

1 State of Arkansas
2 92nd General Assembly
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4

As Engrossed: S3/20/19

A Bill

SENATE BILL 576

5 By: Senators Hester, J. Hendren, J. Dismang, B. Ballinger, A. Clark, L. Eads, J. English, Irvin, B.
6 Johnson, M. Pitsch, D. Wallace
7 By: Representative D. Douglas
8

For An Act To Be Entitled

10 AN ACT TO REFORM THE TAX LAWS OF THE STATE; TO AMEND
11 THE ARKANSAS GROSS RECEIPTS ACT OF 1941; TO REQUIRE
12 THE COLLECTION OF SALES AND USE TAX BY CERTAIN REMOTE
13 SELLERS AND MARKETPLACE FACILITATORS; TO AMEND THE
14 MULTISTATE TAX COMPACT; TO AMEND THE UNIFORM DIVISION
15 OF INCOME FOR TAX PURPOSES ACT; TO PROVIDE FOR A
16 SINGLE SALES FACTOR APPORTIONMENT FORMULA FOR
17 BUSINESS INCOME; TO AMEND THE LAWS CONCERNING THE
18 APPORTIONMENT AND ALLOCATION OF THE NET INCOME OF
19 FINANCIAL INSTITUTIONS; TO PHASE IN AN EXTENSION OF
20 THE NET OPERATING LOSS CARRY-FORWARD PERIOD FOR
21 COMPUTING ARKANSAS INCOME TAX; TO REDUCE CORPORATE
22 INCOME TAX RATES; TO AMEND THE SALES TAX EXEMPTION
23 FOR CERTAIN CAR WASHES; TO EXEMPT CERTAIN PRODUCTS
24 AND SERVICES RELATED TO CAR WASHES FROM SALES AND USE
25 TAX; TO LEVY A FEE ON CERTAIN CAR WASH OPERATORS IN
26 LIEU OF THE SALES AND USE TAX; TO DECLARE AN
27 EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

31 TO REFORM THE TAX LAWS CONCERNING THE
32 LEVY AND COLLECTION OF SALES AND USE TAX,
33 THE APPORTIONMENT AND ALLOCATION OF
34 INCOME FOR TAX PURPOSES, CORPORATE INCOME
35 TAX RATES, AND NET OPERATING LOSSES; AND
36 TO DECLARE AN EMERGENCY.



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2
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
4

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

6 (a) The General Assembly finds that:

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

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

11 (B) Recommending legislation to the General Assembly to:

12 (i) Modernize and simplify the Arkansas tax code;

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

15 (iii) Create jobs; and

16 (iv) Ensure fairness to all taxpayers;

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) Gradually reduce the tax burden on Arkansas taxpayers in a
22 fiscally responsible manner; and

23 (4) Act on the recommendation of the Arkansas Tax Reform and
24 Relief Legislative Task Force to repeal the throwback rule for business
25 income when the state's budget would allow for that change to be enacted in a
26 fiscally responsible manner.

27
28 SECTION 2. Arkansas Code § 26-5-101, Article IV, paragraphs 9-15,
29 concerning the division of income under the Multistate Tax Compact, are
30 amended to read as follows:

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

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

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

11 ~~12. The average value of property shall be determined by~~
12 ~~averaging the values at the beginning and ending of the tax period, but the~~
13 ~~tax administrator may require the averaging of monthly values during the tax~~
14 ~~period if reasonably required to reflect properly the average value of the~~
15 ~~taxpayer's property.~~

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

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

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

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

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

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

36 SECTION 3. Arkansas Code § 26-5-101, Article IV, paragraph 18,

1 concerning the division of income under the Multistate Tax Compact, is
2 amended to read as follows:

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

8 (a) Separate accounting;
9 (b) ~~The exclusion of any one (1) or more of the factors;~~
10 ~~(c) The inclusion of one (1) or more additional factors~~
11 which will fairly represent the taxpayer's business activity in this state;
12 or

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

15
16 SECTION 4. Arkansas Code § 26-51-205(a) and (b), concerning the income
17 tax levied on corporations, are amended to read as follows:

18 (a)(1) Every corporation organized under the laws of this state shall
19 pay annually an income tax with respect to carrying on or doing business on
20 the entire net income of the corporation, as now defined by the laws of the
21 State of Arkansas, received by ~~such~~ the corporation during the income year,
22 on the following basis:

23 ~~(1)~~ (A) On the first ~~\$3,000~~ three thousand dollars
24 (\$3,000) of net income or any part thereof ~~1%, one percent (1%);~~

25 (B) On the second ~~\$3,000~~ three thousand dollars (\$3,000)
26 of net income or any part thereof ~~2%, two percent (2%);~~

27 (C) On the next ~~\$5,000~~ five thousand dollars (\$5,000) of
28 net income or any part thereof ~~3%, three percent (3%);~~

29 (D) On the next ~~\$14,000~~ fourteen thousand dollars
30 (\$14,000) of net income or any part thereof ~~5%, five percent (5%);~~

31 (E) On the next ~~\$75,000~~ seventy-five thousand dollars
32 (\$75,000) of net income or any part thereof, but not exceeding ~~\$100,000~~ 6%
33 one hundred thousand dollars (\$100,000), six percent (6%); and

34 ~~(2)~~ (F) On net income exceeding one hundred thousand
35 dollars (\$100,000), ~~a flat rate of six and one half percent (6 ½ %) shall be~~
36 ~~applied to the entire net income~~ six and five-tenths percent (6.5%).

1 (2) For the tax year beginning January 1, 2021, every
2 corporation organized under the laws of this state shall pay annually an
3 income tax with respect to carrying on or doing business on the entire net
4 income of the corporation, as now defined by the laws of this state, received
5 by the corporation during the income year, on the following basis:

6 (A) On the first three thousand dollars (\$3,000) of net
7 income or any part thereof, one percent (1%);

8 (B) On the next three thousand dollars (\$3,000) of net
9 income or any part thereof, two percent (2%);

10 (C) On the next five thousand dollars (\$5,000) of net
11 income or any part thereof, three percent (3%);

12 (D) On the next fourteen thousand dollars (\$14,000) of net
13 income or any part thereof, five percent (5%);

14 (E) On the next seventy-five thousand dollars (\$75,000) of
15 net income or any part thereof, six percent (6%); and

16 (F) On net income exceeding one hundred thousand dollars
17 (\$100,000), six and two-tenths percent (6.2%).

18 (3) For tax years beginning on or after January 1, 2022, every
19 corporation organized under the laws of this state shall pay annually an
20 income tax with respect to carrying on or doing business on the entire net
21 income of the corporation, as now defined by the laws of this state, received
22 by the corporation during the income year, on the following basis:

23 (A) On the first three thousand dollars (\$3,000) of net
24 income or any part thereof, one percent (1%);

25 (B) On the next three thousand dollars (\$3,000) of net
26 income or any part thereof, two percent (2%);

27 (C) On the next five thousand dollars (\$5,000) of net
28 income or any part thereof, three percent (3%);

29 (D) On the next fourteen thousand dollars (\$14,000) of net
30 income or any part thereof, five percent (5%); and

31 (E) On net income exceeding twenty-five thousand dollars
32 (\$25,000), five and nine-tenths percent (5.9%).

33 (b)(1) Every foreign corporation doing business within the
34 jurisdiction of this state shall pay annually an income tax on the proportion
35 of its entire net income as now determined by the income tax laws of ~~Arkansas~~
36 this state, on the following basis:

1 ~~(1)~~ (A) On the first \$3,000 three thousand dollars
2 (\$3,000) of net income or any part thereof ~~1%~~, one percent (1%);

3 (B) On the second \$3,000 three thousand dollars (\$3,000)
4 of net income or any part thereof ~~2%~~, two percent (2%);

5 (C) On the next \$5,000 five thousand dollars (\$5,000) of
6 net income or any part thereof ~~3%~~, three percent (3%);

7 (D) On the next \$14,000 fourteen thousand dollars
8 (\$14,000) of net income or any part thereof ~~5%~~, five percent (5%);

9 (E) On the next \$75,000 seventy-five thousand dollars
10 (\$75,000) of net income or any part thereof, but not exceeding \$100,000 ~~6%~~
11 one hundred thousand dollars (\$100,000), six percent (6%); and

12 ~~(2)~~ (F) On net income exceeding one hundred thousand
13 dollars (\$100,000), a flat rate of six and one half percent (~~6 1/2 %~~) shall be
14 applied to the entire net income six and five-tenths percent (6.5%).

15 (2) For the tax year beginning January 1, 2021, every foreign
16 corporation doing business within the jurisdiction of this state shall pay
17 annually an income tax on the proportion of its entire net income as now
18 determined by the income tax laws of this state, on the following basis:

19 (A) On the first three thousand dollars (\$3,000) of net
20 income or any part thereof, one percent (1%);

21 (B) On the next three thousand dollars (\$3,000) of net
22 income or any part thereof, two percent (2%);

23 (C) On the next five thousand dollars (\$5,000) of net
24 income or any part thereof, three percent (3%);

25 (D) On the next fourteen thousand dollars (\$14,000) of net
26 income or any part thereof, five percent (5%);

27 (E) On the next seventy-five thousand dollars (\$75,000) of
28 net income or any part thereof, six percent (6%); and

29 (F) On net income exceeding one hundred thousand dollars
30 (\$100,000), six and two-tenths percent (6.2%).

31 (3) For tax years beginning on or after January 1, 2022, every
32 foreign corporation doing business within the jurisdiction of this state
33 shall pay annually an income tax on the proportion of its entire net income
34 as now determined by the income tax laws of this state, on the following
35 basis:

36 (A) On the first three thousand dollars (\$3,000) of net

1 income or any part thereof, one percent (1%);

2 (B) On the next three thousand dollars (\$3,000) of net
3 income or any part thereof, two percent (2%);

4 (C) On the next five thousand dollars (\$5,000) of net
5 income or any part thereof, three percent (3%);

6 (D) On the next fourteen thousand dollars (\$14,000) of net
7 income or any part thereof, five percent (5%); and

8 (E) On net income exceeding twenty-five thousand dollars
9 (\$25,000), five and nine-tenths percent (5.9%).

10
11 SECTION 5. Arkansas Code § 26-51-427 is amended to read as follows:

12 26-51-427. Deductions – Net operating loss carryover.

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

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

26 (B) The net operating loss ~~as hereinbelow defined~~ for any
27 year ending on or after the passage of the Income Tax Act of 1929, § 26-51-
28 101 et seq., and for any succeeding taxable year before January 1, 2020, may
29 be carried over to the next-succeeding taxable year and annually thereafter
30 for a total period of five (5) years next succeeding the year of the net
31 operating loss or until the net operating loss has been exhausted or absorbed
32 by the taxable income of any succeeding year, whichever is earlier, if the
33 net operating loss occurred in an income year beginning on or after January
34 1, 1987, and before January 1, 2020. The net operating loss deduction ~~must~~
35 shall be carried forward in the order ~~named above~~ stated in this subdivision
36 (1)(B).

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

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

22 (b) For net operating losses occurring in tax
 23 years beginning on or after January 1, 2021, a total period of ten (10)
 24 years.

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

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

36 (E)(i) As used in this section, "qualified medical

1 company” means a corporation engaged in:

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

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

7 (ii) *In the case of a qualified medical ~~companies,~~
8 ~~as defined herein,~~ company, a net operating loss for any taxable year shall
9 be a net operating loss carryover to each of the fifteen (15) taxable years
10 following the taxable year of the loss.*

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

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

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

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

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

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

34 (D) In the case of a taxpayer other than a “C
35 corporation,” as defined in 26 U.S.C. § 1361, as in effect on January 1,
36 1985:

1 (i) ~~For income years beginning after December 31,~~
2 ~~1986, the~~ The amount deductible on account of losses from sales or exchanges
3 of capital assets shall not exceed the amount includable on account of gains
4 from sales or exchanges of capital assets; and

5 (ii) ~~For income years beginning after December 31,~~
6 ~~1986, the~~ The deduction for long-term capital gains provided by 26 U.S.C. §
7 1202 [repealed], as in effect on January 1, 1985, shall not be allowed; and

8 (3) In the case of the acquisition of assets of one (1)
9 corporation by another corporation, the acquiring corporation shall succeed
10 to and take into account any net operating loss carryover apportionable to
11 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-
12 701 et seq., that the acquired corporation could have claimed had it not been
13 acquired, subject to the following conditions:

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

18 (B) The net operating loss may not be carried forward to a
19 taxable year ~~which~~ that ends more than five (5) years after the taxable year
20 in which the net operating loss occurred if the net operating loss occurred
21 in an income year beginning on or after January 1, 1987, and before January
22 1, 2020; and

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

28 ~~(C)(D)~~ (D) The net operating loss may be claimed only when the
29 ownership of both the acquired and acquiring corporations is substantially
30 the same, ~~that is, where~~ in that not less than eighty percent (80%) of the
31 voting stock of each corporation is owned by the same person or, ~~where prior~~
32 ~~to~~ before the acquisition, the acquiring corporation owned at least eighty
33 percent (80%) of the voting stock of the acquired corporation. The carryover
34 losses ~~will be~~ are allowed only in those cases ~~where~~ in which the assets of
35 the corporation going out of existence earn sufficient profits apportionable
36 to Arkansas under the Uniform Division of Income for Tax Purposes Act, § 26-

1 51-701 et seq., in the post-merger period to absorb the carryover losses
2 claimed by the surviving corporation.

3
4 SECTION 6. DO NOT CODIFY. The Arkansas Code Revision Commission shall
5 direct the publisher of the Arkansas Code to change the title of Title 26,
6 Chapter 51, Subchapter 7, to the "Division of Income for Tax Purposes Act".

7
8 SECTION 7. Arkansas Code § 26-51-709 is amended to read as follows:
9 26-51-709. Business income.

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

16
17 SECTION 8. Arkansas Code §§ 26-51-710 – 26-51-715 are repealed.

18 ~~26-51-710. Real and tangible personal property—Factor.~~

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

24
25 ~~26-51-711. Original cost of property—Annual rental rate.~~

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

30
31 ~~26-51-712. Average value of property.~~

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

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~~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 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:

- 1 (a) separate accounting;
- 2 (b) ~~the exclusion of any one or more of the factors;~~
- 3 ~~(e)~~ the inclusion of one or more additional factors which will
- 4 fairly represent the taxpayer's business activity in this state; or
- 5 ~~(d)~~ (c) the employment of any other method to effectuate an
- 6 equitable allocation and apportionment of the taxpayer's income.
- 7

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

9 26-51-1401. Apportionment and allocation.

10 (a) Except as otherwise specifically provided, a financial institution

11 whose business activity is taxable both within and without this state shall

12 allocate and apportion its net income as provided in this subchapter. All

13 items of nonbusiness income, income ~~which~~ that is not includable in the

14 apportionable income tax base, shall be allocated ~~pursuant to the provisions~~

15 ~~of~~ under §§ 26-51-704 – 26-51-708. A financial institution organized under

16 the laws of a foreign country, the Commonwealth of Puerto Rico, or a

17 territory or possession of the United States whose effectively connected

18 income, as defined under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as

19 in effect January 1, 1995, is taxable both within this state and within

20 another state, other than the state in which it is organized, shall allocate

21 and apportion its net income as provided in this subchapter.

22 (b)(1) All business income, income which is includable in the

23 apportionable income tax base, shall be apportioned to this state by

24 multiplying such income by the ~~apportionment percentage.~~

25 ~~(2) The apportionment percentage is determined by adding the~~

26 ~~taxpayer's receipts factor as described in § 26-51-1403, property factor as~~

27 ~~described in § 26-51-1404, and payroll factor as described in § 26-51-1405~~

28 ~~together and dividing the sum by three (3). If one (1) of the factors is~~

29 ~~missing, the two (2) remaining factors are added and the sum is divided by~~

30 ~~two (2). If two (2) of the factors are missing, the remaining factor is the~~

31 ~~apportionment percentage. A factor is missing if both its numerator and~~

32 ~~denominator are zero, but it is not missing merely because its numerator is~~

33 ~~zero.~~

34 (c) ~~Each~~ The taxpayer's receipts factor shall be computed according to

35 the method of accounting, cash or accrual basis, used by the taxpayer for the

36 taxable year.

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

- 6 (1) Separate accounting;
7 (2) ~~The exclusion of any one (1) or more of the factors;~~
8 ~~(3) The inclusion of one (1) or more additional factors which~~
9 ~~will fairly represent the taxpayer's business activity in this state; or~~
10 ~~(4) (3) The employment of any other method to effectuate an~~
11 ~~equitable allocation and apportionment of the taxpayer's income.~~

12
13 SECTION 11. Arkansas Code § 26-51-1402(4), concerning the definitions
14 used in relation to the apportionment and allocation of the net income of
15 financial institutions, is repealed.

16 ~~(4) "Compensation" means wages, salaries, commissions, and any~~
17 ~~other form of remuneration paid to employees for personal services that are~~
18 ~~included in such employee's gross income under the Internal Revenue Code, 26~~
19 ~~U.S.C. § 1 et seq., as in effect January 1, 1995. In the case of employees~~
20 ~~not subject to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect~~
21 ~~January 1, 1995, e.g., those employed in foreign countries, the determination~~
22 ~~of whether such payments would constitute gross income to such employees~~
23 ~~under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January~~
24 ~~1, 1995, shall be made as though such employees were subject to the Internal~~
25 ~~Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995;~~

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

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

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

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

36 ~~(ii) Any amount payable as additional rent or in~~

1 lieu of rent, such as interest, taxes, insurance, repairs, or any other
 2 amount required to be paid by the terms of a lease or other arrangement; and
 3 ~~(iii) A proportionate part of the cost of any~~
 4 ~~improvement to real property made by or on behalf of the taxpayer which~~
 5 ~~reverts to the owner or lessor upon termination of a lease or other~~
 6 ~~arrangement. The amount to be included in gross rents is the amount of~~
 7 ~~amortization or depreciation allowed in computing the taxable income base for~~
 8 ~~the taxable year. However, where a building is erected on leased land by or~~
 9 ~~on behalf of the taxpayer, the value of the land is determined by multiplying~~
 10 ~~the gross rent by eight (8) and the value of the building is determined in~~
 11 ~~the same manner as if owned by the taxpayer.~~

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

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

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

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

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

22
 23 SECTION 13. Arkansas Code § 26-51-1403(a)(1)(A), concerning the
 24 apportionment and allocation of net income of financial institutions, is
 25 amended to read as follows:

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

30
 31 SECTION 14. Arkansas Code § 26-51-1403(n), concerning the
 32 apportionment and allocation of net income of financial institutions, *is*
 33 amended to read as follows:

34 (n) All Other Receipts. The numerator of the receipts factor includes
 35 all other receipts pursuant to under the rules set forth out in §§ 26-51-715
 36 - 26-51-716 and 26-51-717.

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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.

(B) 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.

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

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

(B) 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.

1 ~~(d)(b) Average Value of Property Owned by the Taxpayer.~~

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

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

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

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

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

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

24 ~~(2)(A) Where the use of the general method described in this~~
25 ~~subsection results in inaccurate valuations of rented property, any other~~
26 ~~method which properly reflects the value may be adopted by the director or by~~
27 ~~the taxpayer when approved in writing by the director.~~

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

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

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

1 ~~located, situated, or used within this state.~~

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

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

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

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

16 ~~(g) Location of Loans.~~

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

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

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

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

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

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

33 ~~(B) The presumption of proper assignment of a loan~~
34 ~~provided in subdivisions (g)(1)(B) and (g)(2)(A) of this section may be~~
35 ~~rebutted upon a showing by the director, supported by a preponderance of the~~
36 ~~evidence, that the preponderance of substantive contacts regarding such loan~~

1 ~~did not occur at the regular place of business to which it was assigned on~~
2 ~~the taxpayer's records.~~

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

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

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

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

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

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

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

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

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

36 ~~(ii) "Investigation" is the procedure whereby~~

1 ~~employees of the taxpayer determine the credit worthiness of the customer, as~~
2 ~~well as the degree of risk involved in making a particular agreement. Such~~
3 ~~activity is located at the regular place of business which the taxpayer's~~
4 ~~employees are regularly connected with or working out of, regardless of where~~
5 ~~the services of such employees were actually performed;~~

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

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

20 ~~(v) "Administration" is the process of managing the~~
21 ~~account. This process includes bookkeeping, collecting the payments,~~
22 ~~corresponding with the customer, reporting to management regarding the status~~
23 ~~of the agreement, and proceeding against the borrower or the security~~
24 ~~interest if the borrower is in default. Such activity is located at the~~
25 ~~regular place of business which oversees this activity.~~

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

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

36

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

2 ~~26-51-1405. Payroll factor.~~

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

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

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

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

21 ~~(2) The employee's services are performed both within and~~
22 ~~without the state, but the service performed without the state is incidental~~
23 ~~to the employee's service within the state. "Incidental" means any service~~
24 ~~which is temporary or transitory in nature, or which is rendered in~~
25 ~~connection with an isolated transaction; and~~

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

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

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

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

1 ~~state.~~

2

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

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

8 (B) "Forum" includes without limitation a:

9 (i) Store;

10 (ii) Booth;

11 (iii) Publicly accessible internet website;

12 (iv) Catalog; and

13 (v) Place or location similar to the places and

14 locations listed in subdivisions (36)(B)(i)-(iv);

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

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

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

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

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

35 (39)(A) "Referrer" means a person, other than a person engaging
36 in the business of printing or publishing a newspaper, that, under an

1 agreement or arrangement with a marketplace seller or remote seller, does the
 2 following:

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

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

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

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

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

16 (i) Provides internet advertising services; and

17 (ii) Does not:

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

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

22 (40) "Remote seller" means a person, other than a marketplace
 23 facilitator, that does not maintain a place of business in this state and
 24 that through a forum sells tangible personal property, taxable services, a
 25 digital code, or specified digital products, the sale or use of which is
 26 subject to the tax imposed by this chapter or the Arkansas Compensating Tax
 27 Act of 1949, § 26-53-101 et seq.

28
 29 SECTION 18. Arkansas Code § 26-52-110 is repealed.

30 ~~26-52-110. Sellers and affiliated persons—Referral agreements—~~
 31 ~~Notice required—Definitions.~~

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

33 ~~(1) "Affiliated person" means:~~

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

36 ~~(B) Another entity that, notwithstanding its form of~~

1 ~~organization, bears the same ownership relationship to the seller as a~~
2 ~~corporation that is a member of the same controlled group of corporations;~~
3 ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

18
19 SECTION 19. Arkansas Code Title 26, Chapter 52, Subchapter 1, is
20 amended to add an additional section to read as follows:

21 26-52-111. Remote sellers and marketplace facilitators.

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

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

33 (2) Two hundred (200) transactions.

34 (b) A sale made through a marketplace facilitator:

35 (1) Is a sale of the marketplace facilitator for purposes of
36 determining whether a person satisfies the criteria stated in subsection (a)

1 of this section; and

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

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

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

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

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

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

17 (e)(1) The Department of Finance and Administration shall audit a
18 marketplace facilitator solely for sales made by marketplace sellers and
19 facilitated by the marketplace facilitator.

20 (2) The department shall not audit marketplace sellers for sales
21 facilitated by a marketplace facilitator except to the extent the marketplace
22 facilitator seeks relief from liability under subsection (f) of this section.

23 (f)(1) A marketplace facilitator is relieved of liability under this
24 section for failure to collect and remit the correct amount of tax under this
25 section to the extent that the failure was due to incorrect or insufficient
26 information given to the marketplace facilitator by the marketplace seller.

27 (2) This subsection does not apply if the marketplace
28 facilitator and the marketplace seller are related.

29
30 SECTION 20. Arkansas Code § 26-52-301(3)(B)(ii), concerning the levy
31 of sales tax on certain products and services, is repealed.

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

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

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

3
4 SECTION 21. Arkansas Code § 26-52-401, concerning sales tax exemptions
5 for certain products and services, is amended to add an additional
6 subdivision to read as follows:

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

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

13 (ii) Services to a car wash operator; and

14 (iii) Ancillary services by a car wash operator.

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

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

20 (b) "Ancillary service" includes without
21 limitation:

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

24 (2) Vacuuming;

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

27 (4) Waxing any portion of a motor
28 vehicle;

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

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

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

35 (iii) "Car wash operator" means a person that
36 operates one (1) or more automatic car washes, car wash tunnels, self-service

1 bays, or any combination of automatic car washes, car wash tunnels, self-
2 service bays;

3 (iv) "Car wash tunnel" means the same as defined in
4 § 26-57-1601; and

5 (v) "Self-service bay" means the same as defined in
6 § 26-57-1601.

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

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

16
17 SECTION 22. Arkansas Code Title 26, Chapter 57, is amended to add an
18 additional subchapter to read as follows:

19 Subchapter 16 – Car Washes

20
21 26-57-1601. Definitions.

22 As used in this subchapter:

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

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

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

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

35 (A) A municipality;

36 (B) A public facilities board;

1 (C) A public water authority;

2 (D) A water association;

3 (E) A regional water distribution district;

4 (F) A rural development authority;

5 (G) A sanitation authority;

6 (H) An improvement district;

7 (I) A regional wastewater treatment district; or

8 (J) A consolidated waterworks; and

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

12
13 26-57-1602. Registration.

14 (a) A person that is entitled to claim a sales and use tax exemption
15 under § 26-52-401(40) shall pay the fee required under § 26-57-1603 in lieu
16 of paying the sales tax under the Arkansas Gross Receipts Act of 1941, § 26-
17 52-101 et seq., and the compensating use tax under the Arkansas Compensating
18 Tax Act of 1949, § 26-53-101 et seq., on the exempt products and services.

19 (b) A car wash operator that is required to pay a fee under § 26-57-
20 1603 shall register electronically with the Director of the Department of
21 Finance and Administration before a self-service bay, an automatic car wash,
22 or a car wash tunnel is made available for commercial use.

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

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

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

28
29 26-57-1603. Fees.

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

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

36 (A) Multiply by nine-tenths (0.9) the total aggregate

1 number of gallons of water the car wash operator used during the preceding
2 month for all of the car wash operator's car wash tunnels; and

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

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

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

13 (B) Subtract the lesser of five-tenths (0.5) or the
14 product obtained under subdivision (a)(2)(A) of this section from nine-tenths
15 (0.9);

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

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

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

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

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

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

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

1 equal to one-half ($\frac{1}{2}$) of the annual fee levied under this subsection.

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

4
5 26-57-1604. Distribution of revenues.

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

9
10 26-57-1605. Administration – Rules.

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

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

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

18
19 26-57-1606. Sunset.

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

22 (1) Generated under this subchapter; and

23 (2) Loss resulting from the sales tax exemption provided under §
24 26-52-401(40).

25 (b) This subchapter shall sunset if the director determines that the
26 total state revenue loss resulting from the exemption provided in § 26-52-
27 401(40) is greater than the total state revenue generated by the fees under
28 this subchapter.

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

33
34 SECTION 23. DO NOT CODIFY. Rules.

35 (a) When adopting the initial rules required under Sections 20-22 of
36 this act, the final rules shall be filed with the Secretary of State for

1 adoption under § 25-15-204(f):

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

3 (2) If approval under § 10-3-309 has not occurred by October 1,
4 2019, as soon as practicable after approval under § 10-3-309.

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

9
10 SECTION 24. EFFECTIVE DATES.

11 Section 5 of this act is effective for tax years beginning on or after
12 January 1, 2020.

13 (b) Sections 2-4 and 6-16 of this act are effective for tax years
14 beginning on or after January 1, 2021.

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

17 (d) If the emergency clause in Section 25 of this act fails, Sections
18 17-19 of this act are effective on the first day of the calendar quarter
19 following the effective date of this act.

20
21 SECTION 25. EMERGENCY CLAUSE. It is found and determined by the
22 General Assembly of the State of Arkansas that the income tax structure for
23 Arkansas residents is too complicated in comparison with the income tax
24 structure in surrounding states; that this complexity prevents Arkansas from
25 being competitive with surrounding states in the region; that the State of
26 Arkansas will be prevented from seeking the remittance of sales and use tax
27 on the ever-expanding online tax base absent an immediate change in the law
28 allowing for the collection of sales and use tax by remote sellers and
29 marketplace facilitators; and that this act is immediately necessary because
30 it is in the best interests of the state to increase Arkansas's ability to
31 compete in the region by simplifying the tax laws and dedicating as much
32 funding as is economically possible and prudent to relieve the tax burden
33 suffered by taxpayers in the state. Therefore, an emergency is declared to
34 exist, and Sections 17-19 of this act being necessary for the preservation of
35 the public peace, health, and safety shall become effective on July 1, 2019.

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/s/Hester