

SUMMARY OF PROPOSAL #20
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: To Amend the Apportionment Formula to Use a Single Weighted Sales Factor

Summary of Proposal for Consideration

To amend the apportionment formula for taxing multistate business income to use a single sales factor under Arkansas Code § 26-51-709, effective for tax years beginning January 1, 2019.

Fiscal Analysis

According to the Department of Finance and Administration, amending the apportionment formula for taxing multistate business income to use a single sales factor under Arkansas Code § 26-51-709 would result in an estimated increase of \$8.8 million based on fiscal year 2016.

Legal Analysis

Background

Arkansas currently apportions all business income owed to the state using a three-factor formula with a double-weighted sales factor. Arkansas calculates apportionment by adding a business's property, payroll, and double the sales and dividing the sum by four (4).

ACT 413 of 1961 created Arkansas's first apportionment formula, which used a three-factor apportionment formula. The three-factor formula was calculated by adding the business's property, payroll, and sales and dividing the sum by three (3).

ACT 682 of 1995 amended the apportionment calculation to the current double weighted sales-factor apportionment, and the statute has not been amended since.

Potential Legal Issues

None.

Other States

- Iowa: Iowa uses a single sales factor apportionment. (IA St. § 422.33)
- Louisiana: Louisiana uses a single sales factor apportionment for most businesses. Oil and gas companies use a three-factor formula with a double-weighted sales factor, which means that the business's property, payroll, and double the sales are added together, and the sum is divided by four (4). Most transportation and service companies use a ratio of the amount of gross apportionable income derived from

Louisiana sources to the total gross apportionable income of the taxpayer. (LA St. §47:287.95)

- Mississippi: Mississippi provides different apportionment formulas based on the specific type of business, and the apportionment formulas are governed by regulations. A single sales factor formula is required if no specific business formula is specified. Retailers, wholesalers, service companies, and lessors use the single sales factor formula. Manufacturers selling at wholesale use a three-factor apportionment formula by adding the business's property, payroll, and sales and dividing the sum by three (3); manufacturers selling at retail are required to use a double-weighted sales factor formula by adding the business's property, payroll, and double the sales and dividing the sum by four (4). (MS St. §27-7-23; Miss. Admin. Code 35-III-8.06 §§ 302 and 402)
- Missouri: Missouri has three apportionment options. The default formula uses a three-factor apportionment that adds property, payroll, and sales and divides the sum by three (3). However, a business may also elect to use (1) a unique single sales factor formula in which the sales total includes all sales in the state and one-half (1/2) of the amount of sales that occur partially in the state or (2) a traditional single sales factor formula. (MO St. § 143.451)
- Oklahoma: Oklahoma generally uses a three-factor apportionment formula by adding property, payroll, and sales, and dividing the sum by three (3). Businesses that meet certain investment criteria may elect to use a three-factor formula with a double-weighted sales factor. (OK St. 68 § 2358)
- Tennessee: Tennessee generally uses a three-factor formula with a triple-weighted sales factor. Manufacturers and financial asset management companies may elect to use a single sales factor formula. (TN St. § 67-4-2012)
- Texas: Texas uses a single sales factor formula based on gross receipts. (TX St. § 171.106)