

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

As Engrossed: H1/17/04
A Bill

Call Item 6

HOUSE BILL 1105

5 By: Representative Jackson
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7

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR COMBINED REPORTING BY
10 CORPORATIONS THAT ARE MEMBERS OF AN AFFILIATED
11 GROUP; AND FOR OTHER PURPOSES.
12

Subtitle

14 TO PROVIDE FOR COMBINED REPORTING BY
15 CORPORATIONS THAT ARE MEMBERS OF AN
16 AFFILIATED GROUP.
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 26-51-805(a), concerning the reporting of
22 income by corporations that are members of an affiliated group, is amended to
23 read as follows:

24 (a)(1) All corporations which are eligible members of an affiliated
25 group as that term is defined in 26 U.S.C. § 1504(a) and (b) as of January 1,
26 1989, which affiliated group files a federal consolidated corporate income
27 tax return pursuant to 26 U.S.C. §§ 1501-1505 as of January 1, 1989, may
28 elect to file a consolidated Arkansas corporate income tax return subject to
29 the provisions of subdivision (a)(2) of this section.

30 (2)(A) ~~However, only~~ Only corporations in the affiliated group
31 that have gross income from sources within the State of Arkansas that is
32 subject to taxation under the provisions of the Arkansas Income Tax Act, as
33 amended, § 26-51-101 et seq., shall be eligible to file consolidated
34 corporate income tax returns in Arkansas.

35 (B)(i) Each corporation that is a member of an affiliated
36 group and is also a member of a unitary business group is not eligible to



1 file a consolidated corporate income tax return.

2 (ii) Corporations that are members of a unitary
3 business group shall file an Arkansas corporate income tax return utilizing
4 the water's edge combined reporting method in § 26-51-817.

5 (iii) A corporation is presumed to be a member of a
6 unitary business group if the group of businesses of which the corporation is
7 a member share the following three (3) characteristics:

8 (a) Functional integration;

9 (b) Centralization of management; and

10 (c) Economies of scale.

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12 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 8 is amended
13 to add an additional section to read as follows:

14 26-51-817. Combined corporation income tax reports.

15 (a) As used in this section:

16 (1) "Affiliated corporation" means a member of an affiliated
17 group to which the taxpayer filing a return under this section belongs;

18 (2) "Affiliated group" means a group of two or more corporations
19 in which fifty percent (50%) or more of the voting stock of each member of
20 the group is directly or indirectly owned by one or more corporate or
21 noncorporate common owners, or by one or more of the members of the group;

22 (3) 'Water's edge combined reporting method' means a combined
23 reporting method where the income and apportionment factors of the reporting
24 corporations, its United States affiliates, and its foreign affiliates listed
25 in subsection (e) of this section are included in the apportionable base,
26 provided that the corporations are all members of the same unitary business
27 group.

28 (b) The income of any two (2) or more corporations that are members of
29 a unitary business group is allocated or apportioned under subsection (c) of
30 this section as if the corporations were a single corporation if:

31 (1) Fifty percent (50%) or more of the voting stock of each
32 corporation is owned directly or indirectly by a common owner or owners; and

33 (2) The corporations are engaged in a unitary business.

34 (c)(1) The taxable income of a corporation that is a member of a
35 unitary business group is determined by use of a combined report that
36 includes the income, determined under subsection (d) of this section, of all

1 corporations that are members of a unitary business group, allocated and
2 apportioned using the apportionment factors and methods under §§ 26-51-701 -
3 26-51-723 for all corporations included in the combined report.

4 (2)(A) The separate corporate identities of the members of the
5 unitary business group are not disregarded by utilizing a combined report.

6 (B) Each corporation transacting business in this state is
7 subject to income tax on the corporation's apportioned share of unitary
8 business income plus the corporation's nonbusiness income or loss allocated
9 to Arkansas, less the corporation's net operating loss carry forward.

10 (d) The income of a corporation included in a water's-edge combined
11 report is determined as follows:

12 (1)(A) If a corporation is incorporated in the United States or
13 is included in a consolidated federal corporation income tax return, the
14 income included in a combined report is the taxable income for the
15 corporation after making adjustments under the Income Tax Act of 1929, § 26-
16 51-101 et seq.

17 (B) If the corporation is incorporated outside of the
18 United States but is not included in a consolidated federal corporation
19 income tax return, the income to be included in the combined report is the
20 net income of the corporation before income taxes stated on the profit and
21 loss statements included within the consolidated profit and loss statement of
22 the corporation that is prepared for filing with the United States Securities
23 and Exchange Commission.

24 (2)(A) If the corporations within the unitary business group are
25 not required to file a profit and loss statement with the United States
26 Securities and Exchange Commission, the profit and loss statement prepared
27 for the shareholder's report may be used to obtain net income before income
28 taxes.

29 (B) In the alternative, adjustments may be made to the
30 profit and loss statements of the corporation incorporated outside the United
31 States to conform the statements to tax accounting standards as required by
32 the federal Internal Revenue Code, subject to the appropriate adjustments
33 under the provisions of the Income Tax Act of 1929, § 26-51-101, et seq.

34 (e)(1) A corporation that is a member of an affiliated group shall
35 file an Arkansas corporation income tax return using the water's-edge
36 combined reporting method.

1 (2) The following corporations must be included on the return if
2 the corporations are part of a unitary business with the filing corporation:

3 (A) An affiliated corporation in which fifty percent (50%)
4 or more of the voting stock of the corporation is directly or indirectly
5 owned by one or more members of the group if:

6 (i) The corporation's property, payroll, and sales
7 factors in the United States average twenty percent (20%) or more; or

8 (ii) The property, payroll, and sales factors in the
9 United States average under twenty percent (20%), and the corporation does
10 not derive at least eighty percent (80%) of its gross income from the active
11 conduct of a trade or business in a foreign country.

12 (B) A domestic international sales corporation as defined
13 under 26 U.S.C. 992(a);

14 (C) A corporation that is incorporated in or does business
15 in a country that does not impose an income tax, or that imposes an income
16 tax at a rate lower than ninety percent (90%) of the United States' income
17 tax rate on the income tax base of the corporation in the United States if:

18 (i) Fifty percent (50%) or more of the sales,
19 purchases, or payments of income or expenses of the corporation are made
20 directly or indirectly to one or more members of a group of corporations
21 filing under the water's-edge combined reporting method; or

22 (ii) The corporation does not conduct significant
23 economic activity.

24 (3) If the income computation for a group under subdivision
25 (e)(1) of this section results in a loss, the loss will be taken into account
26 in other years, subject to the provisions of § 26-51-427.

27 (4) The determination of the factors in (e)(2)(A)(i) and (ii) of
28 this section shall be computed by equally weighting each factor.

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30 SECTION 3. This act shall become effective for tax years beginning on or
31 after January 1, 2004.

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33 /s/ Jackson
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