

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1845**

**Bill Subtitle: TO CREATE THE SMALL BUSINESS TAX FAIRNESS ACT; TO REQUIRE COMBINED REPORTING FOR INCOME TAX PURPOSES; AND TO LEVY A FLAT INCOME TAX ON CORPORATIONS.**

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### **Basic Change :**

Rep. Nickels

The bill requires combined corporate income tax reporting for multistate corporations. A combined return is a single return that includes the apportionment factors and net incomes of all members of a unitary group. The bill allows a unitary group to make a waters-edge election effective for 10 years. The bill replaces the current graduated tax rate structure with a flat income tax rate of 6% on all corporations. Corporations that are not members of a unitary business shall file returns on either a consolidated or separate entity basis. Effective for tax years beginning on or after January 1, 2014.

### **Revenue Impact :**

FY2014 - \$10.7M loss

FY2015 - \$21.4M loss

[Fiscal impact based solely on reducing the income tax rate to a flat 6% rate. Any revenue impact from combined reporting is impossible to determine due to lack of Arkansas specific information]

### **Taxpayer Impact :**

Taxpayers included in a unitary group would file a single combined Arkansas return with one apportionment calculation for the entire group instead of separate returns or a consolidated return with apportionment calculations for each member of the group.

### **Resources Required :**

Computer programming changes, booklet and form changes, staff training will be needed.

### **Time Required :**

Six months after enactment.

### **Procedural Changes :**

Computer programs, forms and instructions, return processing and training will need to be modified. Tax community will need to be informed of the change.

### **Other Comments :**

The bill amends Title 26, Chapter 51 to add Subchapter 25. Subchapter 25 already exists and contains the "check-off" provisions for both individual and corporate income tax.

The option to allow a water's-edge election may contribute to companies shifting income to shell entities that are located outside of the United States for the purpose to tax avoidance.

Workforce 2000 Fund is funded by that portion of the taxes collected from that portion of the current tax rate over 6% and would be reduced by the reduced tax rate in this bill.

### **Legal Analysis :**

A combined report will be filed by one member of a combined reporting group designated as a "surety" for that purpose. DFA has the discretion to require whatever information it deems necessary to be

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reported on the combined report. DFA is required to promulgate a rule to implement the new combined reporting. A water's-edge election may be disregarded by DFA if there is a "substantial objective" of avoiding state income tax. Also with regard to the water's-edge provisions, a taxpayer may request that its water's-edge election be withdrawn or reinstated due to "unforeseen changes in state tax statutes, law or policy".

The bill's provisions will apply to tax years beginning on or after January 1, 2014. The bill has no Emergency Clause and would therefore become effective 90 days after adjournment of the session.