

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1532**

**Bill Subtitle: TO CREATE AN INCOME TAX EXEMPTION FOR CERTAIN NEW BUSINESSES LOCATING IN THE STATE.**

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### **Basic Change :**

**Sponsor: Rep. Pilkington**

HB1532 adds a section to Arkansas Code Title 26, Chapter 51, Subchapter 3 to create an income tax exemption for three years for certain businesses locating their corporate headquarters in the state in a county that has a population of less than 40,000 if the taxpayer did not have a location in the state for the preceding six years, has fewer than 100 employees in the state and remains in the new location for at least six years. The bill is effective for tax years beginning on and after January 1, 2019.

### **Revenue Impact :**

Revenue loss of undetermined amount beginning in FY2020.

[ There are approximately 55 counties in Arkansas that have populations of less than 40,000 persons. It is unknown how many potential businesses would locate their corporate headquarters in any of these 55 counties. ]

### **Taxpayer Impact :**

Certain new businesses locating in the state can claim an income tax exemption for up to three years.

### **Resources Required :**

Update computer programs, tax forms, and instructions.

### **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 :**

§ 26-51-316(b) should be modified to clarify that a business must meet all requirements listed to obtain an exemption. The bill does not contain details on how the exemption should be administered nor by whom. There is no registration or certification process for the exemption. The bill is effective for tax years beginning on and after January 1, 2019.

### **Legal Analysis :**

HB1532 provides an income tax exemption for some corporations that locate or relocate their corporate headquarters in Arkansas. To qualify for the exemption, the corporation must: (1) locate its corporate headquarters in an Arkansas after the effective date of the act; (2) locate the corporate

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headquarters in a county having a population of less than 40,000; (3) not have had an Arkansas location within the preceding 6 years of locating in this state; (4) employ fewer than 100 employees; and (5) remain in its new Arkansas location for at least 6 years.

A corporation qualifying for this exemption may claim an Arkansas Corporate Income Tax exemption for up to three years. If the corporation relocates its corporate headquarters to another county within Arkansas or relocates to another state within 6 years of becoming eligible for the tax exemption in this act, the corporation will lose the tax exemption and will be required to pay the income tax that would have been due for each year it claimed the income tax exemption under this act. The exemption provided by this act is effective for tax years beginning on and after January 1, 2019.

There are significant administrative concerns regarding this bill. Each new Arkansas corporation formed in a county having a population of fewer than 40,000 and each LLC currently electing to be taxed as a corporation that converts to a corporation will be entitled to this tax exemption if the corporation has fewer than 100 employees. No minimum investment in Arkansas is required and the employment of a minimum number of employees is not required. Additionally, it is not clear that there would be a prohibition to an LLC already in existence in Arkansas converting to a corporation to take advantage of the credit as the corporation would not have had a location in the state prior to conversion.

Additional clarification is needed regarding when the income tax credit may be claimed. The bill currently provides that the tax exemption may be claimed "...for up to three (3) years." This language is unclear regarding whether the exemption expires three years after the corporation first locates in Arkansas or whether the exemption may be carried forward to future years and only expires after it has been claimed for three tax years or if it must be taken in three subsequent and sequential years after eligibility is met. If the exemption is to be valid only for the three years after the corporation locates in Arkansas specific language to that effect should be included. If the exemption may be carried forward until used for three years, then language to that effect should be added.

The bill provides no mechanism for collecting the tax from a company that moves its corporate headquarters to another county or state within six years of locating in Arkansas. Unless DFA is authorized to issue a tax assessment and file a tax lien if the tax is not paid, collection of the taxes from a corporation that moves will be difficult. Also, if the corporation moves out of state, collection of the tax after the corporation has moved will be difficult. Finally, the Department's existing statute of limitations regarding assessments would need to be modified to allow the issuance of an assessment after the existing six year statute of limitations has expired.