and the value on
35 the last day of the taxable year and dividing the sum by two. If averaging on

1 this basis does not properly reflect average value, the Director of the
2 Department of Finance and Administration may require averaging on a more
3 frequent basis. The taxpayer may elect to average on a more frequent basis.
4 When averaging on a more frequent basis is required by the Director of the
5 Department of Finance and Administration or is elected by the taxpayer, the
6 same method of valuation must be used consistently by the taxpayer with
7 respect to property within and without this state and on all subsequent
8 returns unless the taxpayer receives prior permission from the Director of the
9 Department of Finance and Administration or the Director of the Department of
10 Finance and Administration requires a different method of determining average
11 value.

12 (e) Average value of real property and tangible personal property
13 rented to the taxpayer.

14 (1) The average value of real property and tangible personal
15 property that the taxpayer has rented from another and which is not treated as
16 property owned by the taxpayer for Federal income tax purposes, shall be
17 determined annually by multiplying the gross rents payable during the taxable
18 year by eight.

19 (2) Where the use of the general method described in this
20 subsection results in inaccurate valuations of rented property, any other
21 method which properly reflects the value may be adopted by the Director of the
22 Department of Finance and Administration or by the taxpayer when approved in
23 writing by the Director of the Department of Finance and Administration. Once
24 approved, such other method of valuation must be used on all subsequent
25 returns unless the taxpayer receives prior approval from the Director of the
26 Department of Finance and Administration or the Director of the Department of
27 Finance and Administration requires a different method of valuation.

28 (f) Location of real property and tangible personal property owned by
29 or rented to the taxpayer.

30 (1) Except as described in paragraph (2) of this subsection, real
31 property and tangible personal property owned by or rented to the taxpayer is
32 considered to be located within this state if it is physically located,
33 situated or used within this state.

34 (2) Transportation property is included in the numerator of the
35 property factor to the extent that the property is used in this state. The

1 extent an aircraft will be deemed to be used in this state and the amount of
2 value that is to be included in the numerator of this state's property factor
3 is determined by multiplying the average value of the aircraft by a fraction,
4 the numerator of which is the number of landings of the aircraft in this state
5 and the denominator of which is the total number of landings of the aircraft
6 everywhere. If the extent of the use of any transportation property within
7 this state cannot be determined, then the property will be deemed to be used
8 wholly in the state in which the property has its principal base of
9 operations. A motor vehicle will be deemed to be used wholly in the state in
10 which it is registered.

11 (g) Location of loans.

12 (1)(A) A loan is considered to be located within this state if it
13 is properly assigned to a regular place of business of the taxpayer within
14 this state.

15 (B) A loan is properly assigned to the regular place of
16 business with which it has a preponderance of substantive contacts. A loan
17 assigned by the taxpayer to a regular place of business without the state
18 shall be presumed to have been properly assigned if--

19 (i) the taxpayer has assigned, in the regular course
20 of its business, such loan on its records to a regular place of business
21 consistent with Federal or state regulatory requirements;

22 (ii) such assignment on its records is based upon
23 substantive contacts of the loan to such regular place of business; and

24 (iii) the taxpayer uses said records reflecting
25 assignment of loans for the filing of all state and local tax returns for
26 which an assignment of loans to a regular place of business is required.

27 (C) The presumption of proper assignment of a loan provided
28 in subparagraph (B) of paragraph (1) of this subsection may be rebutted upon a
29 showing by the Director of the Department of Finance and Administration,
30 supported by a preponderance of the evidence, that the preponderance of
31 substantive contacts regarding such loan did not occur at the regular place of
32 business to which it was assigned on the taxpayer's records. When such
33 presumption has been rebutted, the loan shall then be located within this
34 state if (i) the taxpayer had a regular place of business within this state at
35 the time the loan was made; and (ii) the taxpayer fails to show, by a

1 preponderance of the evidence, that the preponderance of substantive contacts
2 regarding such loan did not occur within this state.

3 (2) In the case of a loan which is assigned by the taxpayer to a
4 place without this state which is not a regular place of business, it shall be
5 presumed, subject to rebuttal by the taxpayer on a showing supported by the
6 preponderance of evidence, that the preponderance of substantive contacts
7 regarding the loan occurred within this state if, at the time the loan was
8 made the taxpayer's commercial domicile, as defined by subsection (c) of 26-
9 51-1402, was within this state.

10 (3) To determine the state in which the preponderance of
11 substantive contacts relating to a loan have occurred, the facts and
12 circumstances regarding the loan at issue shall be reviewed on a case-by-case
13 basis and consideration shall be given to such activities as the solicitation,
14 investigation, negotiation, approval and administration of the loan. The
15 terms solicitation, investigation, negotiation, approval and
16 administration are defined as follows:

17 (A) Solicitation. Solicitation is either active or
18 passive. Active solicitation occurs when an employee of the taxpayer
19 initiates the contact with the customer. Such activity is located at the
20 regular place of business which the taxpayer's employee is regularly connected
21 with or working out of, regardless of where the services of such employee were
22 actually performed. Passive solicitation occurs when the customer initiates
23 the contact with the taxpayer. If the customer's initial contact was not at a
24 regular place of business of the taxpayer, the regular place of business, if
25 any, where the passive solicitation occurred is determined by the facts in
26 each case.

27 (B) Investigation. Investigation is the procedure whereby
28 employees of the taxpayer determine the credit-worthiness of the customer as
29 well as the degree of risk involved in making a particular agreement. Such
30 activity is located at the regular place of business which the taxpayer's
31 employees are regularly connected with or working out of, regardless of where
32 the services of such employees were actually performed.

33 (C) Negotiation. Negotiation is the procedure whereby
34 employees of the taxpayer and its customer determine the terms of the
35 agreement (e.g., the amount, duration, interest rate, frequency of repayment,

1 currency denomination and security required). Such activity is located at the
2 regular place of business which the taxpayer's employees are regularly
3 connected with or working out of, regardless of where the services of such
4 employees were actually performed.

5 (D) Approval. Approval is the procedure whereby employees
6 or the board of directors of the taxpayer make the final determination whether
7 to enter into the agreement. Such activity is located at the regular place of
8 business which the taxpayer's employees are regularly connected with or
9 working out of, regardless of where the services of such employees were
10 actually performed. If the board of directors makes the final determination,
11 such activity is located at the commercial domicile of the taxpayer.

12 (E) Administration. Administration is the process of
13 managing the account. This process includes bookkeeping, collecting the
14 payments, corresponding with the customer, reporting to management regarding
15 the status of the agreement and proceeding against the borrower or the
16 security interest if the borrower is in default. Such activity is located at
17 the regular place of business which oversees this activity.

18 (h) Location of credit card receivables. For purposes of determining
19 the location of credit card receivables, credit card receivables shall be
20 treated as loans and shall be subject to the provisions of subsection (g) of
21 this section.

22 (i) Period for which properly assigned loan remains assigned. A loan
23 that has been properly assigned to a state shall, absent any change of
24 material fact, remain assigned to said state for the length of the original
25 term of the loan. Thereafter, said loan may be properly assigned to another
26 state if said loan has a preponderance of substantive contact to a regular
27 place of business there.

28 26-51-1405. Payroll Factor.

29 (a) General. The payroll factor is a fraction, the numerator of which
30 is the total amount paid in this state during the taxable year by the taxpayer
31 for compensation and the denominator of which is the total compensation paid
32 both within and without this state during the taxable year. The payroll
33 factor shall include only that compensation which is included in the
34 computation of the apportionable income tax base for the taxable year.

35 (b) Compensation relating to nonbusiness income and independent

1 contractors. The compensation of any employee for services or activities which
2 are connected with the production of nonbusiness income (income which is not
3 includable in the apportionable income base) and payments made to any
4 independent contractor or any other person not properly classifiable as an
5 employee shall be excluded from both the numerator and denominator of the
6 factor.

7 (c) When compensation paid in this state. Compensation is paid in this
8 state if any one of the following tests, applied consecutively, is met:

9 (1) The employee's services are performed entirely within this
10 state.

11 (2) The employee's services are performed both within and without
12 the state, but the service performed without the state is incidental to the
13 employee's service within the state. The term "incidental" means any service
14 which is temporary or transitory in nature, or which is rendered in connection
15 with an isolated transaction.

16 (3) If the employee's services are performed both within and
17 without this state, the employee's compensation will be attributed to this
18 state:

19 (A) if the employee's principal base of operations is
20 within this state; or

21 (B) if there is no principal base of operations in any
22 state in which some part of the services are performed, but the place from
23 which the services are directed or controlled is in this state; or

24 (C) if the principal base of operations and the place from
25 which the services are directed or controlled are not in any state in which
26 some part of the service is performed but the employee's residence is in this
27 state."

28

29 SECTION 2. Ark. Code Ann. § 4-31-205(b) is hereby amended to read as
30 follows:

31 "4-31-205(b) However, the exemption shall not include:

32 (1) Ad valorem taxes assessed against any real property
33 which the corporation, institution, or entity may own in the State of
34 Arkansas;

35 (2) Arkansas income, franchise, and privilege tax which may

1 result from the sale, ownership, or control after acquisition of the property
2 by foreclosure, or acquisition in lieu of foreclosure, either by virtue of the
3 value of the specific piece of property so foreclosed or to which title is
4 taken in lieu of foreclosure, or by virtue of the rental or other income
5 realized from the property;

6 (3) Arkansas income taxes which may be levied upon
7 financial institutions pursuant to Ark. Code Ann. § 26-51-1401, et seq."

8

9 SECTION 3. Ark. Code Ann. § 26-51-407(c) is hereby repealed.

10

11 SECTION 4. EFFECTIVE DATE.

12 This act is applicable for taxable years beginning on or after January
13 1, 1996.

14

15 SECTION 5. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

18

19 SECTION 6. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

24

25 SECTION 7. All laws and parts of laws in conflict with this act are
26 hereby repealed.

27

28 /s/Cunningham, et al

29

30 APPROVED: 3-1-95

31

32

33

34

35

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19