

# EXHIBIT E

## Property Tax Proposals

*for consideration by the Arkansas Tax Reform and Relief Legislative Task Force*

June 20, 2018

- Proposal #1: Repeal the Personal Property Inventory Tax
- Proposal #2: Create a Tax Credit for Inventory Tax
- Proposal #3: Repeal the Franchise Tax
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**SUMMARY OF PROPOSAL #1**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Ad Valorem Personal Property Tax on Business Inventory**

**Summary of Proposal for Consideration**

To exempt business inventory from ad valorem personal property tax under the Arkansas Constitution, effective for assessment years beginning January 1, 2019.

**Fiscal Analysis**

According to the Assessment Coordination Department (ACD), creating an exemption for business inventory from ad valorem personal property tax would result in an estimated reduction of over seventy million two hundred ten thousand dollars (\$70,210,000) of revenues for municipal, county, and school district funding based on tax collections from 2016. An estimated fifty-five million one hundred thousand dollars (\$55,100,000) represents the revenue that would be lost by school districts if business inventory were exempt from ad valorem property tax based on tax collections from 2016.

**Legal Analysis**

***Background***

Arkansas Constitution, Article 16, § 5, states that all property subject to taxation is to be taxed according to its value and that no species of property from which a tax is collected is to be taxed higher than another species of property of equal value. Accordingly, Arkansas levies ad valorem personal property tax on business inventory. Business inventory includes goods produced and held for sale in the normal course of business with the intent of making a profit from such goods, raw materials, works-in-process, finished goods, and supplies and packaging. Ad valorem personal property tax levied on business inventory applies to merchants and manufacturers. Ark Code Ann. §§ 26-26-1203 and 26-26-1205. However, business inventory that is in transit through Arkansas, including raw materials from within or outside of Arkansas used in the manufacturing process, and business inventory that is manufactured, processed, or refined in Arkansas and stored for shipment outside of Arkansas is not subject to ad valorem personal property tax. Ark. Code Ann. § 26-26-1102(b).

ACT 114 of 1883 clarified that all real and tangible personal property is subject to ad valorem property tax, including the property of corporations. This provision is codified under Arkansas Code § 26-3-201. The act further clarified that real and tangible personal property is to be assessed in the town, township, or school district where the property is situated. This provision is codified under Arkansas Code § 26-26-1102(a).

The act also clarified that ad valorem property tax on business inventory applies to merchants. The act provided that a merchant is any person who owns, possesses, or controls tangible personal property with the authority to sell the property at a profit or property that has

been consigned to the merchant from any place outside of Arkansas to be sold within Arkansas. These provisions are codified under Arkansas Code § 26-26-1203.

The act further clarified that ad valorem property tax on business inventory applies to manufacturers. The act provided that a manufacturer is defined as a person who purchases, receives, or holds property of any description for the purpose of adding value to the tangible personal property to incur a gain or profit through a process of manufacturing, refining, rectifying, or combining different materials. Additionally, the act provided that tangible personal property that is part of a manufacturer's stock and the value of all engines and machinery are subject to ad valorem property tax. These provisions are codified under Arkansas Code § 26-26-1205.

ACT 172 of 1929 provided that all tangible personal property is assessed for taxation in the taxing district in which the property is located and kept for use and that tangible personal property in transit is to be assessed in the taxing district of its destination. These provisions are codified under Arkansas Code § 26-26-1102.

ACT 269 of 1969 provided that tangible personal property in transit through Arkansas and tangible personal property manufactured, processed, or refined in Arkansas and stored for shipment outside of Arkansas do not acquire legal jurisdiction to be subject to ad valorem property tax in Arkansas. The act further clarified that "tangible personal property in transit through Arkansas" means tangible personal property that is:

- Moving in interstate commerce through or over the territory of Arkansas;
- Consigned to or stored in or on a warehouse, dock, or wharf in Arkansas in transit to a destination outside of Arkansas; or
- Manufactured, processed, or refined within Arkansas and stored in or on a warehouse, dock, or wharf in Arkansas for shipment to a destination outside of Arkansas.

These provisions are codified under Arkansas Code § 26-26-1102.

ACT 1294 of 1997 provided that tangible personal property in transit through Arkansas also includes raw materials from within or outside Arkansas used in the manufacturing process. This provision is codified under Arkansas Code § 26-26-1102(b)(1)(B). The provisions relating to ad valorem property tax levied on business inventory have not been amended since.

### ***Potential Legal Issues***

Arkansas Constitution, Article 16, § 6, states that all laws exempting property from ad valorem property tax are void unless provided under the Arkansas Constitution. Property that is considered business inventory in Arkansas is not exempt under the constitution. In order to exempt business inventory from ad valorem property tax, a constitutional amendment will be required to comply with Arkansas Constitution, Article 16, § 6.

### *Other States*

- Iowa: Iowa does not levy ad valorem property tax on business inventory. In Iowa, all tangible personal property is exempt from ad valorem property tax. (IA St. § 427A.2)
- Louisiana: Louisiana levies ad valorem property tax on business inventory. All property situated within Louisiana, unless provided an exemption, is subject to ad valorem property tax. (LA St § 47:1951). Under Louisiana law, ad valorem property tax is levied on business inventory, which includes merchandise, fixtures, machinery, and equipment for all persons engaged in manufacturing or in the business of retailing or wholesaling merchandise in Louisiana, when gross sales are in excess of fifteen thousand dollars (\$15,000). Business inventory also includes all goods held as raw materials, goods-in-process, or finished goods by manufacturers, wholesalers, distributors, or retailers. (LA St § 47:1961.1).

However, Louisiana exempts ad valorem property tax levied on business inventory as follows:

- Raw materials, goods, commodities and other articles imported into Louisiana from outside of the continental United States if: the imports remain on the property of the port authority or the docks of a common carrier after arrival to Louisiana; the imports are held in their original bulk form or original packaging, and raw materials are held in bulk to be used in manufacturing or processing; or the imports are held in their original packaging by an importer in storage, unless a retail merchant is holding the imports as part of his stock in trade for sale at retail (LA Const. art. 7, § (D)(1) and LA St. § 47:1951.1);
  - Raw materials, goods, commodities and other articles held in Louisiana for the purpose of being exported from Louisiana (LA Const. art. 7, § (D)(2) and LA St. § 47:1951.2); and
  - Raw materials, goods, commodities, and personal property stored in transit in Louisiana while moving in interstate commerce and property received from outside of Louisiana held in storage to be shipped to a point outside of Louisiana. (LA Const. art. 7, § (D)(3) and LA St. § 47:1951.3).
- Mississippi: Mississippi levies ad valorem property tax on property, which includes inventory used by a business in its operation. (MS Const. art 4, § 112 and MR 35.VI.2.06). Business inventory is defined as goods on hand and available for sale by a business, including without limitation products held in reserve or put on shelves for sale, resale, or consumption by the public, raw materials, works-in-progress, finished goods, consigned goods, or ingredients used in food preparation. (MR 35.VI.2.06). Additionally, the property of all private corporations for pecuniary gain are taxed in the same way and to the same extent as the property of individuals. (MS Const. art. 7, § 181).

However, in Mississippi the governing bodies may exempt from ad valorem property tax business inventory that is:

- Moving in interstate commerce through or over the territory of Mississippi;
- Consigned or transferred to a licensed “free port warehouse” within Mississippi for storage in transit to a final destination outside of Mississippi;
- Manufactured in the State of Mississippi and temporarily stored in separate facilities licensed as a free port warehouse pending transit to a final destination outside of Mississippi; or
- Consigned or transferred to a licensed “free port warehouse” for storage pending transit to a location for production or processing into a component or part that is then transported to a final destination outside of Mississippi. (MS St. § 27-31-53).

Additionally, Mississippi exempts business inventory from ad valorem property tax that is intended for export or import in Mississippi and that is in transit and assembled or stored on wharfs, railway cars, in warehouses, or ports of entry (as designated by the United States government). (MS St. § 27-31-13).

Finally, to encourage manufacturers and other new enterprises of public utility to establish new facilities in Mississippi or expand existing facilities, the governing authority of a county or municipality may exempt all or any portion of the value of products, including finished goods, owned by a manufacturer or any distributor or wholesale merchant located in the county or municipality. However, this business inventory exemption may not exceed ten (10) years and does not apply to property taxes for school districts. (MS Const. art. 7, § 182 and MS St. § 27-31-7)

- Missouri: Missouri does not levy ad valorem property tax on business inventory. All tangible personal property held as industrial inventories, including raw materials, works-in-progress, and finished works on hand by manufacturers and refiners and all personal property held as goods, wares, merchandise, stock in trade, or inventory for resale by distributors, wholesalers, or retail merchants or establishments are exempt from ad valorem property tax. (Missouri Const. art. 10, § 6.1). However, Missouri imposes a countywide replacement tax on all lost revenues as a result of the ad valorem property tax exemption on business inventory. (MO Const. art. 10, § 6.2). The countywide tax is determined by each county clerk. (MO. St. § 139.600(1)).
- Oklahoma: Oklahoma levies ad valorem property tax on business inventory. In Oklahoma, all real and tangible personal property is subject to ad valorem property tax unless exempted by law or through a payment in lieu of tax program. (68 OK St. § 2804). All corporations organized, existing, or doing business in Oklahoma, other than railroads, air carriers, public service corporations assessed by the State Board of Equalization, national banks, state banks, trust companies, and building and loan associations are assessed ad valorem property tax on the value of their real

and tangible personal property. (68 OK St. § 2837). Oklahoma's ad valorem property tax on business inventory includes items such as:

- All goods, chattels and effects;
- All goods, wares, and merchandise, including oil, gas, and petroleum products severed from the realty; and
- All agricultural implements or machinery, goods, wares, merchandise, or other chattels that are in the possession of, under the control of, or held for sale by any warehouseman, agent, factor, or representative in any capacity of any manufacturer or any dealer or agent of any such manufacturer.

(68 OK St. § 2807).

However, Oklahoma provides several exemptions from ad valorem property tax on business inventory. Qualifying manufacturers with new, expanded, or acquired manufacturing facilities are exempt from ad valorem property tax, including ad valorem property tax levied on business inventory for a period of five (5) years. The exemption may also be extended for an additional five (5) years. The exemption applies not only to new facilities but also to the expansion of existing facilities. However, in the case of an expansion of an existing facility, the business inventory property tax exemption is limited to only the increase in ad valorem taxes directly attributable to the expansion and not the entire facility. (Okla. Const. art. 10, § 6B, and 68 OK St. § 2902). Additionally, manufacturing facilities may delay the tax exemption for up to five (5) years following the expiration or termination of the previously agreed-to ad valorem property exemption. (68 OK St. § 2902.5)

Finally, all property consigned to a consignee in Oklahoma that is forwarded at through rates from the point of origin is exempt from ad valorem property tax if the property is not located in Oklahoma for more than ninety (90) days. Additionally, all goods, wares, and merchandise held for assembly, storage, manufacturing, processing, or fabricating that are not detained in Oklahoma for more than nine (9) months, regardless of whether the property is moving on through rates, are exempt from ad valorem property tax. (Okla. Const. art. 10, § 6A).

- Tennessee: Tennessee, generally, does not levy ad valorem property tax on business inventory. Under Tennessee law, businesses subject to the Tennessee Business Tax Act are exempt from ad valorem property tax on business inventory. (TN St. §§ 67-4-701 and 67-5-901). According to the Tennessee Department of Revenue, nearly every type of business is subject to the Tennessee Business Tax Act. In the rare instances where a business is not subject to the Tennessee Business Tax Act, business inventories are subject to ad valorem property tax.
- Texas: Texas levies ad valorem property tax on business inventory. All real and tangible personal property is subject to ad valorem property tax unless exempted by law. (TX St. Tax Code § 11.01). Texas has jurisdiction to tax tangible personal property that is located in Texas for longer than a temporary period, temporarily located outside Texas and the owner of the property resides in Texas, or property

that used continually, whether regularly or irregularly, in Texas. (TX St. Tax Code § 11.01). Property is considered to be used continually, whether regularly or irregularly, if the property is used in Texas three (3) or more times on regular routes or for three (3) or more completed assignments occurring in close succession within a short period of time throughout the year. (TX St. Tax Code § 11.01).

Texas provides an exemption from ad valorem property tax on business inventory that is considered a free port good. (TX St. Tax Code § 11.251). Free port goods are:

- Property acquired in or imported into Texas to be forwarded outside of Texas;
- Property detained in Texas for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property; and
- Property transported outside of Texas no later than one hundred and seventy-five (175) days after the date the person acquired or imported the property into Texas, or if applicable, a later date established by the governing body of a political subdivision in Texas.

(Texas Const. art. 8, § i-j and TX St. Tax Code § 11.253).

A person is also entitled to an exemption from ad valorem property tax levied on tangible personal property, including business inventory, if the property is held or used for the production of income and has a taxable value of less than \$500. (TX St. Tax Code § 11.145).

**SUMMARY OF PROPOSAL #2**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Tax Credit or Deduction; Ad Valorem Personal Property Tax Paid on Business Inventory**

**Summary of Proposal for Consideration**

To create an individual income or corporate income tax credit or deduction to offset the ad valorem personal property tax paid on business inventory, effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Arkansas Assessment Coordination Department (ACD), Arkansas collected an estimated seventy million two hundred ten thousand dollars (\$70,210,000) from ad valorem property tax levied on business inventory based on collections from 2016. According to the Department of Finance and Administration (DFA), depending on the nature of a tax credit or deduction to offset the ad valorem personal property tax paid on business inventory, such a tax credit or deduction may result in an estimated loss of general revenues of up to seventy million two hundred ten thousand dollars (\$70,210,000) based on collections from 2016.

**Legal Analysis**

***Background***

Arkansas currently does not provide an individual income or corporate income tax credit to offset the ad valorem personal property tax paid on business inventory. However, under Arkansas Code § 26-51-416, business inventory taxes paid by a business are an allowable deduction part of the taxes paid by a business. This provision was created by ACT 118 of 1929 and has not been amended since.

***Potential Legal Issues***

None.

***Other States***

- Iowa: Iowa does not levy ad valorem property tax on business inventory. (IA St. 427A.2)
- Louisiana: Louisiana levies ad valorem property tax on business inventory. Louisiana provides an income tax deduction for taxes paid on business inventory. (LA St. § 47:55). Louisiana also provides a tax credit against ad valorem property tax paid to political subdivisions on business inventory held by manufacturers, distributors, and retailers. (LA St. § 47:6006). For corporations that are eligible for the tax credit, the tax credit may be applied against corporate income tax liability

or corporate franchise tax liability, or both. For unincorporated persons the tax credit may be applied against state personal income tax liability. If the amount of the credit exceeds the amount of tax liability for the tax year, the excess credit may either be refunded or may be carried forward as a credit against subsequent Louisiana tax liability. Whether a taxpayer will receive a credit or refund, or both, will depend on the amount of ad valorem property taxes paid by the taxpayer to all political subdivisions and whether the business entity was formed after April 15, 2016. (LA St. § 47:6006(B)(3)).

For the purposes of this tax credit, business inventory includes goods or commodities that are in the course of production or awaiting sale, including without limitation the merchandise of a retail or wholesale concern, the finished goods of a manufacturer, and the commodities from farms, mines, and quarries; raw materials and supplies that will be consumed in a manufacturing process in Louisiana; and personal property that is available for short-term rental and will ultimately be sold. (LA St. § 47:6006). However, some items are not considered business inventory for the purpose of this credit, including without limitation oil stored in tanks held by a producer before the first sale of the oil, items that have been subject to use by the taxpayer when owned for more than eighteen (18) months, and items that are otherwise exempt from ad valorem property tax under the Constitution of Louisiana, including goods, commodities, or personal property stored in the state for use in interstate commerce. (LA St. § 47:6006).

Finally, the authority or district charged with economic development of each parish is authorized to enter into contracts to exempt parish, municipal, and special ad valorem property tax on goods held as inventory by distribution centers. However, before entering into a contract, the economic development authority or district must request and receive written approval to exempt business inventory from ad valorem property tax from each affected tax recipient body in the parish. (LA Const. art. 7, § 21(I)).

- Mississippi: Mississippi levies ad valorem property tax on business inventory. Mississippi allows an income tax deduction for taxes paid for business inventory. (MS St. § 27-7-17). Mississippi also provides a nonrefundable tax credit on the amount of ad valorem property tax paid by any manufacturer, distributor, wholesaler, or retail merchant on business inventory, including commodities, raw materials, works-in-process, products, goods, wares, and merchandise held for resale. This business inventory tax credit is applied against the income tax owed by a manufacturer, distributor, wholesaler, or retail merchant. The business inventory tax credit is also available for individuals, firms, or corporations for ad valorem property tax paid on rental equipment. Any tax credit claimed but not used in a taxable year may be carried forward for five (5) consecutive years. For taxpayers that are owners of a partnership, limited liability company, or S corporation, the credit may be applied only against the income tax liability attributable to the income that the taxpayer received directly from the partnership, limited liability company, or S corporation. The tax credit is the lesser of the amount of ad valorem property

tax paid or the amount of income tax due to the state of Mississippi. (MS St. § 27-7-22.5).

- Missouri: Missouri does not levy ad valorem property tax on business inventory.
- Oklahoma: Oklahoma levies ad valorem property tax on business inventory. Oklahoma does not provide a tax credit for the ad valorem property tax paid on business inventory. According to the Oklahoma Tax Commission, Oklahoma's adjusted gross income is based on and conforms to federal gross adjusted income. As such, Oklahoma allows for an income tax deduction for taxes paid on ad valorem property tax on business inventory in the same manner as and consistent with federal tax law. Federal law permits deductions for taxes paid on state and local taxes, including ad valorem personal property taxes under 26 U.S.C. § 164; however, individuals are limited to deducting up to ten thousand dollars (\$10,000) of state and local taxes.
- Tennessee: Tennessee, generally, does not levy ad valorem property tax on business inventory. Businesses subject to the Tennessee Business Tax Act are exempt from ad valorem property tax on business inventory. (TN St. §§ 67-4-701 and 67-5-901). Tennessee does not levy a corporate income tax and only levies individual income tax on dividends and interest income, so Tennessee does not offer a tax credit or deduction against corporate income tax or individual income tax for taxes paid on business inventory.
- Texas: Texas levies ad valorem property tax on business inventory. (TX St. Tax Code § 31.081). Texas does not levy a tax on individual or corporate income, so Texas does not offer a tax credit or deduction against corporate income tax or individual income tax for taxes paid on business inventory.



**SUMMARY OF PROPOSAL #3**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Corporate Franchise Tax**

**Summary of Proposal for Consideration**

To repeal the Arkansas corporate franchise tax under Arkansas Code § 26-54-101 et seq., effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Arkansas Secretary of State, the following chart provides an overview of the corporate franchise tax collections since 2009:<sup>1</sup>

2009 - \$22.8 million	2012 - \$23.1 million	2015 - \$26.3 million
2010 - \$24.0 million	2013 - \$26.5 million	2016 - \$25.6 million
2011 - \$23.2 million	2014 - \$25.8 million	2017 - \$26.1 million

Under Arkansas Code § 26-54-113(b), the first eight million dollars (\$8,000,000) of revenues collected under the corporate franchise tax are deposited into general revenues, and the remaining revenues are deposited to the credit of the Educational Adequacy Trust Fund.

According to the Arkansas Secretary of State, it is anticipated that collections from the franchise tax will exceed thirty million dollars (\$30,000,000) in fiscal year 2018. Repeal of the corporate franchise tax may result in an estimated loss of eight million dollars (\$8,000,000) in general revenues and a loss of twenty-two million dollars (\$22,000,000) in revenues for the Educational Adequacy Trust Fund, based on the Secretary of State's estimated revenue amounts for fiscal year 2018.

**Legal Analysis**

***Background***

The Arkansas Secretary of State is responsible for the collection and administration of Arkansas's corporate franchise tax. Companies who conduct business in Arkansas are required to pay the corporate franchise tax on an annual basis. The following chart provided by the Arkansas Secretary of State<sup>2</sup> lists the current corporate franchise tax rates under Arkansas Code § 26-54-104:

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<sup>1</sup> Source: Arkansas Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/franchise-tax/>

<sup>2</sup> Source: Arkansas Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/franchise-tax/>

Franchise Tax Type	Current Rate
Corporation/Bank with Stock	0.3% of the outstanding capital stock; \$150 minimum
Corporation/Bank without Stock	\$300 annual fee
Limited Liability Company	\$150 annual fee
Insurance Corporation Legal Reserve Mutual, Assets Less Than \$100 million	\$300 annual fee
Insurance Corporation Legal Reserve Mutual, Assets Greater Than \$100 million	\$400 annual fee
Insurance Company Outstanding Capital Stock Less Than \$500,000	\$300 annual fee
Insurance Company Outstanding Capital Stock Greater Than \$500,000	\$400 annual fee
Mortgage Loan Corporation	0.3% of the outstanding capital stock; \$300 minimum
Mutual Assessment Insurance Corporation	\$300 annual fee

ACT 443 of 1907 created the first corporate franchise tax, which was an annual tax of either ten dollars (\$10.00), twenty-five dollars (\$25.00), fifty dollars (\$50.00), or one hundred dollars (\$100), depending on the amount of the corporation's authorized capital stock.

ACT 260 of 1909 added an annual corporate franchise tax of one hundred dollars (\$100) for corporations with more than one million dollars (\$1,000,000) in authorized stock. The act further added an annual franchise tax of fifty dollars (\$50.00) for corporations without any authorized stock. The act also exempted fraternal orders that write insurance and any agricultural corporation organized only for agricultural purposes from the annual corporate franchise tax.

ACT 112 of 1911 repealed Act 260 of 1909 and established a new system for the corporate franchise tax. The act required each corporation to pay an annual corporate franchise tax of five hundredths percent (0.05%) on outstanding capital stock for property owned and used in business transacted in Arkansas. The act also required an annual tax between twenty dollars (\$20.00) and one hundred dollars (\$100), depending on the type of corporation.

ACT 85 of 1917 amended the corporate franchise tax to impose a tax of one-tenth percent (0.1%) on the part of a domestic or foreign corporation's outstanding capital stock employed in Arkansas.

ACT 278 of 1923 levied an annual corporate franchise tax of ten dollars (\$10.00) on mortgage loan companies that have capital stock of ten thousand dollars (\$10,000) or less employed in Arkansas.

ACT 236 of 1925 required foreign corporations doing business in Arkansas to pay the same corporate franchise tax as domestic corporations and added an annual corporate franchise tax for

legal reserve mutual insurance companies. The act also increased the corporate franchise tax for mutual assessment corporations and building and loan associations.

ACT 271 of 1925 increased the corporate franchise tax on outstanding capital stock to eleven hundredths percent (0.11%).

ACT 220 of 1931 required a domestic corporation doing business entirely outside of Arkansas to pay an annual corporate franchise tax of five dollars (\$5.00).

ACT 304 of 1953 raised the annual corporate franchise tax on insurance companies and mortgage loan companies. The act also required corporations in the process of liquidation to pay a tax of eleven hundredths percent (0.11%) of the value of their real and tangible personal property in Arkansas, and it required mortgage loan companies and corporations in the process of liquidation to pay a minimum tax of eleven dollars (\$11.00).

ACT 889 of 1979 created the Arkansas Corporate Franchise Tax Act of 1979. The act defined "corporation" to mean any corporation that is organized under the laws of Arkansas. However, the act exempted non-profit organizations, corporations exempt from federal income tax, and organizations formed under the Uniform Partnership Act or the Uniform Limited Partnership Act from the corporate franchise tax. The act retained the existing tax structure but increased the tax on insurance companies and legal reserve mutual insurance companies. The act also levied a tax of twenty-five dollars (\$25.00) to one hundred dollars (\$100) on non-insurance corporations without capital stock based on the value of the assets held by the corporation. These provisions are codified under Arkansas Code § 26-54-102.

ACT 863 of 1983 increased the minimum annual corporate franchise tax to seventeen dollars (\$17.00).

ACT 19 of 1987 removed the Commissioner of Revenues of the State as the administrator of the corporate franchise tax and made the Secretary of State the administrator of the corporate franchise tax.

ACT 29 of 1987 (1st Ex. Sess.) established a maximum corporate franchise tax of one million seventy-five thousand dollars (\$1,075,000) and raised the rate of the corporate franchise tax to twenty-seven hundredths percent (0.27%) on corporations with outstanding capital stock and corporations in the process of liquidation. The act also established a minimum tax of one hundred dollars (\$100) for mortgage loan companies. The act required corporations that are not legal reserve mutual insurance corporations, mutual assessment insurance corporations, or mortgage loan corporations, without authorized capital stock, to pay a tax of one hundred dollars (\$100). The minimum corporate franchise tax was also raised to fifty dollars (\$50.00).

ACT 1285 of 1993 added an additional levy of three dollars (\$3.00) for each corporation to pay under the annual corporate franchise tax. The revenues from this levy were designated as special revenues credited to the Signature Imaging System Fund. The act also increased the franchise tax on mutual assessment insurance corporations to one hundred dollars (\$100).

ACT 479 of 1997 required organizations formed under to the Small Business Entity Tax Pass Through Act to pay the minimum annual corporate franchise tax.

ACT 1104 of 1997 provided that the special revenues received by the three-dollar levy would be credited to the Voter Registration Signature Imaging System.

ACT 94 of 2003 (2nd Ex. Sess.) repealed the three-dollar levy and created the corporate franchise tax rates that are currently in use. This act also eliminated the maximum amount of annual corporate franchise tax and provided that the first eight million dollars (\$8,000,000) of revenues collected under the corporate franchise tax would be placed into general revenues, and the remaining revenues would be credited to the Educational Adequacy Trust Fund. The corporate franchise tax has not been amended since.

### ***Potential Legal Issues***

Under Arkansas Constitution, art. 14, § 1, and as held by the court in *Lake View School District No. 25 v. Huckabee*, 91 S.W.3d (2002), the State of Arkansas is required to provide an equal opportunity for an adequate education for all students. The majority of the funds received by the corporate franchise tax are used to fund the Educational Adequacy Trust Fund, which is used to help ensure compliance with the educational adequacy requirements of the Arkansas Constitution and Lake View. Repeal of the corporate franchise tax would reduce the funding available for educational adequacy.

### ***Other States***

- Iowa: Iowa imposes a franchise tax on financial institutions for the privilege of doing business in Iowa, regardless of how the financial institution is treated under federal law. (IA St. §§ 422.60(1) and 422.61(3)(g), and Iowa Admin. Code § 701-59.21). To calculate the financial institution's franchise tax, the financial institution multiplies its net taxable income in Iowa by five percent (5%). (IA St. § 422.63).
- Louisiana: Louisiana imposes a franchise tax on every domestic and foreign corporation conducting business in Louisiana. Louisiana's annual franchise tax is levied at a rate of one dollar and fifty cents (\$1.50) for each one thousand dollars (\$1,000) on the first three hundred thousand dollars (\$300,000) of taxable capital and at a rate of three dollars (\$3.00) for each one thousand dollars (\$1,000) on taxable capital that exceeds three hundred thousand dollars (\$300,000). (LA St. § 47:601). Taxable capital includes the amount of a corporation's issued and outstanding capital stock, surplus, and undivided profits.

Louisiana allows holding corporations that hold at least eighty percent (80%) of the stock or voting power of a banking subsidiary or a public water utility subsidiary, domestic corporations that hold at least eighty percent (80%) of a subsidiary, and public utility holding corporations to deduct investments and advances made to a subsidiary from its taxable capital. Any corporation in a controlled group that has a telephone corporation regulated by the Louisiana Public Service Commission as

a member of the group is also permitted to deduct investments made to any member of the controlled group from its taxable capital. (LA St. § 47:602).

Louisiana law also exempts several types of corporations from the franchise tax, including without limitation labor unions, certain agricultural corporations, fraternal beneficiary societies, nonprofit and charitable organizations, insurance corporations paying a premium tax, and teachers' retirement fund associations. (LA St. § 47:608).

- Mississippi: Mississippi imposes a franchise tax on corporations for the privilege of doing business in the State of Mississippi. Mississippi's franchise tax is due annually as long as the corporation remains incorporated, domesticated, or continues to do business in Mississippi. However, Mississippi's franchise tax is being systematically reduced and beginning January 1, 2028, Mississippi will no longer have a franchise tax. (MS St. §§ 27-13-5 and 27-13-7).

However, for 2018, Mississippi's franchise tax is levied at the rate of two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of the value of the capital used, invested, or employed in Mississippi. Mississippi also has a minimum franchise tax of twenty-five dollars (\$25.00). For 2019, Mississippi's franchise tax will be levied at the rate of two dollars and twenty-five cents (\$2.25) per one thousand dollars (\$1,000) in excess of one hundred thousand dollars (\$100,000) of the value of capital used, invested, or employed in Mississippi. (MS St. §§ 27-13-5 and 27-13-7). When determining the value of the capital subject to the franchise tax, the amount of capital cannot be less than the assessed value of the real estate and tangible personal property in Mississippi from the preceding year. (MS. St. § 27-13-9).

Mississippi also exempts several types of organizations from the Mississippi franchise tax, including without limitation a corporation that has negotiated a fee in lieu of franchise tax payments, approved business enterprises as defined in Mississippi's Growth and Prosperity Act, clean energy generation enterprises, aerospace enterprises, fraternal beneficiary societies, nonprofit and charitable organizations, insurance companies regulated by the Commissioner of Insurance, state, county, or community fair associations, and corporations whose sole function is to own and operate a grammar school, junior high school, high school, or military school within Mississippi. (MS St. §§ 27-13-5(3), 27-13-7(3), and 27-13-63).

- Missouri: Missouri repealed its corporate franchise tax beginning on January 1, 2016. (Mo St. § 147.010(5)).
- Oklahoma: Oklahoma imposes an annual corporate franchise tax on all corporations that do business in Oklahoma. (68 OK St. § 1201). Every domestic and foreign corporation, association, joint-stock company, and business trust is assessed an annual corporate franchise tax of one dollar and twenty-five cents (\$1.25) for each one thousand dollars (\$1,000) of capital invested or used in

Oklahoma. (68 OK St. §§ 1203 and 1204). If the amount of franchise tax is two hundred and fifty dollars (\$250) or less, no franchise tax is due, and the maximum franchise tax due is twenty thousand dollars (\$20,000). (68 OK St. § 1205). However, the franchise tax will not apply during the fiscal year where a corporation, association, or organization has paid an incorporating, filing, or qualifying fee to the Oklahoma Secretary of State. (68 OK St. § 1207).

The franchise tax also does not apply to savings and loan associations; small business investment companies licensed under the Federal Small Business Act of 1958; credit unions; trust companies; real estate trusts operating under the Federal Real Estate Trust Act of 1960; insurance companies, including surety and bond companies; retirement or pension funds; savings banks and savings fund societies; and nonprofit organizations. (68 OK St. § 1206).

- Tennessee: Tennessee imposes a franchise tax on any person, taxpayer, or corporate franchise doing business in Tennessee and having a substantial nexus in Tennessee. (TN St. § 67-4-2104). Substantial nexus means that the taxpayer has a direct or indirect connection to the state such that the taxpayer can be legally required to pay the franchise tax. (TN St. § 67-4-2004(49)). A direct or indirect connection to the state includes without limitation the taxpayer being organized or commercially domiciled in the state, the taxpayer owning or using capital in the state, or the taxpayer having systematic and continuous business activity in the state that has produced gross receipts attributable to customers in the state. (TN St. 67-4-2004(49)). Doing business in the state is any activity that a person purposely engages in within Tennessee with the objective to gain or benefit from the activity in Tennessee. (TN St.67-4-2004(14)(A)). Financial institutions with assets above five million dollars (\$5,000,000) in Tennessee are presumed to be doing business in the state and to be subject to the franchise tax; however, such institutions may challenge this presumption. (TN St. § 67-4-2105(d)(1)). Financial institutions may be exempt from the franchise tax if the only property the entity owns in Tennessee relates to an interest in property, security, or other similar assets in Tennessee. (TN St. § 67-4-2105).

The franchise tax is levied at a rate of twenty-five cents (25¢) per one hundred dollars (\$100) of the greater of a taxpayer's net worth at the close of the tax year or the value of real and tangible property owned or used in Tennessee, excluding exempt inventory and exempt required capital investments. (TN St. §§ 67-4-2106 and 67-4-2108). Tennessee has a minimum franchise tax of one hundred dollars (\$100). (TN St. § 67-4-2119).

Tennessee exempts several types of businesses from the franchise tax, including without limitation:

- Any corporation organized under the laws of Tennessee with the sole purpose of furthering industrial development throughout the state;

- Corporations organized for the purpose of erecting, owning, or operating a common meeting place for more than one (1) Masonic lodge, more than one (1) Lodge of Odd Fellows, or similar lodges, except on income received by such corporations as rentals for use for commercial purposes;
- Federal credit unions and credit unions organized under the laws of other taxing jurisdictions;
- Limited liability companies where at least two-thirds (2/3) of the activities of the company are organized for farming and personal residences; and
- Family owned non-corporate entities created for the production of passive income.

(TN St. §§ 67-4-2008 and 67-4-2105(a)).

- Texas: Texas imposes a franchise tax on entities formed in Texas or doing business in Texas. (TX St. Tax Code §§ 171.001 and 171.0002). The entities subject to the tax include corporations, certain limited liability companies, banks, state limited banking associations, savings and loan associations, S corporations, certain professional corporations, partnerships (not including general partnerships or certain passive entities), certain trusts, professional associations, business associations, joint ventures, and other legal entities. (TX St. Tax Code § 171.0002). An additional franchise tax is imposed on a taxable entity that is no longer subject to the franchise tax, which is equal to the appropriate rate of the franchise tax of the taxable entity's taxable margin determined by the date the previous franchise tax was imposed and the date the entity is no longer subject to the franchise tax. (TX St. Tax Code § 171.0011(b)).

The rate of the franchise tax is seventy-five hundredths percent (0.75%) of the taxpayers taxable margin or a rate of three hundred seventy-five thousandths percent (0.375%) for taxable entities primarily engaged in retail or wholesale trade. (TX St. Tax Code § 171.002). A taxable entity with total revenue that is not more than twenty million dollars (\$20,000,000) may elect to pay a franchise tax that is three hundred thirty-one thousandths percent (0.331%) of the entities taxable margin; however, the entity will not be permitted to take a credit, deduction, or other adjustment against franchise tax liability. (TX St. Tax Code § 171.1016).

Several types of businesses are exempt from the franchise tax, including without limitation:

- An insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in Texas that is required to pay an annual tax measured by its gross premium receipts;
- A farm mutual, local mutual aid association, and burial association;
- A corporation organized as a railway terminal corporation and having no annual net income;
- A corporation engaged solely in the business of manufacturing, selling, or installing solar energy devices;
- A nonprofit organization;

- A marketing association incorporated under the Texas Agricultural Code;
  - A housing finance corporation incorporated under the Texas Housing Finance Corporations Act;
  - A hospital laundry cooperative association;
  - A credit union organized and existing under the laws of Texas;
  - An electric cooperative corporation;
  - A telephone cooperative corporation;
  - A corporation engaged solely in the business of recycling sludge; and
  - A political subdivision corporation.
- (TX St. Tax Code §§ 171.052 – 171.088).

**SUMMARY OF PROPOSAL #4**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Tax Deduction or Tax Credit to Offset the Arkansas Corporate Franchise Tax**

**Summary of Proposal for Consideration**

To implement a tax deduction or tax credit to be taken against Arkansas individual income tax liability or corporate income tax liability to offset payments made under the Arkansas corporate franchise tax, Arkansas Code § 26-54-101 et seq., effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Arkansas Secretary of State, the following chart provides an overview of the corporate franchise tax collections since 2009:<sup>1</sup>

2009 - \$22.8 million	2012 - \$23.1 million	2015 - \$26.3 million
2010 - \$24.0 million	2013 - \$26.5 million	2016 - \$25.6 million
2011 - \$23.2 million	2014 - \$25.8 million	2017 - \$26.1 million

Under Arkansas Code § 26-54-113(b), the first eight million dollars (\$8,000,000) of revenues collected under the corporate franchise tax are deposited into general revenues, and the remaining revenues are deposited to the credit of the Educational Adequacy Trust Fund.

According to the Arkansas Secretary of State, it is anticipated that collections from the franchise tax will exceed thirty million dollars (\$30,000,000) in fiscal year 2018. According to the Department of Finance and Administration (DFA), depending on the nature of a tax credit or deduction to offset the ad valorem personal property tax paid on business inventory, such a tax credit or deduction may result in an estimated loss of general revenues of approximately thirty million dollars (\$30,000,000), based on the Secretary of State's estimated revenue amounts for fiscal year 2018.

**Legal Analysis**

***Background***

Arkansas does not currently provide a tax credit or deduction against Arkansas individual income tax liability or corporate income tax liability to offset payments made under the Arkansas corporate franchise tax. However, under Arkansas Code § 26-51-416, Arkansas allows a deduction from income tax for franchise taxes paid by the taxpayer. The deduction was created by ACT 118 of 1929 and has not been amended since.

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<sup>1</sup> Source: Arkansas Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/franchise-tax/>

### *Potential Legal Issues*

None.

### *Other States*

- Iowa: Iowa imposes a franchise tax on financial institutions for the privilege of doing business in Iowa, regardless of how the financial institution is treated under federal law. (IA St. §§ 422.60(1), § 422.61(3)(g), and Iowa Admin. Code § 701-59.21). If the financial institution pays individual income tax or corporate income tax, the financial institution may receive a credit against the tax liability of the financial institution for individual income tax or corporate income tax on the amount the institution paid under the franchise tax. (IA St. §§ 422.11 and 422.33(8)). The franchise tax can also be reduced by several tax credits, including without limitation the alternative minimum tax credit, the historic preservation and cultural and entertainment district tax credit, the investment tax credit, the endow Iowa tax credit, the wind energy production and renewable energy tax credit, the Iowa fund of funds tax credit, and the redevelopment tax credit. (IA St. § 422.60).
- Louisiana: Louisiana imposes a franchise tax on every domestic and foreign corporation conducting business in Louisiana. (LA St. § 47:601). Louisiana provides a deduction on corporate and individual income tax for taxes paid under the franchise tax. (LA St. § 47:55). Louisiana also provides several tax credits that may be used to offset tax liability under the franchise tax, including without limitation the Atchafalaya trace tax credit, the previously unemployed tax credit, the recycling tax credit, the basic skills training tax credit, the inventory tax credit, and the research and development tax credit. (LA St. §§ 25:1226.4, 47:6004, 47:6005, 47:6006, 47:6009, and 47:6015).
- Mississippi: Mississippi imposes a franchise tax on corporations for the privilege of doing business in the State of Mississippi. Mississippi's franchise tax is due annually as long as the corporation remains incorporated, domesticated, or continues to do business in Mississippi. (MS St. §§ 27-13-5 and 27-13-7). Mississippi does not provide a credit for the franchise tax. However, Mississippi allows for an income tax deduction taxes for paid under the franchise tax. (MS St. § 27-7-17).
- Missouri: Missouri repealed its corporate franchise tax beginning on January 1, 2016. (MO St. § 147.010(5)).
- Oklahoma: Oklahoma imposes an annual corporate franchise tax on all corporations that do business in Oklahoma. (68 OK St. § 1201). Oklahoma does not provide a credit or deduction for taxes paid under the franchise tax.

- Tennessee: Tennessee imposes a franchise tax on any person, taxpayer, or corporate franchise doing business in Tennessee and having a substantial nexus in Tennessee. Examples of a substantial nexus in Tennessee, include without limitation maintaining an office in the state, regularly selling products and or services in the state, and owning or leasing property located in the state. (TN St. §§ 67-4-2104 and § 67-4-2105). Tennessee also provides several tax credits against franchise tax liability, including without limitation:
  - A tax credit on the purchase price of industrial machinery, where the percentage of the tax credit is based on the amount of capital investment made by the company;
  - A job tax credit, including an additional enhanced job tax credit, for businesses meeting certain requirements where the credit is equal to four thousand five hundred dollars (\$4,500) for each qualified job created during the investment period;
  - A job tax credit for employees with disabilities, where the credit is five thousand dollars (\$5,000) for each full-time employee and two thousand dollars (\$2,000) for each part-time employee;
  - A credit on a portion of a qualified headquarters facility's relocation expenses and investments;
  - A credit for a financial institution that makes investments to an eligible housing entity;
  - A credit for a qualified taxpayer that has established its international, national, or regional headquarters in the state; and
  - A credit on fifteen percent (15%) of the qualified expenses incurred by a qualified production company that has established a headquarters facility in Tennessee.

(TN St. §§ 67-4-2009 and 67-4-2109).

Tennessee does not impose a corporate income tax and levies a limited individual income tax only on interest and dividend income, so there are no individual or corporate income tax credits or deductions offered for franchise taxes paid.

- Texas: Texas imposes a franchise tax on entities formed in Texas or doing business in Texas. (TX St. Tax Code § 171.001). Texas also provides three (3) tax credits against the franchise tax:
  - A tax credit for a clean energy project to provide a tax credit equal to the lesser of either ten percent (10%) of the total capital cost of the project or one hundred million dollars (\$100,000,000) (TX ST. Tax Code § 171.602);
  - A tax credit for certain research and development activities based on a certain percentage depending on the nature of the research or development activities. The default rate is a credit that equals five percent (5%) on the difference between qualified research expenses incurred by the entity and fifty percent (50%) of the average amount of qualified research expenses incurred during the three (3) preceding tax years. However, alternative rates

are applicable to different types of research and development activities (TX ST. Tax Code § 171.654); and

- A tax credit for rehabilitation of certified historic structures up to twenty-five percent (25%) of the total eligible costs and expenses incurred in the rehabilitation of a certified historic structure. (TX ST. Tax Code § 171.905).

Texas does not impose an individual income tax or corporate income tax, so there are no individual or corporate income tax credits or deductions offered for franchise taxes paid.

**SUMMARY OF PROPOSAL #5**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Corporate Franchise Tax**

**Summary of Proposal for Consideration**

To reduce the rate of the Arkansas corporate franchise tax from three-tenths percent (0.3%) to one-tenth percent (0.1%) under Arkansas Code § 26-54-104 for corporations, banks, and mortgage loan corporations with outstanding capital stock, effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Arkansas Secretary of State, the following chart provides an overview of the corporate franchise tax collections since 2009:<sup>1</sup>

2009 - \$22.8 million	2012 - \$23.1 million	2015 - \$26.3 million
2010 - \$24.0 million	2013 - \$26.5 million	2016 - \$25.6 million
2011 - \$23.2 million	2014 - \$25.8 million	2017 - \$26.1 million

Under Arkansas Code § 26-54-113(b), the first eight million dollars (\$8,000,000) of revenues collected under the corporate franchise tax are deposited into general revenues and the remaining revenues are deposited to the credit of the Educational Adequacy Trust Fund.

According to the Arkansas Secretary of State, lowering the rate of the corporate franchise tax from three-tenths percent (0.3%) to one-tenth percent (0.1%) for corporations, banks, and mortgage loan corporations with outstanding capital stock would result in an anticipated loss of one million six hundred twenty thousand dollars (\$1,620,000) in revenues, based on the Secretary of State's estimated revenue amounts for fiscal year 2018. This loss would affect only the amount distributed to the Educational Adequacy Trust Fund.

**Legal Analysis**

***Background***

The Arkansas Secretary of State is responsible for the collection and administration of Arkansas's corporate franchise tax. Companies who conduct business in Arkansas are required to pay the corporate franchise tax on an annual basis. The following chart provided by the Arkansas Secretary of State<sup>2</sup> lists the current corporate franchise tax rates under Arkansas Code § 26-54-104:

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<sup>1</sup> Source: Arkansas Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/franchise-tax/>

<sup>2</sup> Source: Arkansas Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/franchise-tax/>

Franchise Tax Type	Current Rate
Corporation/Bank with Stock	0.3% of the outstanding capital stock; \$150 minimum
Corporation/Bank without Stock	\$300 annual fee
Limited Liability Company	\$150 annual fee
Insurance Corporation Legal Reserve Mutual, Assets Less Than \$100 million	\$300 annual fee
Insurance Corporation Legal Reserve Mutual, Assets Greater Than \$100 million	\$400 annual fee
Insurance Company Outstanding Capital Stock Less Than \$500,000	\$300 annual fee
Insurance Company Outstanding Capital Stock Greater Than \$500,000	\$400 annual fee
Mortgage Loan Corporation	0.3% of the outstanding capital stock; \$300 minimum
Mutual Assessment Insurance Corporation	\$300 annual fee

ACT 443 of 1907 created the first corporate franchise tax, which was an annual tax of either ten dollars (\$10.00), twenty-five dollars (\$25.00), fifty dollars (\$50.00), or one hundred dollars (\$100), depending on the amount of the corporation's authorized capital stock.

ACT 260 of 1909 added an annual corporate franchise tax of one hundred dollars (\$100) for corporations with more than one million dollars (\$1,000,000) in authorized stock. The act further added an annual franchise tax of fifty dollars (\$50.00) for corporations without any authorized stock. The act also exempted fraternal orders that write insurance and any agricultural corporation organized only for agricultural purposes from the annual corporate franchise tax.

ACT 112 of 1911 repealed Act 260 of 1909 and established a new system for the corporate franchise tax. The act required each corporation to pay an annual corporate franchise tax of five hundredths percent (0.05%) on outstanding capital stock for property owned and used in business transacted in Arkansas. The act also required an annual tax between twenty dollars (\$20.00) and one hundred dollars (\$100), depending on the type of corporation.

ACT 85 of 1917 amended the corporate franchise tax to impose a tax of one-tenth percent (0.1%) on the part of a domestic or foreign corporation's outstanding capital stock employed in Arkansas.

ACT 278 of 1923 levied an annual corporate franchise tax of ten dollars (\$10.00) on mortgage loan companies that have capital stock of ten thousand dollars (\$10,000) or less employed in Arkansas.

ACT 236 of 1925 required foreign corporations doing business in Arkansas to pay the same corporate franchise tax as domestic corporations and added an annual corporate franchise tax for legal reserve mutual insurance companies. The act also increased the corporate franchise tax for mutual assessment corporations and building and loan associations.

ACT 271 of 1925 increased the corporate franchise tax on outstanding capital stock to eleven hundredths percent (0.11%).

ACT 220 of 1931 required a domestic corporation doing business entirely outside of Arkansas to pay an annual corporate franchise tax of five dollars (\$5.00).

ACT 304 of 1953 raised the annual corporate franchise tax on insurance companies and mortgage loan companies. The act also required corporations in the process of liquidation to pay a tax of eleven hundredths percent (0.11%) of the value of their real and tangible personal property in Arkansas, and it required mortgage loan companies and corporations in the process of liquidation to pay a minimum tax of eleven dollars (\$11.00).

ACT 889 of 1979 created the Arkansas Corporate Franchise Tax Act of 1979. The act defined "corporation" to mean any corporation that is organized under the laws of Arkansas. However, the act exempted non-profit organizations, corporations exempt from federal income tax, and organizations formed under the Uniform Partnership Act or the Uniform Limited Partnership Act from the corporate franchise tax. The act retained the existing tax structure but increased the tax on insurance companies and legal reserve mutual insurance companies. The act also levied a tax of twenty-five dollars (\$25.00) to one hundred dollars (\$100) on non-insurance corporations without capital stock based on the value of the assets held by the corporation. These provisions are codified under Arkansas Code § 26-54-102.

ACT 863 of 1983 increased the minimum annual corporate franchise tax to seventeen dollars (\$17.00).

ACT 19 of 1987 removed the Commissioner of Revenues of the State as the administrator of the corporate franchise tax and made the Secretary of State the administrator of the corporate franchise tax.

ACT 29 of 1987 (1st Ex. Sess.) established a maximum corporate franchise tax of one million seventy-five thousand dollars (\$1,075,000) and raised the rate of the corporate franchise tax to twenty-seven hundredths percent (0.27%) on corporations with outstanding capital stock and corporations in the process of liquidation. The act also established a minimum tax of one hundred dollars (\$100) for mortgage loan companies. The act required corporations that are not legal reserve mutual insurance corporations, mutual assessment insurance corporations, or mortgage loan corporations, without authorized capital stock, to pay a tax of one hundred dollars (\$100). The minimum corporate franchise tax was also raised to fifty dollars (\$50.00).

ACT 1285 of 1993 added an additional levy of three dollars (\$3.00) for each corporation to pay under the annual corporate franchise tax. The revenues from this levy were designated as

special revenues credited to the Signature Imaging System Fund. The act also increased the franchise tax on mutual assessment insurance corporations to one hundred dollars (\$100).

ACT 479 of 1997 required organizations formed under to the Small Business Entity Tax Pass Through Act to pay the minimum annual corporate franchise tax.

ACT 1104 of 1997 provided that the special revenues received by the three-dollar levy would be credited to the Voter Registration Signature Imaging System.

ACT 94 of 2003 (2nd Ex. Sess.) repealed the three-dollar levy and created the corporate franchise tax rates that are currently in use. This act also eliminated the maximum amount of annual corporate franchise tax and provided that the first eight million dollars (\$8,000,000) of revenues collected under the corporate franchise tax would be placed into general revenues, and the remaining revenues would be credited to the Educational Adequacy Trust Fund. The corporate franchise tax has not been amended since.

### ***Potential Legal Issues***

Under Arkansas Constitution, art. 14, § 1, and as held by the court in *Lake View School District No. 25 v. Huckabee*, 91 S.W.3d (2002), the State of Arkansas is required to provide an equal opportunity for an adequate education for all students. The majority of the funds received by the corporate franchise tax are used to fund the Educational Adequacy Trust Fund which is used to help ensure compliance with the Arkansas Constitution and the requirements of *Lake View*. Reducing the rate of the corporate franchise tax would result in a decrease in the revenues collected and credited to the Educational Adequacy Trust Fund, which could raise issues concerning the Arkansas Constitution and the requirements of *Lake View*.

### ***Other States***

- Iowa: Iowa imposes a franchise tax on financial institutions for the privilege of doing business in Iowa, regardless of how the financial institution is treated under federal law. (IA St. §§ 422.60(1) and 422.61(3)(g), and Iowa Admin. Code § 701-59.21). To calculate the financial institution's franchise tax, the financial institution multiplies its net taxable income in Iowa by five percent (5%). (IA St. § 422.63).
- Louisiana: Louisiana imposes a franchise tax on every domestic and foreign corporation conducting business in Louisiana. Louisiana's annual franchise tax is levied at a rate of one dollar and fifty cents (\$1.50) for each one thousand dollars (\$1,000) on the first three hundred thousand dollars (\$300,000) of taxable capital and at a rate of three dollars (\$3.00) for each one thousand dollars (\$1,000) on taxable capital that exceeds three hundred thousand dollars (\$300,000). (LA St. § 47:601). Taxable capital includes the amount of a corporation's issued and outstanding capital stock, surplus, and undivided profits.

Louisiana allows holding corporations that hold at least eighty percent (80%) of the stock or voting power of a banking subsidiary or a public water utility subsidiary,

domestic corporations that hold at least eighty percent (80%) of a subsidiary, and public utility holding corporations to deduct investments and advances made to a subsidiary from its taxable capital. Any corporation in a controlled group that has a telephone corporation regulated by the Louisiana Public Service Commission as a member of the group is also permitted to deduct investments made to any member of the controlled group from its taxable capital. (LA St. § 47:602).

Louisiana law also exempts several types of corporations from the franchise tax, including without limitation labor unions, certain agricultural corporations, fraternal beneficiary societies, nonprofit and charitable organizations, insurance corporations paying a premium tax, and teachers' retirement fund associations. (LA St. § 47:608).

- Mississippi: Mississippi imposes a franchise tax on corporations for the privilege of doing business in the State of Mississippi. Mississippi's franchise tax is due annually as long as the corporation remains incorporated, domesticated, or continues to do business in Mississippi. However, Mississippi's franchise tax is being systematically reduced and beginning January 1, 2028, Mississippi will no longer have a franchise tax. (MS St. §§ 27-13-5 and 27-13-7).

However, for 2018, Mississippi's franchise tax is levied at the rate of two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of the value of the capital used, invested, or employed in Mississippi. Mississippi also has a minimum franchise tax of twenty-five dollars (\$25.00). For 2019, Mississippi's franchise tax will be levied at the rate of two dollars and twenty-five cents (\$2.25) per one thousand dollars (\$1,000) in excess of one hundred thousand dollars (\$100,000) of the value of capital used, invested, or employed in Mississippi. (MS St. §§ 27-13-5 and 27-13-7). When determining the value of the capital subject to the franchise tax, the amount of capital cannot be less than the assessed value of the real estate and tangible personal property in Mississippi from the preceding year. (MS. St. § 27-13-9).

Mississippi also exempts several types of organizations from the Mississippi franchise tax, including without limitation a corporation that has negotiated a fee in lieu of franchise tax payments, approved business enterprises as defined in Mississippi's Growth and Prosperity Act, clean energy generation enterprises, aerospace enterprises, fraternal beneficiary societies, nonprofit and charitable organizations, insurance companies regulated by the Commissioner of Insurance, state, county, or community fair associations, and corporations whose sole function is to own and operate a grammar school, junior high school, high school, or military school within Mississippi. (MS St. §§ 27-13-5(3), 27-13-7(3), and 27-13-63).

- Missouri: Missouri repealed its corporate franchise tax beginning on January 1, 2016. (Mo St. § 147.010(5)).

- Oklahoma: Oklahoma imposes an annual corporate franchise tax on all corporations that do business in Oklahoma. (68 OK St. § 1201). Every domestic and foreign corporation, association, joint-stock company, and business trust is assessed an annual corporate franchise tax of one dollar and twenty-five cents (\$1.25) for each one thousand dollars (\$1,000) of capital invested or used in Oklahoma. (68 OK St. §§ 1203 and 1204). If the amount of franchise tax is two hundred and fifty dollars (\$250) or less, no franchise tax is due, and the maximum franchise tax due is twenty thousand dollars (\$20,000). (68 OK St. § 1205). However, the franchise tax will not apply during the fiscal year where a corporation, association, or organization has paid an incorporating, filing, or qualifying fee to the Oklahoma Secretary of State. (68 OK St. § 1207).

The franchise tax also does not apply to savings and loan associations; small business investment companies licensed under the Federal Small Business Act of 1958; credit unions; trust companies; real estate trusts operating under the Federal Real Estate Trust Act of 1960; insurance companies, including surety and bond companies; retirement or pension funds; savings banks and savings fund societies; and nonprofit organizations. (68 OK St. § 1206).

- Tennessee: Tennessee imposes a franchise tax on any person, taxpayer, or corporate franchise doing business in Tennessee and having a substantial nexus in Tennessee. (TN St. § 67-4-2104). Substantial nexus means that the taxpayer has a direct or indirect connection to the state such that the taxpayer can be legally required to pay the franchise tax. (TN St. § 67-4-2004(49)). A direct or indirect connection to the state includes without limitation the taxpayer being organized or commercially domiciled in the state, the taxpayer owning or using capital in the state, or the taxpayer having systematic and continuous business activity in the state that has produced gross receipts attributable to customers in the state. (TN St. 67-4-2004(49)). Doing business in the state is any activity that a person purposely engages in within Tennessee with the objective to gain or benefit from the activity in Tennessee. (TN St.67-4-2004(14)(A)). Financial institutions with assets above five million dollars (\$5,000,000) in Tennessee are presumed to be doing business in the state and to be subject to the franchise tax; however, such institutions may challenge this presumption. (TN St. § 67-4-2105(d)(1)). Financial institutions may be exempt from the franchise tax if the only property the entity owns in Tennessee relates to an interest in property, security, or other similar assets in Tennessee. (TN St. § 67-4-2105).

The franchise tax is levied at a rate of twenty-five cents (25¢) per one hundred dollars (\$100) of the greater of a taxpayer's net worth at the close of the tax year or the value of real and tangible property owned or used in Tennessee, excluding exempt inventory and exempt required capital investments. (TN St. §§ 67-4-2106 and 67-4-2108). Tennessee has a minimum franchise tax of one hundred dollars (\$100). (TN St. § 67-4-2119).

Tennessee exempts several types of businesses from the franchise tax, including without limitation:

- Any corporation organized under the laws of Tennessee with the sole purpose of furthering industrial development throughout the state;
- Corporations organized for the purpose of erecting, owning, or operating a common meeting place for more than one (1) Masonic lodge, more than one (1) Lodge of Odd Fellows, or similar lodges, except on income received by such corporations as rentals for use for commercial purposes;
- Federal credit unions and credit unions organized under the laws of other taxing jurisdictions;
- Limited liability companies where at least two-thirds (2/3) of the activities of the company are organized for farming and personal residences; and
- Family owned non-corporate entities created for the production of passive income.

(TN St. §§ 67-4-2008 and 67-4-2105(a)).

- Texas: Texas imposes a franchise tax on entities formed in Texas or doing business in Texas. (TX St. Tax Code §§ 171.001 and 171.0002). The entities subject to the tax include corporations, certain limited liability companies, banks, state limited banking associations, savings and loan associations, S corporations, certain professional corporations, partnerships (not including general partnerships or certain passive entities), certain trusts, professional associations, business associations, joint ventures, and other legal entities. (TX St. Tax Code § 171.0002). An additional franchise tax is imposed on a taxable entity that is no longer subject to the franchise tax, which is equal to the appropriate rate of the franchise tax of the taxable entity's taxable margin determined by the date the previous franchise tax was imposed and the date the entity is no longer subject to the franchise tax. (TX St. Tax Code § 171.0011(b)).

The rate of the franchise tax is seventy-five hundredths percent (0.75%) of the taxpayers taxable margin or a rate of three hundred seventy-five thousandths percent (0.375%) for taxable entities primarily engaged in retail or wholesale trade. (TX St. Tax Code § 171.002). A taxable entity with total revenue that is not more than twenty million dollars (\$20,000,000) may elect to pay a franchise tax that is three hundred thirty-one thousandths percent (0.331%) of the entities taxable margin; however, the entity will not be permitted to take a credit, deduction, or other adjustment against franchise tax liability. (TX St. Tax Code § 171.1016).

Several types of businesses are exempt from the franchise tax, including without limitation:

- An insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in Texas that is required to pay an annual tax measured by its gross premium receipts;
- A farm mutual, local mutual aid association, and burial association;

- A corporation organized as a railway terminal corporation and having no annual net income;
  - A corporation engaged solely in the business of manufacturing, selling, or installing solar energy devices;
  - A nonprofit organization;
  - A marketing association incorporated under the Texas Agricultural Code;
  - A housing finance corporation incorporated under the Texas Housing Finance Corporations Act;
  - A hospital laundry cooperative association;
  - A credit union organized and existing under the laws of Texas;
  - An electric cooperative corporation;
  - A telephone cooperative corporation;
  - A corporation engaged solely in the business of recycling sludge; and
  - A political subdivision corporation.
- (TX St. Tax Code §§ 171.052 – 171.088).

**SUMMARY OF PROPOSAL #6**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Ad Valorem Property Tax Assessment Guidelines**

**Summary of Proposal for Consideration**

To amend Arkansas law to create uniform and transparent statewide guidelines for assessing property that is exempt from ad valorem taxation, effective for assessment years beginning January 1, 2019.

**Fiscal Analysis**

The Department of Finance and Administration is unable to provide a fiscal or administrative impact on this proposal.

**Legal Analysis**

***Background***

The Assessment Coordination Department (ACD) is the state department charged with supervising the valuation, assessment, and equalization of all property for ad valorem property tax purposes in Arkansas, except utility property. ACD is also charged with overseeing the assessors, equalization boards, and tax collectors to ensure that all assessments of property are conducted in substantial compliance with Arkansas law. Ark. Code Ann. §§ 26-24-101 et seq. and 26-26-1901 et seq. Accordingly, ACD is charged with the following duties, among others, related to ensuring a uniform assessment of property for ad valorem property tax in Arkansas:

- Prepare and furnish real and personal property assessment guidelines for use by assessors and equalization boards;
- Prescribe appraisal, assessment, and record forms for use by county assessors throughout Arkansas; and
- Confer with, advise, and assist county assessors and equalization boards.

Arkansas Constitution, Article 16, § 5, states that all property subject to taxation is to be taxed according to its value and that no species of property from which a tax is collected is to be taxed higher than another species of property of equal value. Arkansas Constitution, Article 16, § 5, also provides ad valorem property tax exemptions for the following types of property: property used exclusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes; and buildings and grounds and materials used exclusively for public charity. There is also a limited exemption from ad valorem property tax on all capital invested in a textile mill for the manufacture of cotton and fiber goods under Arkansas Constitution, Amendment 12.

Arkansas Code § 26-3-301 et seq. – Property Exempt from Taxes

Arkansas Code § 26-3-301 clarifies which types of property are exempt from ad valorem property tax under Arkansas Constitution, Article 16, § 5, as follows:

- Public school buildings and buildings used exclusively for public worship and not leased or otherwise used with a view to profit;
- All public institutions of higher learning and all buildings;
- All lands used exclusively as graveyards or grounds for burying the dead, except those held by any person, company, or corporation with a view to profit;
- All property belonging exclusively to Arkansas, including property of Arkansas state agencies, institutions, boards, or commissions, or the United States;
- All property belonging exclusively to any county of this state;
- All lands, houses, and other buildings belonging to any county, city, or town used exclusively for the accommodation of the poor;
- All buildings belonging to institutions of purely public charity not leased or otherwise used with a view to profit;
- All fire engines and other implements used for the extinguishment of fires and the buildings used exclusively for the safekeeping of the fire engines and other implements used for the extinguishment of fires;
- All market houses, public squares, other public grounds, town and city houses or halls owned and used exclusively for public purposes, and all works, machinery, and fixtures belonging to any town and used exclusively for conveying water to the town;
- Public property that is being used exclusively for public purposes and may be reserved for use by any person or organization;
- All property owned by the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses when the houses are used for the sole purpose of occupancy and use and enjoyment by students on the property and not leased or otherwise used with a view to profit; and
- All dedicated church property, including the church building used as a place of worship, buildings used for administrative or missional purposes, the land upon which the church buildings are located, all church parsonages, any church educational building operated in connection with the church, including a family life or activity center, a recreation center, a youth center, a church association building, a day care center, a kindergarten, or a private church school is exempt from ad valorem property taxes. In the event any property is used partially for church purposes and partially for investments or other commercial or business purposes, the entire property is exempt from the ad valorem property tax.

ACT 114 of 1883 provided guidance relating to the list of property exemptions under Arkansas Constitution, Article 16, § 5, by stating that certain types of property are exempt from ad valorem property tax.

ACT 74 of 1929 codified Arkansas Constitution, Amendment 12 providing an ad valorem property exemption for property used exclusively in the business of manufacturing textile goods. This provision is codified under Arkansas Code § 26-3-304.

ACT 139 of 1945 added an exemption from all taxes on real property, except improvement district taxes, for parsonages owned by churches and used as homes for pastors. This provision is codified under Arkansas Code § 26-3-303.

ACT 252 of 1953 further clarified the exemptions under Arkansas Constitution, Article 16, § 5, by adding the provision concerning the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses. This provision is codified under Arkansas Code § 26-3-301(11).

ACT 332 of 1983 provided the ad valorem tax exemption for waterworks systems owned by nonprofit property owners associations as public property used for public purposes. This provision is codified under Arkansas Code § 26-3-305.

ACT 627 of 1987 clarified the ad valorem tax exemptions under Arkansas Code § 26-3-301 for public institutions of higher learning and property belonging exclusively to the state.

ACT 1040 of 1987 required churches to list for assessment and pay ad valorem property tax on all real or personal property used for business, commercial, investment, or purposes other than church purposes. This provision is codified under Arkansas Code § 26-3-206. The act also added the ad valorem tax exemption for dedicated church property under Arkansas Code § 26-3-301.

ACT 961 of 1991 added the ad valorem tax exemption for property owned by the State Highway Commission or the Arkansas Department of Transportation as public property used exclusively for public purposes. This provision is codified under Arkansas Code § 26-3-307.

ACT 669 of 1995 added the ad valorem tax exemption under Arkansas Code § 26-3-301(10) for public property that may be reserved for use by any person or organization and that is being used exclusively for public purposes.

ACT 1281 of 2005 added the ad valorem tax exemption under Arkansas Code § 26-3-301(5) for all property belonging exclusively to a county of Arkansas.

ACT 827 of 2007 provided a technical correction to Arkansas Code § 26-3-301(1) to provide that public school buildings and buildings, rather than public school houses, used exclusively for public worship are exempt from ad valorem property tax.

The provisions under Arkansas Code § 26-3-301 have not been amended since.

#### Arkansas Code § 26-26-1001 – List of Exempt Real Property

Arkansas Code § 26-26-1001 provides specific instructions to the county assessors as it relates to listing exempt property from ad valorem property taxation. Specifically, the law requires

that the county assessor, at the time of making the assessment of real property subject to taxation, create a list describing all exempt property and the circumstances by which property is exempt from ad valorem property tax. The law further provides that, if the property is held and used for other public purposes, the county assessor must state who holds the property or how the property is held.

This provision was created by ACT 114 of 1883, and ACT 336 of 1997 made a technical correction to the language of the law. This provision has not been amended since.

#### Arkansas Code § 26-26-1113 – Property Used for Other than Church Purposes

Arkansas Code § 26-26-1113 requires a church or its governing official or board to annually list for assessment all property that is not exempt from ad valorem property tax. ACD is required to promulgate reasonable rules, regulations, and guidelines (upon request) for the various county assessors when listing nonexempt property for assessment. These provisions were created by ACT 1404 of 1987 and have not been amended since.

#### Arkansas Code § 26-26-1901 et seq. – Uniform System of Property Assessment

ACT 1185 of 1999 was enacted to promote a uniform system of real property assessment within each county of the state. One of the act's objectives was to establish and promote a uniform system of real property assessment within each county. ACD was tasked with developing and implementing rules relating to reappraisal procedures to create a uniform system of property assessment. The provisions under this act have been periodically amended to create new provisions relating to the appraisal and reappraisal of property and was last amended in 2013.

#### ***Potential Legal Issues***

There are a few provisions of the Arkansas Constitution that may be relevant to the establishment of guidelines and procedures for assessing exempt property. Arkansas Constitution, Amendment 59, amended Article 16, § 5, to authorize the General Assembly to establish methods and procedures to value property for taxation purposes by a three-fourths (3/4) vote of both houses. Article 16, § 6, states that exemptions from ad valorem property tax are void unless provided for under the Arkansas Constitution. If the General Assembly provides statutory guidelines that establish methods and procedures to value property, those guidelines would require a three-fourths (3/4) vote of both houses. Additionally, if the statutory guidelines create new property tax exemptions by going beyond the scope of the exemptions found in the constitution, such property tax exemptions will require a constitutional amendment.

#### ***Other States***

- Iowa: In Iowa, every county in the state of Iowa has an office of assessor that performs the assessment and appraisal of property. (IA St. §§ 441.1 and 441.18). However, the Iowa Department of Revenue directly assists local governments in making property tax assessments fair and in compliance with the law. (IA St. § 421.17). The department does not collect property taxes. Instead, the role of the

department as it relates to the assessment of property tax includes without limitation issuing equalization orders, providing technical assistance and educational programs for assessors and members of the boards of review, issuing regulations, supervising assessor offices and the boards of review, and creating an appraisal manual that each county shall use to assess and value property. (IA St. § 421.17). Each county assessor is required to determine the assessment value that would be assigned to property that is exempt from property tax and provide a summary report to the department and the local board of review. (IA St. 427.1(18)). The department is required to notify the assessor and each member of the conference board if the department discovers that a city or county assessor is not in compliance with the rules and appraisal manual provided by the department for assessing property. (IA St. § 441.21(i)(1)).

Iowa also provides detailed statutory definitions of property that are exempt from ad valorem property tax in Iowa. (IA ST. § 427.1).

- Louisiana: In Louisiana, the Louisiana Tax Commission is charged with administering and enforcing all laws related to the state supervision of local property tax assessments and the assessment of public service properties. (LA St. § 47:1831). The commission is also charged with measuring the level of appraisals and the degree of uniformity of assessments for each major class and type of property in each parish in the state. (LA St. § 47:1837(B)).

In order to promote compliance with the requirements of the laws of Louisiana, the commission is charged with issuing, amending, and revising rules and regulations containing minimum standards of assessment and appraisal. The commission is also charged with creating and requiring the use of all forms necessary for the effective administration of property tax laws, creating guidebooks for use by local assessors that describe the rules and regulations related to property assessment, creating appraisal manuals, reference bulletins, and digests of property tax laws, and developing, maintaining, and enforcing a uniform statewide system for the preparation of assessment lists, tax rolls, and all other necessary forms. (LA St. § 47:1837(D)). The commission may also conduct or sponsor in-service, pre-entry, and intern training programs in conjunction with the Louisiana Assessors' Association on the technical, legal, and administrative aspects of the assessment process. (LA St. § 47:1837(F)).

Louisiana has created a statewide ad valorem tax assessment database, and all parishes are required to participate in the database program. Among other information, the database includes the location of the assessed property, the assessed valuation of land, the amount of homestead exemption on a property, and the classification of the assessed property. Additionally, the database includes information concerning whether the property is exempt from ad valorem property tax. (LA St. § 47:1837.1).

Finally, Louisiana provides a detailed list of property exemptions under both its constitution and by statute. (LA Const. art. 7, § 21, and LA St. §§ 47:1701 – 47:1708).

- Mississippi: In Mississippi, the Department of Revenue is responsible for conferring with and advising assessing officers, boards of supervisors, and other county officers as to their duties relative to ad valorem tax assessment and advising assessors and county boards regarding the collection, filing, and preservation of data relative to matters of assessment. (MS St. § 27-3-31(k)). The department is charged with investigating and ascertaining what property, if any, is escaping taxation or assessment. (MS St. § 27-3-39). The department is also required under Mississippi law to visit each county and to become familiar with the character and values of the classes of property within each county of the state. When visiting each county, the department must investigate the work and methods adopted by the board of supervisors and county tax assessors and determine whether existing laws are defective or improperly or negligently administered. (MS St. § 27-3-51). The department is also tasked with investigating all matters of taxation and making recommendations to the legislature at each regular session regarding what changes and alterations to the tax laws would create a better, equitable, adequate, just, and thorough system of taxation and valuation of property. (MS St. § 27-3-49).

Mississippi also provides a detailed list of property exemptions by statute, which provides a more detailed explanation of what types of property are exempt under Mississippi law. (MS. St. §§ 27-31-1 – 27-31-50).

- Missouri: In Missouri, each county assessor's work is subject to review by the County Board of Equalization and the State Tax Commission. The commission is the state agency charged with general supervision of the assessors and with enforcing property tax laws. (MO St. § 138.410). The commission is also charged with creating forms and providing instructions to each county clerk regarding the assessment of property and providing opinions and advice on questions related to the assessment of property. (MO St. § 138.320). At least once a year, a member of the commission is required to visit each county and inquire about the methods of assessment and taxation used by the county to ensure compliance with the law. (MO St. § 138.415). The commission has the authority to investigate the tax laws of other states and countries, to formulate and submit to the legislature such recommendations as the commission may deem expedient to prevent evasions of property tax assessment and Missouri property tax laws, to promote equal and uniform taxes, and improve the system of assessment and taxation. (MO St. § 138.380(4)). The Director of Revenue has no authority over the commission. (MO St. § 138.190).

The Missouri Constitution provides for several types of property that are exempt from ad valorem property tax. (MO Const. art. 10, § 6). Missouri also provides a detailed list of property exemptions by statute. (MO St. §§ 137.100 – § 137.101).

- Oklahoma: In Oklahoma, the Ad Valorem Division of the Oklahoma Tax Commission has the authority and duty to:
  - Confer with and assist county assessors and county boards of equalization in the performance of their duties so that all assessments of property are just and uniform and real property and tangible personal property is assessed at its fair cash value;
  - Conduct training schools, institutes, conferences, and meetings for the purpose of improving the qualifications of county assessors and their deputies;
  - Prescribe forms for the county assessors to use during the assessment procedure, including property classification and appraisal forms;
  - Prepare and furnish to county assessors an assessors' manual, which includes information relating to the valuation methodologies for property;
  - Recommend rules to the commission establishing uniform procedures and standards for the appraisal of real property by county assessors; and
  - Promptly notify county assessors, county treasurers and members of county excise and equalization boards of any changes to the laws relating to ad valorem property tax.

(68 OK St. § 2875).

Any county assessor may request special assistance from the commission when valuing property that requires specialized knowledge that is not available to the assessor's staff. (68 OK St. § 2824). Additionally, the commission is required to create rules, regulations, and guidelines for the general guidance and assistance of county assessors. Each assessor is required to value property according to the standards established by the commission or by law. (68 OK St. § 2825). Each county assessor must use only the forms prescribed or approved by the division and comply with the rules and guidelines adopted by the commission. (68 OK St. § 2875). Finally, the commission is required to monitor the progress of valuation in each county and establish guidelines for determining when an assessment is out of compliance with the law or rules governing the valuation of taxable property. (68 OK St. § 2830).

The Oklahoma Constitution provides property tax exemptions for certain types of property. (OK Const. art. 10, § 6). Oklahoma also provides a detailed statutory list of property that is exempt from ad valorem property tax. (68 OK St. § 2887).

- Tennessee: In Tennessee there is a Division of Property Assessments in the Office of the Comptroller of the Treasury that oversees ad valorem property tax assessment. (TN St. § 67-1-201). The division, subject to the policies, rules, and regulations adopted by the Board of Equalization, has the following duties:
  - Supervise and direct all reappraisals and revaluation programs;
  - Prescribe rules and regulations that relate to the administration of the duties of assessors of property;

- Prepare and furnish forms that are required to be used by the assessors;
- Assist the board in the preparation of an assessment manual or manuals for the appraisal, classification, and assessment of property for use by local assessors in making their assessments of particular classes or parcels of property;
- Assist the board in conducting the educational and training courses for state and local assessing officials;
- Effect the assessment of all property in the state in accordance with the state constitution and all statutory provisions; and
- Require that counties and other taxing jurisdictions take the steps necessary to assure that reappraisal and revaluation programs are maintained and updated in accordance with the instructions, policies, rules, and regulations adopted by the board.

(TN St. § 67-1-202).

The division, under the direction and supervision of the board, develops methods and procedures to assist and guide local assessors of property in officially administering the annual assessment process. (TN St. § 67-1-205).

Tennessee also provides detailed statutory descriptions of properties that are exempt from ad valorem property tax. (TN St. §§ 67-5-201 – 67-5-227).

- Texas: In Texas, the Comptroller is required to adopt rules establishing minimum standards for the administration and operation of an appraisal district, including the minimum standards and the kinds of property the district is responsible for appraising. (TX St. Tax Code § 5.03). The comptroller is responsible for setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors. (TX St. Tax Code § 5.04). The comptroller may prepare and issue publications relating to the appraisal of property and the administration of taxes, or he or she may approve other publications relating to those matters for use in the administration of property taxes, including appraisal manuals, an annotated version of the laws regarding property tax, and a handbook containing select laws and rules promulgated by the comptroller relating to property tax and its administration. (TX St. Tax Code § 5.05).

The comptroller is also responsible for prescribing the contents of all forms necessary for the administration of the property tax system and furnishing copies of model forms to the appropriate local officials upon request. (TX St. Tax Code § 5.07). Further, at least once every two (2) years, the comptroller must review the governance of each appraisal district and the operating and appraisal standards, procedures, and methodology used by each appraisal district to determine whether the appraisal district is complying with generally accepted standards, procedures, and methodology under Texas law. (TX St. Tax Code § 5.102(a)).

Texas requires that each appraisal district compile a list of taxable property in the state. (TX St. Tax Code § 25.01).

Texas also provides detailed statutory guidance relating to property that is exempt from ad valorem property tax. (TX St. Tax Code §§ 11.11 – 11.48).



**SUMMARY OF PROPOSAL #7**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Arkansas Assessment Coordination Department**

**Summary of Proposal for Consideration**

To amend Arkansas law to transfer the Assessment Coordination Department (ACD) into the Department of Finance and Administration (DFA), effective July 1, 2019.

**Fiscal Analysis**

DFA is unable to provide a fiscal or administrative impact on this proposal.

**Legal Analysis**

***Background***

ACD is the state department charged with supervising the valuation, assessment, and equalization of all property for ad valorem property tax purposes in Arkansas, except utility property. ACD is also charged with overseeing the assessors, equalization boards, and tax collectors to ensure that all assessments of property are conducted in substantial compliance with Arkansas law. Ark. Code Ann. §§ 26-24-101 et seq. and 26-26-1901 et seq. Accordingly, ACD is charged with the following duties, among others, related to ensuring a uniform assessment of property for ad valorem property tax in Arkansas:

- Prepare and furnish real and personal property assessment guidelines for use by assessors and equalization boards;
- Prescribe appraisal, assessment, and record forms for use by county assessors throughout Arkansas; and
- Confer with, advise, and assist county assessors and equalization boards.

ACT 436 of 1997 created ACD and transferred the Assessment Coordination Division of the Public Service Commission to ACD using a type 2 transfer.

Under Arkansas law, there are four (4) types of departmental transfers. Ark. Code Ann. §§ 25-2-104 – 107. The following provides a brief summary of the four types of departmental transfers:

**Type 1 Transfer (Ark. Code Ann. § 25-2-104)**

Under a type 1 transfer, the transferring department is transferred to a principal department. Upon the transfer, the transferred department is administered under the direction and supervision of the principal department, but the transferred department retains the same prescribed statutory powers, authorities, duties, and functions as it had before the transfer with the ability to exercise powers independently of the principal department. Following a type 1 transfer, the members of any statutory board or commission that is transferred to the principal department will continue to

serve and be selected for the terms provided to the board or commission as applicable by statute. Under a type 1 transfer, all budgeting, purchasing, and related management functions of any transferred department is performed by the transferred department under the direction and supervision of the head of the principal department.

Type 2 Transfer (Ark. Code Ann. § 25-2-105)

A type 2 transfer is a complete transfer of all powers of the transferred department to the principal department, but the transferred department is not abolished. Upon the transfer, all of the powers, duties, and functions are transferred to the head of the principal department. Following a type 2 transfer, the members of any statutory board or commission that is transferred will continue to serve and be selected for the terms provided to the board or commission as applicable by statute.

Type 3 Transfer (Ark. Code Ann. § 25-2-106)

A type 3 transfer abolishes the existing department and transfers the entirety of the transferring department to the principal department. A type 3 transfer transfers of all of the transferred department's powers, duties, and functions to the head of the principal department.

Type 4 Transfer (Ark. Code Ann. § 25-2-107)

A type 4 transfer allows a board or commission of a transferred department to retain its duties and functions while the department and its records, personnel, property, and funds are transferred to the principal department. Following a type 4 transfer, the members of any transferred statutory board or commission and their successors continue to be selected in the manner and serve for the terms provided by the statutes applicable to the board or commission.

***Potential Legal Issues***

None.

***Other States***

- Iowa: In Iowa, every county in the state of Iowa has an office of assessor that performs the assessment and appraisal of property. (IA St. §§ 441.1 and 441.18). However, the Iowa Department of Revenue directly assists local governments in making property tax assessments fair and in compliance with the law. (IA St. § 421.17). The department does not collect property taxes. Instead, the role of the department as it relates to the assessment of property tax includes without limitation issuing equalization orders, providing technical assistance and educational programs for assessors and members of the boards of review, issuing regulations, supervising assessor offices and the boards of review, and creating an appraisal manual that each county shall use to assess and value property. (IA St. § 421.17).
- Louisiana: In Louisiana, the Louisiana Tax Commission is charged with administering and enforcing all laws related to the state supervision of local

property tax assessments and the assessment of public service properties. (LA St. § 47:1831). The commission is also charged with measuring the level of appraisals and the degree of uniformity of assessments for each major class and type of property in each parish in the state. (LA St. § 47:1837(B)).

In order to promote compliance with the requirements of the laws of Louisiana, the commission is charged with issuing, amending, and revising rules and regulations containing minimum standards of assessment and appraisal. The commission is also charged with creating and requiring the use of all forms necessary for the effective administration of property tax laws, creating guidebooks for use by local assessors that describe the rules and regulations related to property assessment, creating appraisal manuals, reference bulletins, and digests of property tax laws, and developing, maintaining, and enforcing a uniform statewide system for the preparation of assessment lists, tax rolls, and all other necessary forms. (LA St. § 47:1837(D)). The commission may also conduct or sponsor in-service, pre-entry, and intern training programs in conjunction with the Louisiana Assessors' Association on the technical, legal, and administrative aspects of the assessment process. (LA St. § 47:1837(F)).

- Mississippi: In Mississippi, the Department of Revenue is responsible for conferring with and advising assessing officers, boards of supervisors, and other county officers as to their duties relative to ad valorem tax assessment and advising assessors and county boards regarding the collection, filing, and preservation of data relative to matters of assessment. (MS St. § 27-3-31(k)). The department is charged with investigating and ascertaining what property, if any, is escaping taxation or assessment. (MS St. § 27-3-39). The department is also required under Mississippi law to visit each county and to become familiar with the character and values of the classes of property within each county of the state, and to determine whether existing laws are defective, or improperly or negligently administered. When visiting each county, the department must investigate the work and methods adopted by the board of supervisors and county tax assessors and determine whether existing laws are defective, or improperly or negligently administered. (MS St. § 27-3-51). The department is also tasked with investigating all matters of taxation and making recommendations to the legislature at each regular session regarding what changes and alterations to the tax laws would create a better, equitable, adequate, just, and thorough system of taxation and valuation of property. (MS St. § 27-3-49).
- Missouri: In Missouri, each county assessor's work is subject to review by the County Board of Equalization and the State Tax Commission. The commission is the state agency charged with general supervision of the assessors and with enforcing property tax laws. (MO St. § 138.410). The commission is also charged with creating forms and providing instructions to each county clerk regarding the assessment of property and providing opinions and advice on questions related to the assessment of property. (MO St. § 138.320). At least once a year, a member of the commission is required to visit each county and inquire about the methods of

assessment and taxation used by the county to ensure compliance with the law. (MO St. § 138.415). The commission has the authority to investigate the tax laws of other states and countries, to formulate and submit to the legislature such recommendations as the commission may deem expedient to prevent evasions of property tax assessment and Missouri property tax laws, to promote equal and uniform taxes, and improve the system of assessment and taxation. (MO St. § 138.380(4)). The Director of Revenue has no authority over the commission. (MO St. § 138.190).

- Oklahoma: In Oklahoma, the Ad Valorem Division of the Oklahoma Tax Commission has the authority and duty to:
  - Confer with and assist county assessors and county boards of equalization in the performance of their duties so that all assessments of property are just and uniform and real property and tangible personal property is assessed at its fair cash value;
  - Conduct training schools, institutes, conferences, and meetings for the purpose of improving the qualifications of county assessors and their deputies;
  - Prescribe forms for the county assessors to use during the assessment procedure, including property classification and appraisal forms;
  - Prepare and furnish to county assessors an assessors' manual, which includes information relating to the valuation methodologies for property;
  - Recommend rules to the commission establishing uniform procedures and standards for the appraisal of real property by county assessors; and
  - Promptly notify county assessors, county treasurers and members of county excise and equalization boards of any changes to the laws relating to ad valorem property tax.

(68 OK St. § 2875).

Additionally, the commission is required to create rules, regulations, and guidelines for the general guidance and assistance of county assessors. (68 OK St. § 2825). Finally, the commission is required to monitor the progress of valuation in each county and establish guidelines for determining when an assessment is out of compliance with the law or rules governing the valuation of taxable property. (68 OK St. § 2830).

- Tennessee: In Tennessee there is a Division of Property Assessments in the Office of the Comptroller of the Treasury that oversees ad valorem property tax assessment. (TN St. § 67-1-201). The division, subject to the policies, rules, and regulations adopted by the Board of Equalization, has the following duties:
  - Supervise and direct all reappraisals and revaluation programs;
  - Prescribe rules and regulations that relate to the administration of the duties of assessors of property;
  - Prepare and furnish forms that are required to be used by the assessors;

- Assist the board in the preparation of an assessment manual or manuals for the appraisal, classification, and assessment of property for use by local assessors in making their assessments of particular classes or parcels of property;
- Assist the board in conducting the educational and training courses for state and local assessing officials;
- Effect the assessment of all property in the state in accordance with the state constitution and all statutory provisions; and
- Require that counties and other taxing jurisdictions take the steps necessary to assure that reappraisal and revaluation programs are maintained and updated in accordance with the instructions, policies, rules, and regulations adopted by the board.

(TN St. § 67-1-202).

The division, under the direction and supervision of the board, develops methods and procedures to assist and guide local assessors of property in officially administering the annual assessment process. (TN St. § 67-1-205).

- Texas: In Texas, the Comptroller is required to adopt rules establishing minimum standards for the administration and operation of an appraisal district, including the minimum standards and the kinds of property the district is responsible for appraising. (TX St. Tax Code § 5.03). The comptroller is responsible for setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors. (TX St. Tax Code § 5.04). The comptroller may prepare and issue publications relating to the appraisal of property and the administration of taxes, or he or she may approve other publications relating to those matters for use in the administration of property taxes, including appraisal manuals, an annotated version of the laws regarding property tax, and a handbook containing select laws and rules promulgated by the comptroller relating to property tax and its administration. (TX St. Tax Code § 5.05).

The comptroller is also responsible for prescribing the contents of all forms necessary for the administration of the property tax system and furnishing copies of model forms to the appropriate local officials upon request. (TX St. Tax Code § 5.07). Further, at least once every two (2) years, the comptroller must review the governance of each appraisal district and the operating and appraisal standards, procedures, and methodology used by each appraisal district to determine whether the appraisal district is complying with generally accepted standards, procedures, and methodology under Texas law. (TX St. Tax Code § 5.102(a)).



**SUMMARY OF PROPOSAL #8**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC:        Abatement of Ad Valorem Property Tax**

**Summary of Proposal for Consideration**

To amend Arkansas law regarding the payment in lieu of taxes (PILOT) program, under Arkansas Code §§ 14-164-703 and 14-164-704, or to create new provisions under Arkansas law to allow the Arkansas Economic Development Commission (AEDC) to enter into agreements with new businesses that are recruited to Arkansas to provide an abatement of up to one hundred percent (100%) of ad valorem property tax, effective for assessment years beginning January 1, 2019.

**Fiscal Analysis**

The Assessment Coordination Department, the Department of Finance and Administration, and AEDC are unable to provide a fiscal analysis for this proposal.

**Legal Analysis**

***Background***

Arkansas currently does not have a general abatement provision as proposed by this proposal, but there are some specific provisions that provide for a property tax abatement. Arkansas Constitution, Amendment 12, provides a tax abatement for all capital invested in a textile mill for the manufacture of cotton and fiber goods for a period of seven (7) years. Arkansas Constitution, Amendment 27, allows the Governor and the agency created to assist in industrial development to provide owners of a new manufacturing or processing establishment located in Arkansas an exemption from state ad valorem property taxation for a period not to exceed ten (10) years. However, Arkansas Constitution, Amendment 47 repealed the state ad valorem property tax in 1958.

Arkansas Constitution, Article 12, § 5, provides that a municipality, county, or municipal corporation may obtain or appropriate money for an entity or individual to finance economic development projects or provide economic development services. Municipalities and counties may also negotiate contracts for the sale or lease of industrial parks or other such properties. The General Assembly may only amend the provisions relating to the types of economic development projects and economic development services enumerated with a three-fourths (3/4) vote of each house.

Arkansas uses a PILOT program that allows certain industrial facilities to contract with municipalities, counties, or the Arkansas Development Finance Authority (ADFA) to agree to payments in lieu of the ad valorem property tax that would have been paid on the facility. Ark. Code Ann. § 14-164-701 et seq. The PILOT program is limited to existing and new industrial facilities owned by a municipality, county, or ADFA and financed with bonds issued under the Arkansas Municipalities and Counties Industrial Development Bond Law or the Arkansas

Development Finance Authority Bond Guaranty Act. Ark. Code Ann. § 14-164-201. Under the PILOT program, the property of the facility is owned by either the county, municipality, or ADFFA and then leased back to the private entity. Because the property is publically owned, the property is exempt from ad valorem property tax under Arkansas Constitution, Article 16, § 5. Under the PIOLT program, the private entity is then required to make certain payments in lieu of the taxes that would have been paid by the private entity absent the PILOT agreement. Ark. Code Ann. § 14-164-201.

If a PILOT agreement is reached, the payments made under the PILOT are distributed to the political subdivisions that would have received ad valorem tax payments in the proportion of the millage levied by each affected local political subdivision, unless otherwise agreed. Ark. Code Ann. § 14-164-703. The negotiated PILOT may not be less than thirty-five percent (35%) of the ad valorem property tax that would have been paid if the property were on the tax rolls, unless the Executive Director of AEDC and the Chief Fiscal Officer of the State approve a lesser amount. Ark. Code Ann. § 14-164-704(a)(1)(A). This means that unless otherwise approved by the Executive Director of AEDC and the Chief Fiscal Officer, property subject to a PILOT agreement may receive a property tax exemption of up to sixty-five percent (65%). Under the PILOT program, the interest of a lessee or a purchaser under contract of sale of industrial property financed through bond financing under the PILOT program is considered intangible property and exempt from ad valorem property tax. Ark. Code Ann. § 14-164-702(a).

ACT 497 of 1981 created the PILOT program codified under Arkansas Code § 14-164-701 et seq.

ACT 713 of 1991 amended Arkansas Code § 14-164-703 to allow affected school districts and other public bodies to agree on the distribution of payments in lieu of ad valorem tax under the PILOT program.

ACT 1629 of 2001 required any city or county that contracts or leases city or county property to a private for-profit entity under the PILOT program between July 1, 2001, and June 30, 2003, to require that the lessee make payments in lieu of property taxes of at least thirty-five percent (35%) of the taxes that would have been paid, unless the Director of AEDC and the Chief Fiscal Officer of the State approve a lesser amount of payment.

ACT 1289 of 2003 applied the requirements of ACT 1629 of 2001 to all PILOT agreements and provided guidelines detailing how the percentage of payments in lieu of tax may be determined. These provisions have not been amended since.

### ***Potential Legal Issues***

There are several constitutional issues that may need to be considered depending on the exact nature of the proposal to create an abatement program allowing AEDC to contract with newly recruited businesses to provide a one hundred percent (100%) abatement of ad valorem property tax.

First, Arkansas Constitution, Article 16, § 7, provides that the power to tax corporations and corporate property may not be surrendered or suspended by any contract or grant to which the State may be a party. If the proposed abatement program allowed the state to directly contract with corporate entities through AEDC to abate ad valorem property tax, such a contract may violate the provisions of Arkansas Constitution, Article 16, § 7. In order to create an abatement program, a constitutional amendment would be required to allow the state to enter into contracts to abate the ad valorem property tax that would be paid by a corporate entity.

Second, under Arkansas Constitution, Article 16, § 5, all real and tangible property subject to taxation must be taxed according to its value and taxed in an equal and uniform manner throughout the state. Additionally, a type of property may not be taxed at a higher amount than other property of the same type. Ark. Const. art. 16, § 5. If the abatement program created under this proposal allowed for State to tax similar corporate property at differing ad valorem property tax rates, such a proposal may require a constitutional amendment to overcome constitutional concerns regarding Article 16, § 5.

Finally, under Arkansas Constitution 16, § 6, property may not be exempt from ad valorem property tax unless the property tax exemption is provided by the Arkansas Constitution. If the scope of the abatement program under this proposal created ad valorem tax exemptions for certain types of property that went beyond the scope of the exemptions found in the constitution, such property tax exemptions would require a constitutional amendment.

#### *Other States*

- Iowa: Iowa has a constitutional provision that states that all property of corporations for pecuniary profit is subject to taxation in the same way as the property of individuals. (IA Const. art. 8, § 2). However, Iowa does not have a constitutional provision that explicitly prohibits property tax abatements or exemptions. Iowa does not have a state-based abatement program. Instead, Iowa has the following programs to provide an abatement of ad valorem property taxes for businesses at the municipal or county level:
  - Industrial real estate abatement program: A city council or a county board of supervisors may provide for an abatement of ad valorem property tax on the actual value added by new construction to industrial real estate, research-service facilities, warehouses, distribution centers, and the acquisition of or improvement to machinery and equipment assessed as real estate. (IA St. § 427B.1). Additionally, a cattle facility may also be eligible for the abatement. (IA St. § 427B.1). Unless the city council or county board adopts an alternative abatement schedule, the amount of the abatement is limited to a maximum of five (5) years and is reduced each year as follows:
    - First year: seventy five percent (75%) abatement;
    - Second year: sixty percent (60%) abatement;
    - Third year: forty percent (40%) abatement;
    - Fourth year: thirty percent (30%) abatement; and

- Fifth year: fifteen percent (15%) abatement. (IA St. § 427B.3).

- Urban revitalization property tax exemption program: Under the Iowa urban revitalization property tax exemption program, the governing body of a city or county may designate an area of a city or county as a revitalization area for rehabilitation, conservation, redevelopment, or economic development in the interest of the public health, safety, or welfare of the residents of the city or county. (IA St. §§ 404.1 and 404.2). All qualified real estate assessed as residential property is eligible to receive an exemption from ad valorem property tax on the actual value added by the improvements made to the property for a period up to ten (10) years. (IA St. § 404.3). A city or county may adopt a different tax exemption schedule; however, the schedule adopted may not allow for a greater exemption. (IA St. § 404.3). The standard exemption will apply to only the increased value of the qualified real estate that is located in the revitalization zone as follows:

- Year one: eighty percent (80%) exemption;
- Year two: seventy percent (70%) exemption;
- Year three: sixty percent (60%) exemption;
- Year four: fifty percent (50%) exemption;
- Year five: forty percent (40%) exemption;
- Year six: forty percent (40%) exemption;
- Year seven: thirty percent (30%) exemption;
- Year eight: thirty percent (30%) exemption;
- Year nine: twenty percent (20%) exemption; and
- Year ten: twenty percent (20%) exemption.

(IA St. § 404.3).

Additionally, all qualified real estate is eligible to receive a one hundred percent (100%) tax exemption of ad valorem property tax that is limited to the value added for improvements for a period not to exceed three (3) years. (IA St. § 404.3(3)). Finally, qualified real estate that is residential property or commercial or multi-residential property that has at least three (3) or more separate living quarters with at least seventy-five percent (75%) of the space used for residential purposes are eligible to receive a one hundred percent (100%) tax exemption from ad valorem property tax on the actual value added by improvements for a period up to ten (10) years. (IA St. § 404.3).

- Louisiana: Louisiana does not have a constitutional provision that prevents the creation of a state-based abatement program; however, the Louisiana Constitution states that all property is subject to taxation unless provided an exemption under the constitution. (LA Const. art. 7, § 21) Accordingly, Louisiana provides abatement programs at both the state and local level to provide an abatement of ad valorem property taxes for businesses as allowed by its constitution:

- Industrial tax abatement program: The Louisiana State Board of Commerce and Industry, with the approval of the Governor, may enter into contracts to exempt ad valorem property tax on a new manufacturing establishment or an addition to an existing manufacturing establishment for up to five (5) years. The exemption may be renewed for an additional five (5) years. However, land underlying the facility and other property pertaining to the facility on which ad valorem property taxes have previously been paid, inventories, consumables, and property eligible for the manufacturing exemption are not exempt from ad valorem property taxes. (LA Const. art. 7, § 21(F) and (L)).
- Restoration tax abatement program: The Louisiana State Board of Commerce and Industry, with the approval of the Governor and the local governing authority, may enter into contracts granting to a property owner who proposes to expand, restore, improve, or develop an existing structure or structures in a downtown, historic, or economic development district the right of a tax abatement for an initial term of five (5) years after completion of the work. Under this provision, the owner is required to pay ad valorem property tax based only on the assessed value of the property in the year before the commencement of the expansion, restoration, improvement, or development. Eligible contracts may be renewed for an additional period up to five (5) years. (LA Const. art. 7, § 21(H) and LA St. § 47:4313).
- Distribution centers: The authority or district charged with economic development may enter into contracts to exempt parish, municipal, and special ad valorem taxes of goods held in inventory by distribution centers from ad valorem property tax. However, all tax recipient bodies in the parish must concur in order to exempt goods held in inventory by a distribution center from ad valorem property tax. (LA Const. art. 7, § 21(I)).
- Mississippi: Mississippi has a constitutional provision stating that the power to tax corporations and their property may never be surrendered or abridged by any contract or grant to which the state or any political subdivision may be a party, except that the legislature may grant abatements of ad valorem property tax for up to ten (10) years to encourage manufacturers and other new enterprises of public utility. (MS Const. art. 7, § 182). Additionally, an ad valorem property tax abatement for up to ten (10) years may be granted for additions and expansions of existing manufacturers and other enterprises of public utility. (MS Const. art. 7, § 182). Under these constitutional provisions, Mississippi has created several programs at the state and local level that provide an abatement of ad valorem property taxes for businesses:
  - New factories and enterprises abatement program: County boards of supervisors and municipal authorities are authorized to grant an abatement of ad valorem property tax on certain new factories and enterprises,

including warehouse and distribution centers, manufacturing facilities, processors and refineries, research facilities, health care industry facilities, corporate regional and national headquarters, movie industry studios, air transportation and maintenance facilities, recreational facilities that impact tourism, data and information processing enterprises, technology intensive enterprises or facilities, and telecommunication enterprises. (MS St. § 27-31-101). However, the abatement does not apply to property tax for school district purposes, property tax assessed on products, automobiles or trucks, and ad valorem property taxes levied on the products of manufacturers or other new enterprises. (MS St. §§ 27-31-101 and 27-31-117). The ad valorem property tax abatement may be granted for up to ten (10) years and begins on the date the new factory or enterprise is completed. (MS St. § 27-31-101). An additional abatement up to ten (10) years also applies to additions to or expansions of the facilities or properties or replacements of equipment used in connection with the operation of the enterprise. (MS St. § 27-31-105). However, the abatement does not apply to property tax for school districts, property tax assessed on products, automobiles, or trucks, and ad valorem property taxes levied on the products of manufacturers or other new enterprises. (MS St. §§ 27-31-101 and 27-31-117).

Additionally, local governing authorities may enter into an agreement to grant a payment in lieu of ad valorem taxes for any new enterprise project with a minimum capital investment over sixty million dollars (\$60,000,000) or qualified business projects with a capital investment over one hundred million dollars (\$100,000,000). (MS St. § 27-31-104). However, the payment in lieu of tax agreements must be approved by the Mississippi Development Authority. (MS St. § 27-31-104). The minimum payment in lieu of tax cannot be less than one-third (1/3) of the property tax levy, including ad valorem taxes for school districts. (MS St. § 27-31-104). The payment in lieu of tax agreement will continue for a period up to thirty (30) years from the date of the agreement; however, no particular parcel of land, real property improvement, or item of tangible personal property may be subject to the payment in lieu of tax agreement for more than ten (10) years. (MS St. § 27-31-104). Under this program, the tax abatement also applies to gasworks, waterworks, and cooperative electrification associations but does not apply to railroads or expansions or replacements of railroads. (MS St. § 27-31-115).

Mississippi also has an abatement program for enhanced oil recovery project equipment. Under this program, pipelines, dehydrators, compressors and other appurtenant equipment that are used to facilitate the transportation of carbon dioxide (CO<sub>2</sub>) in connection with an enhanced oil recovery project in the State of Mississippi will receive an abatement on all ad valorem property tax, except for ad valorem property tax for school district purposes, for a period not to exceed ten (10) years from the date such pipelines and equipment are first placed into service. (MS St. § 27-31-102).

County boards of supervisors and municipal authorities in counties bordering on the Gulf of Mexico may also grant an abatement from ad valorem taxation, except taxes for school districts, on all tangible property used in the operation of hotels and motels, other than motor vehicles. The exemption may be granted by a county for up to five (5) years and may be granted by a municipality for up to ten (10) years. (MS St. § 27-31-103).

- Ad valorem tax exemption for growth and prosperity (GAP) areas: Mississippi allows counties and municipalities to provide an abatement on ad valorem property tax to encourage businesses to locate facilities and hire individuals in areas that have at least thirty percent (30%) of the population below the federal poverty level or have an unemployment rate that is two hundred percent (200%) of the state's average unemployment rate. An eligible business that constructs a new facility or expands an existing facility located in a GAP area can apply for an exemption from local ad valorem property tax for up to ten (10) years or until December 31, 2029, whichever occurs first. Local ad valorem property tax means any county or municipal ad valorem property tax, except taxes for school, fire, and police. The exemption from local ad valorem property tax is based on the business's real and personal property located in the GAP area. The abatement must be approved by the Mississippi Development Authority. (MS St. §§ 57-80-5, 57-80-7 and 57-80-9).
- Small business financing program: Mississippi also has a small business financing program for certain small businesses financed through bonds by the Mississippi Business Finance Corporation. (MS St. § 57-10-201 et seq.). However, the ad valorem tax abatement under the small business finance program is limited to a period up to ten (10) years, beginning on the day the project is completed. (MS St. § 57-10-255).
- Agricultural and industrial development program: Municipalities and counties may acquire certain agricultural and industrial development projects and lease the property back to the business entities involved in the agricultural and industrial development project by way of bond financing. The income, mortgages, leases, or purchase agreements and all purchases that are required to establish the business entity and financed by the bond proceeds authorized under the program are exempt from all ad valorem property tax except taxes for school districts. The tax exemption is limited to ten (10) years, beginning on the day the project is completed. (MS St. § 57-3-33).
- Major economic impact projects: A municipality or county may enter into an agreement to exempt certain ad valorem property taxes, except taxes for school districts, for a project that has a capital investment of at least seven hundred fifty million dollars (\$750,000,000) that will create at least three

thousand (3,000) jobs, an eligible automobile plant where construction begins between March 11, 2007, and December 1, 2007, and an eligible enterprise operating a major powertrain component manufacturing and assembly plant where construction begins between March 11, 2007, and December 1, 2007. (MS St. §§ 57-75-5 and 57-75-35). Requests by the enterprise to the governing authorities for an exemption for ad valorem property tax may be approved, in advance, for ten (10) years; however, agreements made by the governing authorities may provide an ad valorem property tax exemption for the enterprise for up to twenty (20) years. (MS St. § 57-75-35).

- Buildings in central business districts: A municipality may grant an abatement from ad valorem property tax on new structures, improvements, or renovations to existing structures located in a designated central business district for up to ten (10) years. The tax exemption does not apply to taxes for school districts. (MS St. § 27-31-31).
- Furniture marketing businesses: A county or municipality may either fully or partially exempt furniture facilities of a certain size that are primarily engaged in marketing or exhibiting furniture from ad valorem property taxes, except for taxes for school districts. The abatement is limited to a maximum of ten (10) years. (MS. St. § 27-31-47).
- Ad valorem tax exemption for broadband technology equipment: Mississippi allows for an ad valorem tax abatement for telecommunications businesses on the equipment used in the deployment of broadband technology. However, this abatement does not apply to companies organized to do business as commercial broadcast radio stations, television stations, and news organizations primarily serving in-state markets. The exemption applies only to equipment placed in service after June 30, 2003, and before July 1, 2020, and the exemption is for a period of ten (10) years after the date the equipment is placed in service. (MS St. § 57-87-7).
- Personal property in transit: Mississippi allows the governing bodies to exempt from ad valorem property taxes personal property that is moving in interstate commerce through or over the territory of Mississippi; consigned or transferred to a licensed free port warehouse within Mississippi for storage and transit to a final destination outside of Mississippi; manufactured in Mississippi and temporarily stored in separate facilities licensed as a free port warehouse pending transit to a final destination outside of Mississippi; or consigned or transferred to a licensed free port warehouse for storage pending transit to a location in the state for production or processing into a component or part that is then transported to a final destination outside of Mississippi. The exemption is effective the first calendar day of the taxable year, and the duration of the exemption is decided by the governing body. (MS St. § 27-31-53).

- Finally, to encourage manufacturers and other new enterprises of public utility to establish new facilities in Mississippi or expand existing facilities, the governing authority of a county or municipality may exempt all or any portion of the value of products, including finished goods, owned by a manufacturer or any distributor or wholesale merchant located in the county or municipality. (MS Const. art. 7, § 182 and MS St. § 27-31-7). However, this business inventory exemption may not exceed ten (10) years and does not apply to property taxes for school districts.
- Missouri: Missouri has a provision that prevents the state or any political subdivision from surrendering, suspending, or contracting away the power to tax, unless provided by the constitution. (MO Const. art. 10, § 2). However, the Missouri Constitution does allow the legislature to provide tax relief for the reconstruction, redevelopment, and rehabilitation of obsolete, decadent, or blighted areas, for periods not to exceed twenty-five years (25) years. (MO Const. art. 10, § 7). Although Missouri does not have a state-based abatement program, Missouri does have the following municipal and county based programs to provide an abatement of ad valorem property tax on businesses:
  - Enhanced enterprise zone program: The enhanced enterprise zone program encourages job creation and investment by providing state tax credits and local property tax abatement to new or expanding businesses that locate in an enhanced enterprise zone. Projects that qualify for the enhanced enterprise zone tax abatement may receive a standard abatement on ad valorem property tax of up to one hundred percent (100%) for improvements made to real property for a period of time determined by the agreement. Additionally, subsequent improvements to real property located in an enhanced enterprise zone or an enhanced business enterprise or warehouse will be exempt from at least one-half (1/2) of the ad valorem property taxes levied by the political subdivision for up to ten (10) years. Improvements to a speculative industrial enterprise will be exempt from at least one-half (1/2) of the ad valorem property taxes for up to two (2) years. (MO St. § 135.963).
  - Industrial development bonds: This program allows cities or counties to purchase or construct certain types of projects with bond proceeds and to lease or sell the project to a company. Eligible projects include the purchase, construction, extension, and improvement of warehouses, distribution facilities, and industrial plants, including buildings, fixtures, and machinery. Upon the approval of the city or county issuer, it may be possible to abate most of the real or personal property tax on new real estate improvements and new machinery financed by a qualified bond. To enact this procedure, the city or county must own the assets financed by the bonds, and an eligible company would lease the assets from the city or county for the term of the bonds. In effect, property tax is exempt by virtue of public ownership of the

property; however, the city or county may require that a portion of the payments otherwise due will be paid in the form of a payment in lieu of tax. The amount and term of abatement depends on the terms provided by the city or county issuer, as they have the discretion to abate any portion of ad valorem property tax. (MO St. §§ 100.010 - 100.200).<sup>1</sup>

Additionally, a real property abatement is also possible through enterprise zones, tax increment financing, the Brownfield Redevelopment Program, and Urban Redevelopment Corporations; however, these programs do not provide an abatement on personal property. Missouri Development Finance Board revenue bonds may provide an abatement from property taxes; however, the board will provide the abatement only if the affected local government requests it. (MO St. §§ 100.010 - 100.200).

- Urban redevelopment corporation program: The real property of an urban redevelopment corporation acquired by a political subdivision is exempt from the ad valorem property tax imposed by the state or any political subdivision for up to ten (10) years after the date the corporation became owner of the real property. Under this program, the amounts of tax assessments will not be increased during the exemption period so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of the city. A city or urban redevelopment corporation may agree by contract to impose payments in lieu of taxes and the political subdivisions will receive the revenue from the payments on a pro rata basis. (MO St. § 353.110).
- Real property improvements in enterprise zones: The governing body of a municipality may agree to an exemption for ad valorem property taxes, in whole or in part, on real property in an enterprise zone for a period up to twenty-five (25) years from the date the original enterprise zone was created. The authorizing resolution will specify the percentage of the exemption and the duration of the exemption. A city designated as a “home rule city” may provide an exemption for a period of up to twenty-five (25) years from the date the exemption is provided. If a new or expanded facility creates at least fifty (50) new jobs with an average of thirty (30) hours of employment per week, subsequent improvements to the facility may receive an exemption of one-half (1/2) on the ad valorem property taxes owed for a period of not less than ten (10) years following the date the improvements were assessed, provided that the improved properties are used for assembling, fabricating, processing, manufacturing, mining, warehousing, or distributing properties; however, the exemption may not be granted for more than twenty-five (25) years following the state the enterprise zone was

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<sup>1</sup> The Department of Economic Development has explicitly stated that it does not represent the validity of this procedure as it is not specified in the statutes. However, multiple cities have used the procedure. (Missouri Department of Economic Development – Industrial Development Bonds).

designated, unless the enterprise zone is within a home rule city. The abatement or exemption will cease if there is a business closure, work stoppage for a period of thirty (30) days, major reduction in force, or a significant change in the type of business conducted. (MO St. § 135.215).

- Oklahoma: Oklahoma does not permit the power to tax to be surrendered, suspended, or contracted away, unless provided by the constitution. (OK Const. art. 10, § 5). Oklahoma does not have a state-based abatement program. However, Oklahoma has the following municipal and county programs that provide an abatement of ad valorem property taxes for businesses as provided under its constitution:

- Manufacturing facilities tax abatement: Qualifying manufacturing concerns may receive an ad valorem property tax exemption for new, expanded, or acquired manufacturing facilities, including facilities engaged in research and development for up to five (5) years. (OK Const. art. 10, § 6B, and 68 OK St. § 2902). After the exemption has ended, the county may retain up to twenty-five percent (25%) of the ad valorem property taxes levied on the previously exempt property for use as an economic incentive to attract additional investment, if approved by the county voters. (OK Const. art. 10, § 6B(G)). Under Oklahoma Constitution, Article 10, §6B, an existing facility is required to have been unoccupied for a period of twelve (12) months prior to acquisition to receive the tax exemption. The tax exemption applies to new and expanding manufacturers, research and development companies, computer services and data processing companies with significant out-of-state sales, aircraft repair companies, and oil refineries. (68 OK St. § 2902). Additionally, manufacturing facilities may delay the tax exemption for up to five (5) years following the expiration or termination of the previously agreed upon ad valorem tax exemption. (68 OK St. § 2902.5). All initial applications for a tax exemption for a new, acquired, or expanded manufacturing facility will be granted only if the facility increases the base payroll and offers a basic health benefits plan to the full-time-equivalent employees of the facility. A tax exemption may also be granted if the investment cost of the construction, acquisition, or expansion of the manufacturing facility is three hundred million dollars (\$300,000,000) or more and the manufacturing facility retains an average employment of at least one thousand seven hundred fifty (1,750) full-time equivalent employees. (68 Ok St. § 2902).

- Local incentive districts for property tax abatement program: The legislature may permit municipalities and counties to provide incentives, exemptions, and other forms of tax relief for historic preservation, reinvestment, or enterprise areas that are exhibiting economic stagnation or decline. (OK Const. art. 10, § 6C). Accordingly, this program allows local political subdivisions the ability to contract with businesses to provide a tax abatement on ad valorem property tax for projects in an enterprise zone

designated by the Oklahoma Department of Commerce as a historic preservation area or a reinvestment area. The local governing body may grant an exemption from local taxation only on the project related to the new investment. No ad valorem tax abatements may be granted on the value of property that has been assessed or that is subject to assessment before the adoption of the project plan. Retail establishments areas are also not eligible for the ad valorem tax abatements. The abatement, which may be full or partial, may be granted for up to five (5) years for preservation and reinvestment areas and up to six (6) years for enterprise zones. (OK Const. art. 10, § 6C, and 62 OK St. §§ 854; 854 and 860).

Under the Oklahoma Constitution, the exemption from ad valorem property tax is not retroactive and only permitted after an entity files an original application for the tax exemption. (OK Const. art. 10, § 22A).

- Tennessee: Tennessee states that all real and personal property is subject to taxation; however, the legislature may exempt property as provided in the constitution, including property held by the state or a local government and used exclusively for public or corporation purposes. (TN Const. art. 2, § 28). Accordingly, Tennessee has the following municipal and county PILOT program that provides a reduction in the amount of ad valorem property taxes paid by businesses:
  - Industrial development corporations PILOT program: This program allows municipalities and counties to create public industrial development corporations to finance, acquire, own, lease, or dispose of properties so that the corporations may be able to improve and increase economic, housing, and tourism related activities. (TN St. § 7-53-102). These corporations are considered to be a public instrumentality of the municipality and, accordingly, are exempt from taxation. If a project is conveyed to the corporation and leased to a private entity, the project may agree to a PILOT agreement to make payments in lieu of the ad valorem property taxes owed. The corporation has the authority to negotiate, accept, or waive any payments in lieu of taxes after receiving a formal approval from the municipality or county that formed the corporation, subject to certain restrictions. No agreement providing for the acceptance or waiver of payments in lieu of taxes may be provided for a period that is greater than twenty (20) years plus a reasonable construction or installation period up to three (3) years, unless both the Commissioner of Economic and Community Development and the Comptroller of the Treasury have made a written determination that the agreement is in the best interest of the state. However, if a project is in an area designated as the center-city area by a municipality that has a central business improvement district, the amount of the payments in lieu of taxes cannot be fixed below the lesser of the taxes that would otherwise be due and payable with respect to the project or the taxes that would have been due and payable on the project for the period

immediately preceding the date of acquisition by the corporation. (TN St. § 7-53-305). In 2018, Tennessee amended these provisions to state that an industrial development corporation may negotiate a payment in lieu of tax agreement for less than the ad valorem taxes due for a retail business for a period up to ten (10) years, including a reasonable construction or installation period up to three (3) years, if the agreement has received the required approvals. (TN St. § 7-53-305).

- Texas: Under the constitution of Texas, the power to tax corporations and corporate property may not be surrendered or suspended by the legislature or any contract or grant where the state is a party. (TX Const. art. 8, §1-G). However, the Texas state legislature may create laws authorizing political subdivisions to grant exemptions or other relief from ad valorem property tax located in a reinvestment zone to encourage development or redevelopment. (TX Const. art. 8, § 1-G). Accordingly, Texas does not have a state-based abatement program and instead has the following local abatement program:
  - Property redevelopment abatement program: Texas has a property redevelopment and tax abatement program under which the governing body of a municipality or county may establish guidelines and criteria governing tax abatement agreements applicable to property located in a reinvestment zone for new facilities and structures and for the expansion or modernization of existing facilities and structures, except for improvements financed by tax increment bonds subject to a voluntary cleanup agreement. A reinvestment zone is an area that impairs economic growth, creates social liabilities, and is a detriment to the public health, safety and welfare of the inhabitants. A reinvestment zone may also be an area that is designated as having the potential to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would benefit the area's property values and contribute to the economic development of the municipality. (TX St. Tax Code § 312.202). The total period of the ad valorem property tax abatement may not exceed ten (10) years. (TX St. Tax Code §§ 312.204). The agreement may provide a tax abatement for the portion of the real property, personal property, or both, located within the zone of the agreement. The tax abatement may exempt all or a portion of the value of the real property. (TX St. Tax Code § 312.204). The program is set to expire September 1, 2019. (TX St. Tax Code § 312.006).



**SUMMARY OF PROPOSAL #9**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC:      Reappraisal of Property**

**Summary of Proposal for Consideration**

To provide that reappraisal of property may occur only every five (5) years under Arkansas Code § 26-26-1902, effective for assessment years beginning January 1, 2019.

**Fiscal Analysis**

The Arkansas Assessment Coordination Department (ACD) is unable to provide a specific fiscal impact analysis for this proposal. However, ACD states that five-year reappraisals are not as responsive to market changes in markets that are growing more rapidly and are also not as responsive to declining markets due to limitations on taxable value as dictated by Arkansas Constitution, Amendment 79.

**Legal Analysis**

***Background***

Under Arkansas Code § 26-26-1902, Arkansas requires each county to appraise all market value real estate normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every three (3) years. However, any county that has completed a reappraisal within the last three (3) years or completed a reappraisal between the years 2002 through 2004 is not required to commence or complete an additional reappraisal under the three-year cycle, and instead, is required to appraise all real property normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every five (5) years from the previous assessment.

If a county in a three-year reappraisal cycle has a new market value real estate assessment that is greater than fifteen percent (15%) from the previous market value real estate assessment, a county is required to complete its next reappraisal at least one (1) time every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the previous market value real estate assessment, at which point the county is placed into a five-year reappraisal cycle.

If a county in a five-year reappraisal cycle has a new market value real estate assessment that is greater than twenty-five percent (25%) from the previous market value real estate assessment, a county is required to complete its next reappraisal at least one (1) time every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the previous market value real estate assessment, at which point the county is placed into a five-year reappraisal cycle.

A county may appeal its new or continued placement into a three-year reappraisal cycle if the increased market value real estate assessment is a result of a single property improvement. The

ACD is required to place a county in a five-year reappraisal cycle if the department concludes that the increase in the new real estate market value assessment resulted from a single property improvement in the county.

ACT 114 of 1883 provided that assessors shall assess property for value in the year 1883 and every second year thereafter.

ACT 172 of 1929 provided that each assessor was to appraise and assess urban property each odd-numbered year and rural property each even-numbered year.

ACT 385 of 1957 provided that each county assessor was required to assess for value all property, both urban and rural, on an annual basis.

ACT 758 of 1995 provided that county assessors follow a cyclical valuation review program so that property would be reappraised and revalued every five (5) years.

ACT 440 of 1997 repealed the five-year cyclical valuation review requirement.

ACT 1185 of 1999 was enacted to promote a uniform system of real property assessments within each county of the state. This act provided that each county is required to appraise all market value real estate normally assessed by the county assessor at its full and fair market value at least one (1) time every three (3) years. The act also provided that approximately one-third (1/3) of the state's counties complete reappraisal in each of the years 2002, 2003, and 2004. This act was codified under Arkansas Code § 26-26-1902.

ACT 1058 of 2001 amended Arkansas Code § 26-26-1902 to provide that a county that has completed a reappraisal within the last three (3) years or a county that has completed a reappraisal between the years 2002 through 2004 is not required to commence or complete an additional reappraisal under the three-year cycle and is instead required to appraise all real property normally assessed by the county assessor at its full and fair market value at least one (1) time every five (5) years from the previous assessment. The act further provided the conditions under which a county may be placed in a three-year or five-year appraisal cycle, depending on the new market value real estate assessment percentage increase from the preceding reappraisal cycle.

ACT 2259 of 2005 amended Arkansas Code § 26-26-1902 to repeal the provisions relating to one-third (1/3) of the state's counties completing reappraisal in each of the years 2002, 2003, and 2004.

ACT 1520 of 2013 provided that property producing mineral interests must be reappraised annually for ad valorem property tax purposes under Arkansas Code § 26-26-1308(a). The provisions relating to reappraisal have not been amended since.

***Potential Legal Issues***

None.

### *Other States*

- Iowa: Iowa requires that all real estate be listed and reassessed every two (2) years in odd-numbered years. (IA St. § 428.4(1)). Under Iowa law, when reassessments are conducted, the assessor will revalue the property similar to how other states conduct reappraisals of property at the county level. (IA St. § 428.4(1)). [Awaiting further information from the Iowa Department of Revenue to determine if the reappraisal is countywide.] Further, the department is responsible for determining the actual value of all property under the department's jurisdiction on an annual basis. Property under the department's jurisdiction includes centrally assessed properties, such as railroads and public utilities. (IA St. §§ 428.28, 428.29, and 441.18).
- Louisiana: Louisiana requires that all real property subject to taxation is reappraised and valued at least every four (4) years. The quadrennial cycle appraisal date is determined solely by the Louisiana Tax Commission. (LA Const. art. 7, § 18(F), LA St. § 47:2331, and La. Admin. Code. Tit. 61, PTV, § 213(C)).
- Mississippi: Mississippi requires that all real property is reappraised at least every four (4) years. However, a county may establish an update schedule to revalue property in cycles less than four (4) years. The method of reappraisal is determined by the rules and regulations of the Mississippi Department of Revenue. (MS St. § 27-35-165 and MR 35.VI.2.06).
- Missouri: Missouri requires that all real property is reappraised every two (2) years in odd-numbered years. (MO St. § 137.115(1)).
- Oklahoma: Oklahoma requires an annual reappraisal of the value of real property by the county assessor. Additionally, each county assessor must conduct a visual inspection of all taxable property within the county at least one (1) time every four (4) years. (OK Const. art. 10, § 8, and 68 OK St. §§ 2817(B) and 2820).
- Tennessee: Tennessee requires that each county establish periodic reappraisal programs on either a six-year, five-year, or four-year cycle. In the third year of a six-year reappraisal cycle, a county is required to update all real property values if the overall level of appraisal for the jurisdiction is less than ninety percent (90%) of fair market value. (TN St. § 67-5-1601(a)).
- Texas: Texas requires an appraisal district to reappraise property at least once every three (3) years. (TX St. Tax Code § 25.18(b)).



**SUMMARY OF PROPOSAL #10**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC:      Property Tax Relief Trust Fund**

**Summary of Proposal for Consideration**

To use the excess funds in the Property Tax Relief Trust Fund from the one-half cent (0.5¢) sales tax under Arkansas Code §§ 26-52-302(c) and 26-53-107(c) that are not used to fund the homestead tax credit under Arkansas Constitution, Amendment 79, and Arkansas Code § 26-26-310, for other tax relief, effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Department of Finance and Administration (DFA), all revenue deposited in the Property Tax Relief Trust Fund consists of the special revenues derived from the five-tenths percent (0.5%) sales tax dedicated to that purpose. For 2017, there were approximately seven hundred twenty thousand (720,000) credits certified to DFA for a total reimbursement of two hundred thirty million one hundred thousand dollars (\$230,100,000) paid over the course of the entire year.

Each county collector must annually certify the total amount of real property tax reductions allowed within their county. DFA receives these certifications and determines each county's proportionate share of the total statewide reduction. DFA transmits this information to the State Treasurer who then makes distributions from the Property Tax Relief Trust Fund to each county treasurer in accordance with the counties proportionate share of the total statewide property tax reduction for that calendar year.

For 2017, after the payments were made for the entire year and the required disbursements of two million dollars (\$2,000,00) each to cities and counties, there was a balance of approximately seventy-eight million six hundred thousand dollars (\$78,600,000). In the past decade, the balance has fluctuated between approximately twenty-eight million eight hundred thousand dollars (\$28,800,000) in 2012 and ninety-four million three hundred thousand dollars (\$94,300,000) in 2008. According to DFA, any use of the fund balance of the Property Tax Relief Trust Fund must be done without depleting the Trust Fund and the ability to make monthly payments to cities and counties regardless of the revenue received in that specific month.

**Legal Analysis**

***Background***

Arkansas Constitution, Amendment 21, was adopted during the November 1936 general election. Amendment 21 provides a homestead tax exemption from ad valorem property tax on homesteads that do not exceed an assessed valuation of one thousand dollars (\$1,000). However, if the assessed value of the homestead exceeds one thousand dollars (\$1,000), the exemption will apply only to the first one thousand dollars (\$1,000).

Arkansas Constitution, Amendment 79, also known as the “Property Tax Relief” Amendment was adopted during the November 2000 general election. Amendment 79 requires the General Assembly to provide an annual state credit of at least three hundred dollars (\$300) against ad valorem property tax on a homestead. The tax credit may not exceed the amount of ad valorem property taxes owed. Arkansas Constitution, Amendment 79 did not create a funding mechanism for the homestead tax credit.

ACT 1 and ACT 2 of 2000 (2nd Ex. Sess.) were identical acts that created the Property Tax Relief Trust Fund, which was funded with an additional excise tax of five-tenths percent (0.5%) on all taxable sales of property and services subject to Arkansas sales tax. The act was codified under Arkansas Code §§ 19-5-1103, 26-26-310, 26-52-302(c) and 26-53-107(c). The act provided that the Property Tax Relief Trust Fund will reimburse each county treasurer for the property taxes reduced by the homestead tax credit from Arkansas Constitution, Amendment 79. The act provided that after the distributions have been made to each of the counties, the Chief Fiscal Officer of the State is required to determine that portion of the balance remaining in the Property Tax Relief Trust Fund that is in excess of the required reimbursement to the counties. Under the act, excess funds may be used in accordance with subsequent legislation to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a direct result of Arkansas Constitution, Amendment 79.

ACT 1275 of 2001 amended Arkansas Code § 26-26-310(a) to provide that when the funds from the Property Tax Relief Trust Fund are received by the county treasurers, ninety-six percent (96%) of the funds are allocated and distributed to the various taxing entities within the county and four percent (4%) is retained in the fund of the commission of the county collector.

ACT 1892 of 2005 amended Arkansas Code § 26-26-310(b) to provide that one percent (1%) of the excess funds from the Property Tax Relief Trust Fund are to be used by the county assessors for administering the homestead tax credit under Arkansas Constitution, Amendment 79.

ACT 655 of 2009 amended Arkansas Code § 26-26-1118 to raise the homestead tax credit from the constitutionally mandated three hundred dollars (\$300) to three hundred fifty dollars (\$350). The homestead tax credit has not been amended since.

### ***Potential Legal Issues***

Under Arkansas Constitution, Amendment 79, the state is required to provide an annual state credit against ad valorem property tax on a homestead of at least three hundred dollars (\$300). If the use of funds from the Property Tax Relief Trust Fund for additional tax relief deplete the funds available from the Property Tax Relief Trust Fund to reimburse the county treasurers for the homestead tax credit, the state is still constitutionally required to provide the homestead tax credit.

Arkansas Constitution, Article 16, § 11 states that no funds arising from a tax levied for any purpose shall be used for any other purposes. Under Arkansas Code § 26-26-310(2)(C)(iv) excess funds from the Property Tax Relief Trust Fund may be used to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a result of the

homestead tax credit. Without a constitutional amendment, using the revenues already collected from the Property Tax Relief Trust Fund for purposes other than providing tax relief or financial assistance to school districts may violate the provisions of Arkansas Constitution, Article 16, § 11, because the tax revenues would not be used for the purpose stated in the law. However, amending § 26-26-310 to allow these funds to be used for another purpose would not violate the constitution if only the funds collected after the law is amended are used for the new purpose.

### *Other States*

- Iowa: Iowa has a homestead credit that is based on the first four thousand eight hundred fifty dollars (\$4,850) of net taxable value. The Director of the Department of Administrative Services issues warrants on the homestead credit fund payable to the county treasurers. The homestead credit fund is apportioned each year from the state's general revenues to provide a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars (\$4,850) of actual value for each homestead. Accordingly, the funds apportioned from general revenues to provide a credit against the tax on eligible homesteads cannot be used for other purposes because Iowa apportions the funds based only on actual revenue needed to pay the credit. (IA St. § 425.1).
- Louisiana: Louisiana does not have a homestead tax credit. Instead, Louisiana provides a homestead tax exemption under Louisiana Constitution, Article 7, § 20. A bona fide homestead is exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars (\$7,500) of the assessed valuation of the homestead. (LA. Const. art. 7, § 20). The homestead tax exemption is funded by the Revenue Sharing Fund, which is allocated ninety million dollars (\$90,000,000) annually from the state general fund, and the legislature may appropriate additional sums to the fund. The Revenue Sharing Fund is distributed annually solely on the basis of population and the number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Any balance remaining in a parish distribution is allocated to the municipalities and tax recipient bodies within each parish. A political subdivision may incur debt by issuing negotiable bonds and may pledge its portion of funds from the Revenue Sharing Fund for the payment of all or part of the principal and interest of such bonds. (LA Const. art. 7, § 26).
- Mississippi: Mississippi provides a standard homestead tax exemption on homes that are legally assessed on the land roll and owned and actually occupied as a home by bona fide residents of Mississippi who are heads of families. The amount of the exemption is based on the assessed value of the homestead up to a maximum of seven thousand five hundred dollars (\$7,500) of assessed value. The exemption is provided against ad valorem property tax levied for school district purposes and county purposes. (MS St. §§ 27-33-3 and 27-33-75). The amount of the homestead tax exemption is limited to three hundred dollars (\$300) of actual exempted tax dollars. (MS St. § 27-33-75).

Homeowners over the age of sixty-five (65), disabled American veterans, and disabled owners as defined by the Social Security Act (42 U.S.C. § 416) are provided an exemption from all ad valorem property taxes on the homestead and the amount of actual exempt tax dollars is not limited to a maximum of three hundred dollars (\$300). The amount of the exemption is based on the assessed value of the homestead up to a maximum of seven thousand five hundred dollars (\$7,500) of assessed value. (MS St. §§ 27-33-3, 27-33-67, and MR 35.IV.3.01). These same individuals are eligible for an additional homestead tax exemption from all ad valorem taxes in an amount equal to the difference between the assessed value of the homestead property on January 1, 2018, or January 1 of the first year that the homeowner qualified for the exemption and any increase in the assessed value of the homestead that results from a subsequent update in the valuation of the property. (MS. St. § 27-33-75). If a subsequent assessment results in a lower assessed value than the assessed value on January 1, 2018, or January 1 of the first year that the homeowner qualified for the exemption, then the exemption will be an amount equal to the difference between the lower assessed value and any increase in the assessed value of the homestead property from the subsequent update in valuation of the property. (MS. St. § 27-33-75). However, renovations, expansions, improvements or additions to promote energy efficiency, safety, or access to the property are not included in the determination of the additional exemption. (MS St. § 27-33-75(2)(c)).

The Tax Commission is responsible for reimbursing the revenue losses from the Mississippi homestead tax exemption. (MS St. § 27-33-41). The reimbursement is funded by general revenues, and the amount of the reimbursement is one hundred dollars (\$100) per homestead applicant. (MS St. § 27-33-77). One half of the reimbursement is paid to reimburse the loss of county tax revenue, and one half of the reimbursement is paid to reimburse the loss of school tax revenue. (MS St. 27-33-77).

- Missouri: The Missouri Constitution permits the General Assembly to provide for homestead tax exemptions and credits; however, if the General Assembly provides a homestead tax exemption or credit, it must also provide restitution for any revenues lost to the respective political subdivisions. (MO Const. art. 10, § 6(a)).

Missouri provides a homestead exemption credit on real estate property tax for persons over the age of sixty five (65) and individuals who are disabled that meet certain income requirements if those taxes increase at least two and one-half percent (2.5%) in a non-reassessment year or five percent (5%) in a reassessment year. The credit is for the amount of tax that exceeds the two and one-half percent (2.5%) or five percent (5%) increase in property tax. Because this homestead exemption credit reduces the revenues of political subdivisions, the law is required to provide restitution under Missouri Constitution, Article 10, § 6. Under this homestead exemption credit, if funds are appropriated from general revenues, the Director of the Department of Revenue will instruct the State Treasurer to distribute the

appropriated funds to each county to offset the homestead exemption credit. If the general assembly does not provide the appropriated funding from general revenues, then the homestead exemption credit will not occur. (MO St. §§ 137.106(13) and (14)).

- Oklahoma: Oklahoma provides a homestead tax exemption against ad valorem property taxes. The homestead tax exemption exempts one thousand dollars (\$1,000) of the assessed valuation of the homestead from ad valorem taxation. (68 OK St. § 2889). Oklahoma also provides an additional homestead tax credit to the extent of one thousand dollars (\$1,000) of the assessed valuation on each homestead with a head of household whose gross household income does not exceed twenty thousand dollars (\$20,000). (68 OK St. § 2890). Reimbursed funds to the counties are apportioned by the Tax Commission using the Ad Valorem Reimbursement Fund, and monies apportioned to this fund may also be transferred to other state funds or otherwise expended as directed by the legislature. (62 OK St. § 193). The county commissioners must submit claims for reimbursement to the commission, and the commission will either approve all or part of the claim for reimbursement. If there are insufficient funds in the reimbursement fund to pay all of the claims, claims for reimbursement for loss of revenue due to exemptions of ad valorem taxes for new or expanded manufacturing or research and development facilities are paid first, and any remaining funds are distributed for reimbursement of revenue for school district and county purposes due to the homestead tax exemption, followed by reimbursements for other ad valorem property tax exemptions. (62 OK St. § 193(C)). One percent (1%) of net general revenues received from state income tax are credited to the Ad Valorem Reimbursement Fund. (OK St. 68 § 2352(1)(d)).
- Tennessee: Tennessee only provides a homestead exemption that relates to execution and bankruptcy issues and does not relate to a reduction of ad valorem property tax. (TN Const. art. 11, § 11, and TN St. § 26-2-301). However, the General Assembly is allowed to provide tax relief for disabled individuals and for the elderly. (TN Const. art 2. § 28). As such, Tennessee provides that low-income individuals who are over the age of sixty-five (65) with an income less than twenty-four thousand dollars (\$24,000), as adjusted for inflation, disabled persons, and disabled veterans may qualify for a rebate on the taxes paid on a specific portion of the value of property used as their residence. The tax refund is for the property taxes paid on the first twenty-seven thousand dollars (\$27,000), as adjusted for inflation, of the full market value of the property, with the exception of disabled veterans, who receive reimbursement on the first one hundred seventy-five thousand dollars (\$175,000) of the full market value of the property. The reimbursements are paid from the general revenues of the state, and the State Comptroller is required to estimate the cost of the homestead tax credit on an annual basis and provide the information to the Department of Finance and Administration for budgeting and appropriation of funds. (TN St. §§ 67-5-701 – 67-5-704). If the comptroller determines that funds for the appropriation are insufficient to permit full payment of claims under the homestead tax exemption, the comptroller is required to

uniformly adjust the payments to permit all claims to be paid within the limits of the appropriation. (TN St. § 67-5-701).

- Texas: Texas provides for several types of homestead exemptions in its Constitution. The homestead exemptions are as follows:
  - General homestead exemption: a family or single adult is entitled to an exemption on county ad valorem property tax on the first three thousand dollars (\$3,000) of the assessed value of the residence;
  - School taxes: all residential homestead owners are allowed a twenty-five thousand dollar (\$25,000) homestead exemption from their home's value for school taxes;
  - County taxes: if a county collects a special tax for farm-to-market roads or flood control, a residential homestead is permitted to receive a three thousand dollar (\$3,000) exemption for this tax. If the county grants an optional exemption for homeowners age sixty-five (65) or older or disabled, the owners will receive only the local-option exemption;
  - Exemption for individuals age sixty-five (65) or older and disabled for ad valorem property taxes for school districts: individuals age sixty-five (65) or older and disabled residential homestead owners may qualify for an additional ten thousand dollar (\$10,000) homestead exemption for school district taxes. If the owner qualifies for the additional exemption based on both age and disability, the owner may choose only one (1) type of exemption;
  - Optional percentage exemption: any taxing unit, including a city, county, school, or special district, may offer an exemption of up to twenty percent (20%) of a home's value. However, the amount of an optional exemption cannot be less than five thousand dollars (\$5,000). Each taxing unit decides if it will offer the exemption and at what percentage. This percentage exemption is added to any other home exemption for which an owner qualifies. The taxing unit must decide before July 1 of the tax year whether to offer this exemption. This exemption will expire on December 31, 2019; and

Texas also offers a discretionary exemption for taxpayers who are age sixty-five (65) or older or disabled. A taxing unit may offer an additional exemption of at least three thousand dollars (\$3,000) for taxpayers who are age sixty-five (65) or older or disabled, or both. This exemption is optional, and a taxing unit is not obligated to provide this exemption. However, if a county provides the other homestead tax exemptions, this additional exemption may not be taken in conjunction with the other homestead tax exemptions for the purposes of a county tax.

(TX Const. art 8, § 1-b, TX St. Tax Code §§ 11.13 - 11.131, and Texas Comptroller – What Homestead Exemptions are Available).

Texas reimburses lost revenue for property tax exemptions related to school taxes collected from ad valorem property tax under the Foundation School Program from

general revenues. (TX St. Education Code § 42.2522(a)(2) and TX St. Government Code § 403.302(d)). Beginning with the 2017-2018 school year, school districts are entitled to additional state aid to the extent that state and local revenue is less than what the revenue would have been as a result of the homestead tax credit. (TX St. Education Code § 42.2518). Texas also reimburses local governments for the lost revenue from the property tax exemption for a disabled veteran. The source of this reimbursement is from general revenues. (TX St. Local Government Code § 140.011). According to the State Comptroller's office, the state does not provide any further reimbursements to political subdivisions for revenues lost by way of an ad valorem homestead property tax exemption.



**SUMMARY OF PROPOSAL #11**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: State Ad Valorem Property Tax on Property within a Border City**

**Summary of Proposal for Consideration**

To create a state ad valorem property tax on property within a border city that is exempt from Arkansas income tax under Arkansas Code § 26-52-601 et seq., and eliminate the additional sales tax requirement under Arkansas Code § 26-52-601 et seq., effective for tax years beginning January 1, 2019. Under this proposal, the state ad valorem property tax would be based on the effective rate of the ad valorem property tax levied in the border city in the state adjoining Arkansas, after subtracting the effective rate of ad valorem property tax levied at the local and municipal level in the Arkansas city subject to the border city exemption under Arkansas Code § 26-52-601 et seq.

**Fiscal Analysis**

Texarkana, Arkansas is currently the only border city exempt from income tax under Arkansas Code § 26-52-601 et seq. There are approximately thirty thousand (30,000) residents in the municipal area of Texarkana, Arkansas. The current total millage rate for the municipal area of Texarkana, Arkansas is thirty-nine and nine-tenths (39.9). This provides an effective ad valorem property tax rate of three and nine-tenths percent (3.9%). The value of each additional mill in the city is valued at four hundred eight thousand one hundred ninety-seven dollars (\$408,197).

The Department of Finance and Administration estimates that the border city income tax exemption for Texarkana, Arkansas results in a loss of state revenues in the amount of approximately twenty one million two hundred thousand dollars (\$21,200,000) per fiscal year, without factoring in the one percent (1%) additional sales tax imposed by Arkansas Code § 26-52-601 et seq.

According to the City of Texarkana, Texas, the property tax rate in 2017 was seventy cents (70¢) per one hundred dollars (\$100) in valuation.<sup>1</sup>

If the additional sales tax of one percent (1%) was removed and a state ad valorem property tax was created to make up the difference in income tax lost under the border city income tax exemption under Arkansas Code § 26-52-601 et seq., a state ad valorem property tax of fifty-two (52) mills would be necessary. This would leave Texarkana, Arkansas with an effective property tax rate of nine and nine-tenths percent (9.9%) and would constitute a one hundred thirty-four percent (134%) increase in ad valorem property tax on property located within Texarkana, Arkansas.

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<sup>1</sup> City of Texarkana, Texas: <https://www.ci.texarkana.tx.us/356/Tax-Rate-Debt-Obligation-Information>

## **Legal Analysis**

### ***Background***

The Arkansas border city income tax exemption was created by ACT 48 of 1977 and codified under Arkansas Code § 26-52-601 et seq. Under the Arkansas border city income tax exemption, whenever any Arkansas city or town is divided by a state line from an incorporated city or town in an adjoining state in which the other state does not levy a state income tax, the qualified electors of the Arkansas border city or town may vote to equalize the state taxes paid by citizens in the border city or town in Arkansas with the tax advantages of the citizens of the adjoining city or town in the other state. In order for an Arkansas city or town to take advantage of the border city income tax exemption, an additional state sales tax of one percent (1%) must be approved at a special election. The proceeds of the additional sales tax is to provide revenues to the state of Arkansas in lieu of the state income tax that would have been collected in the border city or town. Ark. Code Ann. § 26-52-605(a).

ACT 735 of 1997 added the provision that the one percent (1%) additional sales tax also applies to state use tax collected as a local tax and enforced in accordance with the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq. These provisions regarding the border city income tax exemption have not been amended since.

### ***Potential Legal Issues***

Under Arkansas Constitution, Amendment 47, no ad valorem property tax may be levied upon property by the State of Arkansas. Accordingly, implementation of a state ad valorem property tax would require a constitutional amendment.

### ***Other States***

- Iowa: Iowa allows for a state ad valorem property tax to be levied on the assessed value of taxable property to raise funds for general state purposes. The Director of the Department of Revenue has the authority to fix the rate of tax. (IA St. § 444.22). According to the Iowa Department of Revenue, even though Iowa is permitted by law to levy a state ad valorem property tax to raise funds for general state purposes, Iowa currently does not have such a tax in place to raise funds for state purposes. Iowa does not have a provision that raises the ad valorem property tax on border cities. Iowa also does not have a border city income tax exemption.
- Louisiana: Louisiana permits a state ad valorem property tax that is limited to an annual rate of five and three-quarter (5.75) mills on one dollar (\$1.00) of assessed valuation. (LA Const. art. 7, § 19). According to the Louisiana Department of Revenue, even though Louisiana is permitted by law to levy state ad valorem property tax, Louisiana currently does not have such a tax in place. Louisiana does

not have a provision that increases ad valorem property tax on border cities. Louisiana also does not have a border city income tax exemption.

- Mississippi: Mississippi's state ad valorem property taxes were repealed in 1980. Mississippi does not have a provision that raises ad valorem property tax on border cities. According to the Mississippi Department of Revenue, Mississippi also does not have a border city income tax exemption.
- Missouri: Missouri's constitution states that the state may impose a state tax on real and tangible personal property, exclusive of the tax necessary to pay any bonded debt of the state; however, this state property tax may not exceed ten cents (10¢) on one hundred dollars (\$100) of assessed valuation. (MO Const. art. 10, § 8). Missouri's constitution also requires that all taxes levied and collected for public purposes are uniform within the territorial limits of the authority levying the tax. (MO Const. art. 10, § 3). According to the Missouri Department of Revenue, even though the Missouri constitution allows for a state ad valorem property tax on real and tangible personal property, Missouri does not currently have such a tax in place. Missouri also does not have a provision that increases the ad valorem property tax on border cities and does not have a border city income tax exemption.
- Oklahoma: Oklahoma's constitution states that no ad valorem property tax shall be levied for state purposes, nor shall any part of the proceeds of any ad valorem tax levied upon any kind of property be used for state purposes. (OK Const. art. 10, § 9). Oklahoma does not have a provision that raises ad valorem property tax on border cities. According to the Oklahoma Tax Commission, Oklahoma also does not have a border city income tax exemption.
- Tennessee: Tennessee states that all real and personal property shall be assessed for taxation for state purposes. (TN St. § 67-5-101). According to the Tennessee Comptroller of Assessments, notwithstanding the provisions under Tennessee statute § 67-5-101, Tennessee does not currently levy ad valorem property tax to raise funds for general state revenues. Tennessee does not have a provision that raises the ad valorem property tax on border cities. Tennessee also does not have a border city income tax exemption.
- Texas: Texas's constitution states that no state ad valorem property tax may be levied on any property within the state. (TX Const. art. 8, § 1-e). Texas does not have a provision that raises the ad valorem property taxes on border cities. Texas also does not have a border city income tax exemption, as Texas does not levy income tax.

