

**SUMMARY OF PROPOSAL #19**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: To Repeal Throwback Rule for Business Income**

**Summary of Proposal for Consideration**

To repeal the “throwback rule” for business income under Arkansas Code § 26-51-716, effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

The Department of Finance and Administration estimates that repealing the “throwback rule” would have resulted in an estimated revenue reduction of twenty-four million five hundred thousand dollars (\$24,500,000) for Fiscal Year 2018 based on the fiscal impact statement prepared for HB1790 of 2017.

**Legal Analysis**

***Background***

For purposes of allocation and apportionment of income, a taxpayer is taxable in another state if the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax in another state, or another state has jurisdiction to subject the taxpayer to a net income tax regardless of whether the state does or does not subject the taxpayer to income tax.

The “throwback rule” is part of the calculation used by Arkansas concerning the apportionment of business income by multistate businesses for income tax purposes. Arkansas uses an apportionment formula consisting of property, payroll, and double sales factors to apportion income of a multistate business. All sales must be reported somewhere, otherwise a taxpayer will have untaxed “nowhere” income. “Nowhere” sales are recaptured and placed in the Arkansas sales tax factor under Arkansas Code § 26-51-716, which is referred to as the “throwback rule.”

ACT 413 of 1961 adopted the “throwback rule” and has not been amended since.

***Potential Legal Issues***

None.

***Other States***

- Iowa: Does not have the “throwback rule.”
- Louisiana: Does not have the “throwback rule.”

- Mississippi: Has the “throwback rule” concerning the apportionment of business income by multistate businesses for income tax purposes. (MS St. §27-7-24.3)
- Missouri: Has the “throwback rule” concerning the apportionment of business income by multistate businesses for income tax purposes when the taxpayer is using the three-factor apportionment formula. Missouri allows businesses to elect two other types of apportionment that do not use the “throwback rule.” (MO St. § 143.451)
- Oklahoma: Has the “throwback rule” concerning the apportionment of business income by multistate businesses for income tax purposes. (OK St. 68 § 2358)
- Tennessee: Has the “throwback rule” only for sales of tangible personal property to the United States government. (Tenn. Code Ann. § 67-4-2012)
- Texas: Does not have the “throwback rule.”