State of Arkansas
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A Bill

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SENATE BILL 576

By: Senators Hester, J. Hendren, J. Dismang, B. Ballinger, A. Clark, L. Eads, J. English, Irvin, B. Johnson, M. Pitsch, D. Wallace
By: Representative D. Douglas

For An Act To Be Entitled

AN ACT TO REFORM THE TAX LAWS OF THE STATE; TO AMEND THE ARKANSAS GROSS RECEIPTS ACT OF 1941; TO REQUIRE THE COLLECTION OF SALES AND USE TAX BY CERTAIN REMOTE SELLERS AND MARKETPLACE FACILITATORS; TO AMEND THE MULTISTATE TAX COMPACT; TO AMEND THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT; TO REPEAL THE THROWBACK RULE FOR BUSINESS INCOME; TO PROVIDE FOR A SINGLE SALES FACTOR APPORTIONMENT FORMULA FOR BUSINESS INCOME; TO AMEND THE LAWS CONCERNING THE APPORTIONMENT AND ALLOCATION OF THE NET INCOME OF FINANCIAL INSTITUTIONS; TO PHASE IN AN EXTENSION OF THE NET OPERATING LOSS CARRY-FORWARD PERIOD FOR COMPUTING ARKANSAS INCOME TAX; TO AMEND THE SALES TAX EXEMPTION FOR CERTAIN CAR WASHES; TO EXEMPT CERTAIN PRODUCTS AND SERVICES RELATED TO CAR WASHES FROM SALES AND USE TAX; TO LEVY A FEE ON CERTAIN CAR WASH OPERATORS IN LIEU OF THE SALES AND USE TAX; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REFORM THE TAX LAWS CONCERNING THE LEVY AND COLLECTION OF SALES AND USE TAX, THE APPORTIONMENT AND ALLOCATION OF INCOME FOR TAX PURPOSES, AND NET OPERATING LOSSES; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

(A) Examining and identifying areas of potential tax reform within the tax laws; and

(B) Recommending legislation to the General Assembly to:

(i) Modernize and simplify the Arkansas tax code;

(ii) Make Arkansas's tax laws competitive with tax laws in other states;

(iii) Create jobs; and

(iv) Ensure fairness to all taxpayers;

(2) The state's income tax laws should be amended to modernize and simplify the tax code, increase Arkansas's competitiveness, create jobs, and ensure fairness to all taxpayers;

(3) The inability to effectively collect any Arkansas sales or use tax from remote sellers who deliver tangible personal property, other property subject to Arkansas sales and use tax, or services directly into the state is seriously eroding the sales and use tax base of this state, causing revenue losses and imminent harm to the state through the loss of critical funding for state and local services;

(4) The harm from the loss of revenue is especially serious in Arkansas because sales and use tax revenue is essential in funding state and local services;

(5) Despite the fact that a use tax is owed on tangible personal property, certain other property, or services delivered for use in this state, many remote sellers actively market sales as tax-free or as transactions not subject to sales and use tax;

(6) The structural advantages of remote sellers, including the absence of point-of-sale tax collection and the general growth of online retail, make clear that further erosion of this state's sales and use tax base is likely to occur in the near future;

(7) Remote sellers that make a substantial number of deliveries into Arkansas or collect large gross revenues from Arkansas benefit extensively from this state's market, economy, and infrastructure;

(8) In contrast with the increasing harm caused to the state by the exemption of remote sellers from sales and use tax collection duties, the costs of such collection have decreased because advanced computing and software options have made it neither difficult nor burdensome for remote sellers to collect and remit sales and use taxes associated with sales of goods and services to residents of this state;

(9) The United States Supreme Court recently upheld the ability of states to compel out-of-state sellers with no physical presence in the state to collect state sales and use taxes; and

(10) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

(b) It is the intent of the General Assembly to:

(1) Reform Arkansas tax laws to modernize and simplify the tax code, increase the state's competitiveness, create jobs, and ensure fairness to all taxpayers;

(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers; and

(3) Gradually reduce the tax burden on Arkansas taxpayers in a fiscally responsible manner.

SECTION 2. Arkansas Code § 15-4-2404 is amended to read as follows:

15-4-2404. Net operating loss deduction — Carry forward.

(a) Taxpayers qualified for the benefits of this subchapter and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year following the year of the net operating loss and annually thereafter for ~~a total period of ten (10) years or until the net operating loss has been exhausted, whichever is earlier.~~ the total period set out in this subsection or until the net operating loss has been exhausted, whichever is earlier:

(1) For net operating losses occurring in the tax year beginning January 1, 2020, eleven (11) years;

(2) For net operating losses occurring in the tax year beginning January 1, 2021, fourteen (14) years;

(3) For net operating losses occurring in the tax year beginning January 1, 2022, seventeen (17) years; and

(4) For net operating losses occurring in tax years beginning on or after January 1, 2023, twenty (20) years.

(b) The net operating loss deduction must be carried forward in the order named in subsection (a) of this section.

SECTION 3. Arkansas Code § 26-5-101, Article IV, paragraphs 9-18, concerning the division of income under the Multistate Tax Compact, are amended to read as follows:

9. ~~All~~ (a)(1) For the tax year beginning January 1, 2021, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the ~~property factor plus the payroll factor plus double the sales factor,~~ total sales of the taxpayer in this state during the tax period and the denominator of which is ~~four (4)~~ the total sales of the taxpayer everywhere during the tax period.

(2) For purposes of determining business income under paragraph (9)(a)(1) of this article, the taxpayer shall include only one-half (1/2) of the taxpayer's sales receipts from sales described in paragraph 16 of this article in the taxpayer's total sales.

(b) For tax years beginning on or after January 1, 2022, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

~~10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

~~11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.~~

~~12. The average value of property shall be determined by~~

~~averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~

~~13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~

~~14. Compensation is paid in this state if:~~

~~(a) The individual's service is performed entirely within the state;~~

~~(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~

~~(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

~~15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~

16. ~~Sales~~ (a) For the tax year beginning January 1, 2021, sales of tangible personal property are in this state if:

~~(a) The~~ (1) The property is delivered or shipped to a purchaser, ~~other than~~ including without limitation the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

~~(b) the~~ (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and: ~~(1) the~~

(A) The purchaser is the United States Government and the property is delivered outside this state; or ~~(2) the~~

(B) The taxpayer is not taxable in the state of the purchaser.

(b) For tax years beginning on or after January 1, 2022, sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser, including without limitation the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) ~~The exclusion of any one (1) or more of the factors;~~

~~(c)~~ The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

~~(d)~~(c) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

SECTION 4. Arkansas Code § 26-51-427 is amended to read as follows:

26-51-427. Deductions — Net operating loss carryover.

In addition to other deductions allowed by this chapter, there ~~shall be~~ is allowed as a deduction from gross income a net operating loss carryover under the following rules:

(1)(A) The net operating loss ~~as hereinbelow defined~~ for any ~~year ending on or after the passage of the Income Tax Act of 1929 and for any succeeding~~ taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of three (3) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the net operating loss occurred in an income year beginning before January 1, 1987. The net operating loss deduction ~~must~~ shall be carried forward in the order ~~named above~~ stated in this subdivision (1)(A).

(B) The net operating loss ~~as hereinbelow defined~~ for any year ending on or after the passage of the Income Tax Act of 1929, § 26-51-101 et seq., and for any succeeding taxable year before January 1, 2020, may be carried over to the next-succeeding taxable year and annually thereafter for a total period of five (5) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the net operating loss occurred in an income year beginning on or after January 1, 1987, and before January 1, 2020. The net operating loss deduction ~~must~~ shall be carried forward in the order ~~named above~~ stated in this subdivision (1)(B).

(C)(i) ~~The net operating loss as hereinbelow defined which resulted from farming operations, for income years beginning on or after January 1, 1981, and expired in accordance with subdivision (1)(A) of this section before being fully used, may be carried forward for an additional two (2) years and any unused portions can be combined and either applied to tax years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to claim the additional two-year carry forward, taxpayers must attach copies of both their federal tax returns and their state tax returns, showing the net operating losses for income years beginning on or after January 1, 1981, to their state tax returns. As used in this subdivision (1)(C), "farming operations" means that at least sixty-six and two-thirds percent (66 2/3%) of the total gross income, from all sources for the taxable year, must come from farming as defined by 26 U.S.C. § 464(e)(1) in effect on January 1, 1989.~~ For net operating losses occurring in taxable years beginning on or after January 1, 2020, the net operating loss may be carried over to the next succeeding taxable year and annually thereafter for the following number of years next succeeding the tax year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of a succeeding year, whichever is earlier:

(a) For net operating losses occurring in the tax year beginning January 1, 2020, a total period of eight (8) years;

(b) For net operating losses occurring in the tax year beginning January 1, 2021, a total period of eleven (11) years;

(c) For net operating losses occurring in the tax year beginning January 1, 2022, a total period of fourteen (14) years;

(d) For net operating losses occurring in the tax year beginning January 1, 2023, a total period of seventeen (17) years; and

(e) For net operating losses occurring in the tax years beginning on or after January 1, 2024, a total period of twenty (20) years.

(ii) The net operating loss deduction shall be carried forward in the order stated in this subdivision (1)(C).

(D) As used in this section, “taxable income” or “net income” ~~shall be deemed to be~~ means the net income computed without benefit of the deduction for income taxes, personal exemptions, and credit for dependents. The net income of the taxable period to which the net operating loss deduction, as adjusted, is carried~~, shall be~~ is the net income before the deduction of federal income taxes, personal exemption, and credit for dependents. ~~Such income~~ The income taxes, exemptions, and credits described in this subdivision (1)(D) shall not be used to increase the net operating loss ~~which~~ that may be carried to any other taxable period.

(E)(i) As used in this section, “qualified medical company” means a corporation engaged in:

(a) Research and development in the medical field; and

(b) ~~Manufacture~~ The manufacture and distribution of medical products, including therapeutic and diagnostic products.

(ii) In the case of a qualified medical ~~companies, as defined herein,~~ company, a net operating loss ~~for any taxable year shall be a net operating loss carryover to each of the fifteen (15) taxable years following the taxable year of the loss~~ occurring in taxable years beginning on or after January 1, 2020, may be carried over to the next succeeding taxable year and annually thereafter for the total period set out in this subdivision (1)(E) or until the net operating loss has been exhausted, whichever is earlier:

(a) For net operating losses occurring in the tax year beginning January 1, 2020, sixteen (16) years;

(b) For net operating losses occurring in the tax year beginning January 1, 2021, seventeen (17) years;

(c) For net operating losses occurring in the tax year beginning January 1, 2022, eighteen (18) years;

(d) For net operating losses occurring in the tax year beginning January 1, 2023, nineteen (19) years; and

(3) For net operating losses occurring in the tax years beginning on or after January 1, 2024, twenty (20) years.

(iii) If the qualified medical company is an "S" corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year of the net operating loss, ~~shall be~~ are applicable.

(iv) The net operating loss provisions ~~set forth above~~ stated in this subdivision (1)(E), which resulted from the operation of a qualified medical company, ~~shall be~~ are effective for taxable years beginning on and after January 1, 1987;

(2) As used in this section, "net operating loss" ~~is defined as~~ means the excess of allowable deductions over gross income for the taxable year, subject to the following adjustments:

(A) There shall be added to gross income all nontaxable income~~,~~ not required by law to be reported as gross income~~, as provided by law,~~ less any expenses properly and reasonably incurred in earning nontaxable income, which expenses would otherwise be nondeductible;

(B) In the case of a taxpayer other than a corporation, deductions, not including federal income taxes, not attributable to the operation of the trade or business, ~~shall be~~ are eliminated from the deductions otherwise allowable for the taxable year to the extent that they exceed gross income not derived from trade or business. Personal exemptions and credit for dependents ~~shall not be~~ are not a deduction for the purpose of computing a net operating loss;

(C) ~~No~~ A net operating loss deduction shall not be allowed; and

(D) In the case of a taxpayer other than a "C corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1, 1985:

(i) ~~For income years beginning after December 31, 1986, the~~ The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(ii) ~~For income years beginning after December 31, 1986, the~~ The deduction for long-term capital gains provided by 26 U.S.C. § 1202 [repealed], as in effect on January 1, 1985, shall not be allowed; and

(3) In the case of the acquisition of assets of one (1) corporation by another corporation, the acquiring corporation shall succeed to and take into account any net operating loss carryover apportionable to Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq., that the acquired corporation could have claimed had it not been acquired, subject to the following conditions:

(A) The net operating loss may not be carried forward to a taxable year ~~which~~ that ends more than three (3) years after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning before January 1, 1987;

(B) The net operating loss may not be carried forward to a taxable year ~~which~~ that ends more than five (5) years after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning on or after January 1, 1987, and before January 1, 2020; ~~and~~

(C) The net operating loss may not be carried forward to a taxable year that ends more than the number of years stated in subdivision (1)(C) of this section after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning on or after January 1, 2020; and

~~(C)~~ (D) The net operating loss may be claimed only when the ownership of both the acquired and acquiring corporations is substantially the same~~, that is, where~~ in that not less than eighty percent (80%) of the voting stock of each corporation is owned by the same person or, ~~where prior to~~ before the acquisition, the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation. The carryover losses ~~will be~~ are allowed only in those cases ~~where~~ in which the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas under <u>the Uniform Division of Income for Tax Purposes Act,</u> § 26-51-701 et seq.<u>,</u> in the post-merger period to absorb the carryover losses claimed by the surviving corporation.

SECTION 5. DO NOT CODIFY. <u>The Arkansas Code Revision Commission shall direct the publisher of the Arkansas Code to change the title of Title 26, Chapter 51, Subchapter 7, to the "Division of Income for Tax Purposes Act".</u>

SECTION 6. Arkansas Code § 26-51-709 is amended to read as follows:

26-51-709. Business income.

<u>(a)(1)</u> ~~All~~ <u>For the tax year beginning January 1, 2021, all</u> business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the ~~property factor plus the payroll factor plus double the sales factor,~~ <u>total sales of the taxpayer in this state during the tax period</u> and the denominator of which is ~~four~~ <u>the total sales of the taxpayer everywhere during the tax period</u>.

<u>(2) For purposes of determining business income under subdivision (a)(1) of this section, the taxpayer shall include only one-half (1/2) of the taxpayer's sales receipts from sales described in § 26-51-716(a)(2) in the taxpayer's total sales.</u>

<u>(b) For tax years beginning on or after January 1, 2022, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.</u>

SECTION 7. Arkansas Code §§ 26-51-710 — 26-51-715 are repealed.

~~26-51-710. Real and tangible personal property — Factor.~~

~~The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

~~26-51-711. Original cost of property — Annual rental rate.~~

~~Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.~~

~~26-51-712. Average value of property.~~

~~The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the Director of the Department of Finance and Administration may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~

~~26-51-713. Payroll factor.~~

~~The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.~~

~~26-51-714. Compensation for service — Determination of payment in state.~~

~~Compensation is paid in this state if:~~

~~(a) the individual's service is performed entirely within the state; or~~

~~(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~

~~(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

~~26-51-715. Sales factor.~~

~~The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the~~

~~denominator of which is the total sales of the taxpayer everywhere during the tax period.~~

SECTION 8. Arkansas Code § 26-51-716 is amended to read as follows:

26-51-716. Sales of tangible personal property.

(a) ~~Sales~~ For the tax year beginning January 1, 2021, sales of tangible personal property are in this state if:

~~(a) the~~ (1) The property is delivered or shipped to a purchaser, ~~other than~~ including without limitation the United States ~~government~~ Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

~~(b) the~~ (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and: ~~(1) the~~

(A) The purchaser is the United States ~~government~~ Government and the property is delivered outside this state; or ~~(2) the~~

(B) The taxpayer is not taxable in the state of the purchaser.

(b) For tax years beginning on or after January 1, 2022, sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser, including without limitation the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale.

SECTION 9. Arkansas Code § 26-51-718 is amended to read as follows:

26-51-718. Procedure when allocation does not fairly represent taxpayer’s business activity.

If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer’s business activity in this state, the taxpayer may petition for or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer’s business activity, if reasonable:

(a) separate accounting;

(b) ~~the exclusion of any one or more of the factors;~~

~~(c)~~ the inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or

~~(d)~~ (c) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

SECTION 10. Arkansas Code § 26-51-1401 is amended to read as follows:

26-51-1401. Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this subchapter. All items of nonbusiness income, income ~~which~~ that is not includable in the apportionable income tax base, shall be allocated ~~pursuant to the provisions of~~ under §§ 26-51-704 — 26-51-708. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income, as defined under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this subchapter.

(b)(1) All business income, income which is includable in the apportionable income tax base, shall be apportioned to this state by multiplying such income by the ~~apportionment percentage.~~

~~(2) The apportionment percentage is determined by adding the~~ taxpayer's receipts factor as described in § 26-51-1403~~, property factor as described in § 26-51-1404, and payroll factor as described in § 26-51-1405 together and dividing the sum by three (3). If one (1) of the factors is missing, the two (2) remaining factors are added and the sum is divided by two (2). If two (2) of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero~~.

(c) ~~Each~~ The taxpayer's receipts factor shall be computed according to the method of accounting, cash or accrual basis, used by the taxpayer for the taxable year.

(d) If the allocation and apportionment provisions of this subchapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) ~~The exclusion of any one (1) or more of the factors;~~

~~(3)~~ The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

~~(4)~~ (3) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

SECTION 11. Arkansas Code § 26-51-1402(4), concerning the definitions used in relation to the apportionment and allocation of the net income of financial institutions, is repealed.

~~(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995. In the case of employees not subject to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, shall be made as though such employees were subject to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995;~~

SECTION 12. Arkansas Code § 26-51-1402(9), concerning the definitions used in relation to the apportionment and allocation of the net income of financial institutions, is repealed.

~~(9)(A) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.~~

~~(B) "Gross rents" shall include, but not be limited to:~~

~~(i) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;~~

~~(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and~~

~~(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other~~

~~arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the taxpayer.~~

~~(C) "Gross rents" does not include:~~

~~(i) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;~~

~~(ii) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;~~

~~(iii) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and~~

~~(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it;~~

SECTION 13. Arkansas Code § 26-51-1403(a)(1)(A), concerning the apportionment and allocation of net income of financial institutions, is amended to read as follows:

(1)(A)(i)(a) The receipts factor is a fraction, the numerator of which is the total receipts of the taxpayer in this state during the taxable year and the denominator of which is the total receipts of the taxpayer within and without this state during the taxable year.

(b) For purposes of determining business income under subdivision (a)(1)(A)(i)(a) of this section, for tax years beginning on or after January 1, 2021, the taxpayer shall include only one-half (1/2) of the taxpayer's sales receipts from sales of tangible personal property described in § 26-51-716(a)(2) in the taxpayer's total sales receipts.

(ii) For tax years beginning on or after January 1, 2022, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the total receipts of the taxpayer in this state during the taxable year and the denominator of which is the total receipts of the taxpayer within and without this state during the taxable year.

SECTION 14. Arkansas Code § 26-51-1403(n) and (o), concerning the apportionment and allocation of net income of financial institutions, are amended to read as follows:

(n) All Other Receipts. The numerator of the receipts factor includes all other receipts ~~pursuant to~~ under the rules set ~~forth~~ out in §§ ~~26-51-715 –~~ 26-51-716 and 26-51-717.

(o) Attribution of Certain Receipts to Commercial Domicile. All receipts, other than sales of tangible personal property, which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

SECTION 15. Arkansas Code § 26-51-1404 is amended to read as follows:

26-51-1404. Property ~~factor~~ values.

(a) ~~Generally. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year; and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.~~

~~(b) Property Included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.~~

~~(c) Value of Property Owned by the Taxpayer.~~

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(2)(A) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts.

<u>(B)</u> If a loan is charged off, in whole or in part, for federal income tax purposes, the portion of the loan charged off is not outstanding.

<u>(C)</u> A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines ~~which~~ <u>that</u> is treated as charged off for federal income tax purposes shall be treated as charged off for purposes of this section.

(3)<u>(A)</u> Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts.

<u>(B)</u> If a credit card receivable is charged off, in whole or in part, for federal income tax purposes, the portion of the receivable charged off is not outstanding.

~~(d)~~<u>(b)</u> ~~Average Value of Property Owned by the Taxpayer.~~

(1) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2).

(2) If averaging on this basis does not properly reflect average value, the Director of the Department of Finance and Administration may require averaging on a more frequent basis.

(3) The taxpayer may elect to average on a more frequent basis.

(4) When averaging on a more frequent basis is required by the Director of the Department of Finance and Administration or is elected by the taxpayer, the same method of valuation ~~must~~ <u>shall</u> be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the director or the director requires a different method of determining average value.

~~(e) Average Value of Real Property and Tangible Personal Property Rented to the Taxpayer.~~

~~(1) The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight (8).~~

~~(2)(A) Where the use of the general method described in this~~

~~subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the director or by the taxpayer when approved in writing by the director.~~

~~(B) Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the director or unless the director requires a different method of valuation.~~

~~(f) Location of Real Property and Tangible Personal Property Owned by or Rented to the Taxpayer.~~

~~(1) Except as described in subdivision (f)(2) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.~~

~~(2)(A) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.~~

~~(B) The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.~~

~~(C) If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations.~~

~~(D) A motor vehicle will be deemed to be used wholly in the state in which it is registered.~~

~~(g) Location of Loans.~~

~~(1)(A) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.~~

~~(B) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts.~~

~~(2)(A) A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:~~

~~(i) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;~~

~~(ii) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and~~

~~(iii) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.~~

~~(B) The presumption of proper assignment of a loan provided in subdivisions (g)(1)(B) and (g)(2)(A) of this section may be rebutted upon a showing by the director, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records.~~

~~(C) When such presumption has been rebutted, the loan shall then be located within this state if:~~

~~(i) The taxpayer had a regular place of business within this state at the time the loan was made; and~~

~~(ii) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.~~

~~(3) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state, if, at the time the loan was made, the taxpayer's commercial domicile, as defined by § 26-51-1402(3), was within this state.~~

~~(4)(A) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan.~~

~~(B) The terms "solicitation", "investigation", "negotiation", "approval", and "administration" are defined as follows:~~

~~(i)(a) "Solicitation" is either active or passive.~~

~~(b) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed.~~

~~(c) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case;~~

~~(ii) "Investigation" is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer, as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;~~

~~(iii) "Negotiation" is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, for example, the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;~~

~~(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer; and~~

~~(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the~~

~~regular place of business which oversees this activity.~~

~~(h) Location of Credit Card Receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (g) of this section.~~

~~(i) Period for Which Properly Assigned Loan Remains Assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.~~

SECTION 16. Arkansas Code § 26-51-1405 is repealed.

~~26-51-1405. Payroll factor.~~

~~(a) Generally. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.~~

~~(b) Compensation Relating to Nonbusiness Income and Independent Contractors. The compensation of any employee for services or activities which are connected with the production of nonbusiness income, which is income that is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.~~

~~(c) When Compensation Paid in this State. Compensation is paid in this state if any one (1) of the following tests, applied consecutively, is met:~~

~~(1) The employee's services are performed entirely within this state;~~

~~(2) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. "Incidental" means any service which is temporary or transitory in nature, or which is rendered in~~

~~connection with an isolated transaction; and~~

~~(3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:~~

~~(A) If the employee's principal base of operations is within this state;~~

~~(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or~~

~~(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.~~

SECTION 17. Arkansas Code § 26-52-103, concerning the definitions used under the Arkansas Gross Receipts Act of 1941, is amended to add additional subdivisions to read as follows:

(35)(A) "Forum" means a physical place or electronic location where sales occur.

(B) "Forum" includes without limitation a:

(i) Store;

(ii) Booth;

(iii) Publicly accessible internet website;

(iv) Catalog; and

(v) Place or location similar to the places and locations listed in subdivisions (36)(B)(i)-(iv);

(36) "Marketplace facilitator" means a person that facilitates the sale of tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products by:

(A) Listing or advertising tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products for sale in a forum; and

(B) Either directly or indirectly through an agreement or arrangement with a third party, collecting payment from a purchaser and transmitting the payment to the person selling the tangible personal property, taxable services, a digital code, or specified digital products, regardless of whether the person receives compensation or other consideration in exchange for the person's services in collecting and transmitting the payment;

(37) "Marketplace seller" means a person that has an agreement with a marketplace facilitator under which the marketplace facilitator facilitates sales for the person;

(39) "Referral" means the transfer by a referrer of a potential purchaser to a person that advertises or lists tangible personal property, taxable services, a digital code, or specified digital products for sale on the referrer's platform;

(39)(A) "Referrer" means a person, other than a person engaging in the business of printing or publishing a newspaper, that, under an agreement or arrangement with a marketplace seller or remote seller, does the following:

(i) Agrees to list or advertise for sale tangible personal property, taxable services, a digital code, or specified digital products of the marketplace seller or remote seller via a physical or electronic medium;

(ii) Receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement;

(iii) Transfers by telecommunications, internet link, or other means, a purchaser to a marketplace seller or remote seller to complete a sale; and

(iv) Does not collect a receipt from the purchaser for the sale.

(B) "Referrer" does not include a person that:

(i) Provides internet advertising services; and

(ii) Does not:

(a) Provide the marketplace seller's or the remote seller's shipping terms; or

(b) Advertise whether a marketplace seller or remote seller collects sales or use tax; and

(40) "Remote seller" means a person, other than a marketplace facilitator, that does not maintain a place of business in this state and that through a forum sells tangible personal property, taxable services, a

digital code, or specified digital products, the sale or use of which is subject to the tax imposed by this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

SECTION 18. Arkansas Code § 26-52-110 is repealed.

~~26-52-110. Sellers and affiliated persons — Referral agreements — Notice required — Definitions.~~

~~(a) As used in this section:~~

~~(1) “Affiliated person” means:~~

~~(A) A person that is a member of the same controlled group of corporations as the seller; or~~

~~(B) Another entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations; and~~

~~(2) “Controlled group of corporations” means the same as in 26 U.S.C. § 1563(a), as it existed on January 1, 2011.~~

~~(b) A seller is presumed to be engaged in the business of selling tangible personal property, specified digital products, a digital code, or taxable services for use in the state if an affiliated person is subject to the sales and use tax jurisdiction of the state and the:~~

~~(1) Seller sells a similar line of products as the affiliated person and sells the products under the same business name or a similar business name;~~

~~(2) Affiliated person uses his, her, or its in-state employees or in-state facilities to advertise, promote, or facilitate sales by the seller to consumers;~~

~~(3) Affiliated person maintains an office, distribution facility, warehouse or storage place, or similar place of business to facilitate the delivery of property, specified digital products, a digital code, or services sold by the seller to the seller’s business;~~

~~(4) Affiliated person uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the seller; or~~

~~(5) Affiliated person delivers, installs, assembles, or performs maintenance services for the seller’s purchasers within the state.~~

~~(c) The presumption in subsection (b) of this section may be rebutted by demonstrating that the affiliated person's activities in the state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales.~~

~~(d)(1) If there is not an affiliated person with respect to a seller in the state, the seller is presumed to be engaged in the business of selling tangible personal property, specified digital products, a digital code, or taxable services for use in the state if the seller enters into an agreement with one (1) or more residents of the state under which the residents, for a commission or other consideration, directly or indirectly refer potential purchasers, whether by a link on an Internet website or otherwise, to the seller.~~

~~(2) However, subdivision (d)(1) of this section applies only if the cumulative gross receipts from sales by the seller to purchasers in the state who are referred to the seller by all residents according to the type of agreement described in subdivision (d)(1) of this section exceed ten thousand dollars ($10,000) during the preceding twelve (12) months.~~

~~(e)(1) The presumption in subsection (d) of this section may be rebutted by submitting proof that the residents with whom the seller has an agreement did not engage in any activity within the state that was significantly associated with the seller's ability to establish or maintain the seller's market in the state during the preceding twelve (12) months.~~

~~(2) Proof provided under subdivision (e)(1) of this section may consist of written statements from all of the residents with whom the seller has an agreement stating that they did not engage in any solicitation in the state on behalf of the seller during the preceding twelve (12) months if the statements were provided and obtained in good faith.~~

~~(f) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.~~

SECTION 19. Arkansas Code Title 26, Chapter 52, Subchapter 1, is amended to add an additional section to read as follows:

26-52-111. Remote sellers and marketplace facilitators.

(a) A remote seller or a marketplace facilitator that sells or facilitates the sale of tangible personal property, taxable services, a digital code, or specified digital products for delivery into Arkansas shall collect and remit the applicable sales tax levied under this chapter or the applicable compensating use tax levied under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., if in the previous calendar year or in the current calendar year, the remote seller or the marketplace facilitator had aggregate sales of tangible personal property, taxable services, digital codes, or specified digital products subject to Arkansas sales or use tax within this state or delivered to locations within this state exceeding:

(1) One hundred thousand dollars ($100,000); or

(2) Two hundred (200) transactions.

(b) A sale made through a marketplace facilitator:

(1) Is a sale of the marketplace facilitator for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section; and

(2) Is not a sale of the marketplace seller for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section.

(c) The requirement to collect and remit sales or use tax under this section shall not be applied retroactively.

(d) This section does not affect or impair the:

(1) Obligation of a purchaser in this state to remit use tax on any applicable transaction in which the seller does not collect and remit sales or use tax;

(2) Obligation of a seller, when the seller is transacting business in the state and a point-of-sale tax is collected on the transaction, to remit all state and local taxes on any applicable transaction in which the seller provides goods or furnishes services within the state; or

(3) Ability of a state entity to immediately collect the taxes described in subdivision (d)(2) of this section.

SECTION 20. Arkansas Code § 26-52-301(3)(B)(ii), concerning the levy of sales tax on certain products and services, is repealed.

~~(ii)(a) However, the provisions of this section shall not apply to a coin-operated car wash.~~

~~(b) As used in subdivision (3)(B)(ii)(a) of this section, "coin-operated car wash" means a car wash in which the car washing equipment is activated by the insertion of coins into a slot or~~

~~receptacle and the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.~~

SECTION 21. Arkansas Code § 26-52-401, concerning sales tax exemptions for certain products and services, is amended to add an additional subdivision to read as follows:

(40)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Tangible personal property, specified digital products, or a digital code by or to a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service;

(ii) Services to a car wash operator; and

(iii) Ancillary services by a car wash operator.

(B) As used in this subdivision (40):

(i)(a) "Ancillary service" means a service provided by a car wash operator in conjunction with the sale of a service through an automatic car wash, a car wash tunnel, or a self-service bay that involves the cleaning of interior or exterior, or both, of a motor vehicle.

(b) "Ancillary service" includes without limitation:

(1) Hand prepping any portion of a motor vehicle;

(2) Vacuuming;

(3) Hand drying any portion of a motor vehicle;

(4) Waxing any portion of a motor vehicle;

(5) Hand cleaning any portion of a motor vehicle; and

(6) Applying a protective or shine coat to any portion of a motor vehicle;

(ii) "Automatic car wash" means the same as defined in § 26-57-1601;

(iii) "Car wash operator" means a person that operates one (1) or more automatic car washes, car wash tunnels, self-service bays, or any combination of automatic car washes, car wash tunnels, self-service bays;

(iv) "Car wash tunnel" means the same as defined in § 26-57-1601; and

(v) "Self-service bay" means the same as defined in § 26-57-1601.

(C)(i) This subdivision (40) shall expire if the Director of the Department of Finance and Administration determines under § 26-57-1606 that the total state revenue loss resulting from the exemption provided in this subdivision (40) is greater than the total state revenue generated by the fees under § 26-57-1601.

(ii) If the exemption provided under this subdivision (40) expires under subdivision (40)(C)(i) of this section, the expiration of the exemption is effective on and after the first day of the calendar quarter following the director's determination under § 26-57-1606.

SECTION 22. Arkansas Code Title 26, Chapter 57, is amended to add an additional subchapter to read as follows:

Subchapter 16 — Car Washes

26-57-1601. Definitions.

As used in this subchapter:

(1) "Automatic car wash" means a car wash bay that provides a car wash using mechanical equipment that cleans the motor vehicle while the motor vehicle remains stationary;

(2) "Car wash tunnel" means a car wash bay that provides a fully automated car wash in which the motor vehicle is moved through a tunnel by a conveyor system;

(3) "Nonpublic water system" means a water source that is not a public water system, including without limitation a private well;

(4) "Public water system" means a water system subject to regulation under the Safe Drinking Water Act, 42 U.S.C. § 300f, as existing on January 1, 2019, which is owned by a municipal corporation, a governmental corporation, or a nonprofit corporation, including without limitation:

(A) A municipality;

(B) A public facilities board;

(C) A public water authority;

(D) A water association;

(E) A regional water distribution district;

(F) A rural development authority;

(G) A sanitation authority;

(H) An improvement district;

(I) A regional wastewater treatment district; or

(J) A consolidated waterworks; and

(5) "Self-service bay" means a car wash bay that allows a person to manually wash a motor vehicle using equipment and supplies provided by the car wash operator.

26-57-1602. Registration.

(a) A person that is entitled to claim a sales and use tax exemption under § 26-52-401(40) shall pay the fee required under § 26-57-1603 in lieu of paying the sales tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., on the exempt products and services.

(b) A car wash operator that is required to pay a fee under § 26-57-1603 shall register electronically with the Director of the Department of Finance and Administration before a self-service bay, an automatic car wash, or a car wash tunnel is made available for commercial use.

(c) The electronic registration form provided for in this section shall:

(1) Be in the form prescribed by the director; and

(2) Contain the information required by rules adopted by the director to implement this subchapter.

26-57-1603. Fees.

(a) A car wash operator that uses water from a public water system shall pay to the Director of the Department of Finance and Administration the following fee by the twentieth day of each month:

(1) For a car wash operator that operates only one (1) or more car wash tunnels, the car wash operator shall calculate the monthly fee due under this subsection as follows:

(A) Multiply by nine-tenths (0.9) the total aggregate number of gallons of water the car wash operator used during the preceding month for all of the car wash operator’s car wash tunnels; and

(B) Multiply the product obtained under subdivision (a)(1)(A) of this section by seventy-five hundredths of one cent (0.75¢); and

(2) For a car wash operator that operates one (1) or more car wash tunnels and one (1) or more self-service bays or automatic car washes, or both, at the same location, the car wash operator shall calculate the monthly fee due for each location with one (1) or more car wash tunnels and one (1) or more self-service bays or automatic car washes, or both, under this subsection as follows:

(A) Multiply the number of self-service bays and automatic car washes at the same location as a car wash tunnel by one-tenth (0.1);

(B) Subtract the lesser of five-tenths (0.5) or the product obtained under subdivision (a)(2)(A) of this section from nine-tenths (0.9);

(C) Multiply the total aggregate number of gallons of water the car wash operator used during the preceding month for all of the car wash operator’s car wash tunnels at that location by the difference obtained under subdivision (a)(2)(B) of this section; and

(D) Multiply the product obtained under subdivision (a)(2)(C) of this section by seventy-five hundredths of one cent (0.75¢).

(b)(1) Except as otherwise provided in this subsection, by July 31 of each year, a car wash operator that operates only one (1) or more self-service bays or automatic car washes, or both, that use water from a public water system or a nonpublic water system shall pay to the director an annual fee of:

(A) One hundred dollars ($100) for each self-service bay operated by the car wash operator; and

(B) Five hundred dollars ($500) for each automatic car wash operated by the car wash operator.

(2) A car wash operator that has one (1) or more self-service bays and one (1) or more automatic car washes at the same location is not required to pay the fee levied under subdivision (b)(1)(A) of this section on the self-service bays.

(3) A fee paid for a self-service bay or automatic car wash operated only during the last six (6) months of the fiscal year shall be

equal to one-half (½) of the annual fee levied under this subsection.

(c) A car wash operator shall pay the fees required under this section electronically in the form and method prescribed by the department.

26-57-1604. Distribution of revenues.

All revenue collected under this subchapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

26-57-1605. Administration — Rules.

(a)(1) Each fee levied under this subchapter is a “state tax” as that term is defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(2) The Arkansas Tax Procedure Act, § 26-18-101 et seq., so far as is practicable, is applicable to the fees levied under this subchapter and to the reporting, remitting, and enforcement of the fees.

(b) The Director of the Department of Finance and Administration shall adopt rules to implement and administer this subchapter.

26-57-1606. Sunset.

(a) At the end of each fiscal year, the Director of the Department of Finance and Administration shall determine the total state revenue:

(1) Generated under this subchapter; and

(2) Loss resulting from the sales tax exemption provided under § 26-52-401(40).

(b) This subchapter shall sunset if the director determines that the total state revenue loss resulting from the exemption provided in § 26-52-401(40) is greater than the total state revenue generated by the fees under this subchapter.

(ii) If the fees provided under this subchapter expire under subsection (b) of this section, the expiration of this subchapter is effective on and after the first day of the calendar quarter following the director’s determination under this section.

SECTION 23. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under Sections 20-22 of this act, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before October 1, 2019; or

(2) If approval under § 10-3-309 has not occurred by October 1, 2019, as soon as practicable after approval under § 10-3-309.

(b) The Director of the Department of Finance and Administration shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of October 1, 2019, so that the Legislative Council may consider the rules for approval before October 1, 2019.

SECTION 24. EFFECTIVE DATES.

(a) Sections 2 and 4 of this act are effective for tax years beginning on or after January 1, 2020.

(b) Sections 3 and 5-16 of this act are effective for tax years beginning on or after January 1, 2021.

(c) Sections 20-22 of this act are effective on the first day of the calendar quarter following the effective date of this act.

(d) If the emergency clause in Section 25 of this act fails, Sections 16-18 of this act are effective on the first day of the calendar quarter following the effective date of this act.

SECTION 25. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the income tax structure for Arkansas residents is too complicated in comparison with the income tax structure in surrounding states; that this complexity prevents Arkansas from being competitive with surrounding states in the region; that the State of Arkansas will be prevented from seeking the remittance of sales and use tax on the ever-expanding online tax base absent an immediate change in the law allowing for the collection of sales and use tax by remote sellers and marketplace facilitators; and that this act is immediately necessary because it is in the best interests of the state to increase Arkansas's ability to compete in the region by simplifying the tax laws and dedicating as much funding as is economically possible and prudent to relieve the tax burden suffered by taxpayers in the state. Therefore, an emergency is declared to exist, and Sections 17-19 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.