

1 State of Arkansas
2 91st General Assembly
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4
5 By: Representative Jett
6

A Bill

HOUSE BILL 2100

For An Act To Be Entitled

8 AN ACT TO AMEND THE MULTISTATE TAX COMPACT AND THE
9 UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT; TO
10 AMEND AND MODERNIZE THE LAW CONCERNING THE
11 APPORTIONMENT OF INCOME DERIVED FROM MULTISTATE
12 OPERATIONS; TO CHANGE THE METHOD FOR SOURCING OF
13 RECEIPTS FOR SERVICES AND INTANGIBLES FROM COST OF
14 PERFORMANCE TO MARKET-BASED SOURCING; AND FOR OTHER
15 PURPOSES.
16

Subtitle

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18
19 TO AMEND AND MODERNIZE THE LAW CONCERNING
20 THE APPORTIONMENT OF INCOME DERIVED FROM
21 MULTISTATE OPERATIONS; TO CHANGE THE
22 METHOD FOR SOURCING OF RECEIPTS FOR
23 SERVICES AND INTANGIBLES.
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25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 26-5-101, Article IV, concerning the
29 division of income under the Multistate Tax Compact, is amended to read as
30 follows:

ARTICLE IV

Division of Income

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33
34 1. As used in this Article, unless the context otherwise
35 requires:

36 (a) ~~“Business income” means income arising from~~



1 ~~transactions and activity in the regular course of the taxpayer's trade or~~
 2 ~~business and includes income from tangible and intangible property if the~~
 3 ~~acquisition, management, and disposition of the property constitute integral~~
 4 ~~parts of the taxpayer's regular trade or business operation;~~ "Apportionable
 5 income" means:

6 (1) All income that is apportionable under the
 7 United States Constitution and is not allocated under the laws of this state,
 8 including:

9 (A) Income arising from transactions and
 10 activity in the regular course of the taxpayer's trade or business; and

11 (B) Income arising from tangible and
 12 intangible property if the acquisition, management, employment, development,
 13 or disposition of the property is or was related to the operation of the
 14 taxpayer's trade or business; and

15 (2) Any income that would be allocable to this state
 16 under the United States Constitution, but that is apportioned rather than
 17 allocated pursuant to the laws of this state;

18 (b) "Commercial domicile" means the principal place from
 19 which the trade or business of the taxpayer is directed or managed;

20 (c) "Compensation" means wages, salaries, commissions, and
 21 any other form of remuneration paid to employees for personal services;

22 (d) ~~{Repealed.}~~ "Financial institution" means the same as
 23 defined in § 26-51-1402;

24 (e) ~~"Nonbusiness Nonapportionable income"~~ means all income
 25 other than business apportionable income;

26 (f) ~~"Public utility" means any business entity (1) which~~
 27 ~~owns or operates any plant, equipment, property, franchise, or license for~~
 28 ~~the transmission of communications, transportation of goods or persons,~~
 29 ~~except by pipeline, or the production, transmission, sale, delivery, or~~
 30 ~~furnishing of electricity, water, or steam; and (2) whose rates of charges~~
 31 ~~for goods or services have been established or approved by a federal, state,~~
 32 ~~or local government or governmental agency;~~

33 (g) ~~"Sales"~~ "Receipts" means all gross receipts of the
 34 taxpayer not allocated under paragraphs 4 through 8 of this article and that
 35 are received from transactions and activity in the regular course of the
 36 taxpayer's trade or business; except that receipts of a taxpayer from hedging

1 transactions and from the maturity, redemption, sale, exchange, loan or other
 2 disposition of cash or securities shall be excluded;

3 ~~(h)~~ (g) "State" means any state of the United States, the
 4 District of Columbia, the Commonwealth of Puerto Rico, any territory or
 5 possession of the United States, and any foreign country or political
 6 subdivision thereof;

7 ~~(i)~~ (h) "This state" means ~~the state in which the relevant~~
 8 ~~tax return is filed or, in the case of application of this article to the~~
 9 ~~apportionment and allocation of income for local tax purposes, the~~
 10 ~~subdivision or local taxing district in which the relevant tax return is~~
 11 ~~filed~~ the State of Arkansas.

12 2. Any taxpayer having income from business activity which is
 13 taxable both within and without this state, other than activity as a ~~public~~
 14 ~~utility~~ financial institution or the rendering of purely personal services by
 15 an individual, shall allocate and apportion his net income as provided in
 16 this article. ~~If a taxpayer has income from business activity as a public~~
 17 ~~utility but derives the greater percentage of his income from activities~~
 18 ~~subject to this article, the taxpayer may elect to allocate and apportion his~~
 19 ~~entire net income as provided in this article.~~

20 3. For purposes of allocation and apportionment of income under
 21 this article, a taxpayer is taxable in another state if (1) in that state ~~he~~
 22 the taxpayer is subject to a net income tax, a franchise tax measured by net
 23 income, ~~a franchise tax for the privilege of doing business, or a corporate~~
 24 ~~stock tax, or (2) that state has jurisdiction to subject the taxpayer to a~~
 25 ~~net income tax regardless of whether, in fact, the state does or does not~~ or
 26 any other tax measured by income or other measure of business activity in the
 27 state and the taxpayer files the requisite tax return in the other state, or
 28 (2) the state has no net income tax, franchise tax measured by net income, or
 29 any other tax measured by income or other measure of business activity in the
 30 state as provided in this section and the taxpayer has activities in the
 31 other state that exceed those protected by 15 U.S.C. §§ 381 – 384.

32 4. Rents and royalties from real or tangible personal property,
 33 capital gains, interest, dividends, or patent or copyright royalties, to the
 34 extent that they constitute ~~nonbusiness~~ nonapportionable income, shall be
 35 allocated as provided in paragraphs 5 through 8 of this article.

36 5.(a) Net rents and royalties from real property located in this

1 state are allocable to this state.

2 (b) Net rents and royalties from tangible personal
3 property are allocable to this state: (1) if and to the extent that the
4 property is utilized in this state, or (2) in their entirety if the
5 taxpayer's commercial domicile is in this state and the taxpayer is not
6 organized under the laws of or taxable in the state in which the property is
7 utilized.

8 (c) The extent of utilization of tangible personal
9 property in a state is determined by multiplying the rents and royalties by a
10 fraction, the numerator of which is the number of days of physical location
11 of the property in the state during the rental or royalty period in the
12 taxable year and the denominator of which is the number of days of physical
13 location of the property everywhere during all rental or royalty periods in
14 the taxable year. If the physical location of the property during the rental
15 or royalty period is unknown or unascertainable by the taxpayer, tangible
16 personal property is utilized in the state in which the property was located
17 at the time the rental or royalty payer obtained possession.

18 6.(a) Capital gains and losses from sales of real property
19 located in this state are allocable to this state.

20 (b) Capital gains and losses from sales of tangible
21 personal property are allocable to this state if (1) the property had a situs
22 in this state at the time of the sale, or (2) the taxpayer's commercial
23 domicile is in this state and the taxpayer is not taxable in the state in
24 which the property had a situs.

25 (c) Capital gains and losses from sales of intangible
26 personal property are allocable to this state if the taxpayer's commercial
27 domicile is in this state.

28 7. Interest and dividends are allocable to this state if the
29 taxpayer's commercial domicile is in this state.

30 8.(a) Patent and copyright royalties are allocable to this
31 state: (1) if and to the extent that the patent or copyright is utilized by
32 the payer in this state, or (2) if and to the extent that the patent
33 copyright is utilized by the payer in the state in which the taxpayer is not
34 taxable and the taxpayer's commercial domicile is in this state.

35 (b) A patent is utilized in a state to the extent that it
36 is employed in production, fabrication, manufacturing, or other processing in

1 the state or to the extent that a patented product is produced in the state.
2 If the basis of receipts from patent royalties does not permit allocation to
3 states or if the accounting procedures do not reflect states of utilization,
4 the patent is utilized in the state in which the taxpayer's commercial
5 domicile is located.

6 (c) A copyright is utilized in a state to the extent that
7 printing or other publication originates in the state. If the basis of
8 receipts from copyright royalties does not permit allocation to states or if
9 the accounting procedures do not reflect states of utilization, the copyright
10 is utilized in the state in which the taxpayer's commercial domicile is
11 located.

12 9. All ~~business~~ apportionable income shall be apportioned to
13 this state by multiplying the income by a fraction, the numerator of which is
14 the property factor plus the payroll factor plus ~~double~~ two (2) times the
15 ~~sales~~ receipts factor, and the denominator of which is four (4).

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

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

26 12. The average value of property shall be determined by
27 averaging the values at the beginning and ending of the tax period, but the
28 tax administrator may require the averaging of monthly values during the tax
29 period if reasonably required to reflect properly the average value of the
30 taxpayer's property.

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

35 14. Compensation is paid in this state if:

36 (a) The individual's service is performed entirely within

1 ~~the~~ this state;

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

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

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

15 16. Sales Receipts from the sale of tangible personal property
16 are in this state if:

17 (a) The property is delivered or shipped to a purchaser,
18 other than the United States Government, within this state regardless of the
19 f.o.b. point or other conditions of the sale; or

20 (b) The property is shipped from an office, store,
21 warehouse, factory, or other place of storage in this state and (1) the
22 purchaser is the United States Government or (2) the taxpayer is not taxable
23 in the state of the purchaser.

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

26 ~~(a) The income producing activity is performed in this~~
27 ~~state; or~~

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

32 (a) Receipts, other than receipts described in subsection
33 16 of this section, are in this state if the taxpayer's market for the sales
34 is in this state. The taxpayer's market for sales is in this state:

35 (1) In the case of sale, rental, lease, or license
36 of real property, if and to the extent the property is located in this state;

1 (2) In the case of rental, lease, or license of
2 tangible personal property, if and to the extent the property is located in
3 this state;

4 (3) In the case of sale of a service, if and to the
5 extent the service is delivered to a location in this state; and

6 (4) In the case of intangible property:

7 (A) That is rented, leased, or licensed, if
8 and to the extent the property is used in this state, provided that
9 intangible property utilized in marketing a good or service to a consumer is
10 used in this state if that good or service is purchased by a consumer who is
11 in this state; and

12 (B) That is sold, if and to the extent the
13 property is used in this state, provided that:

14 (i) A contract right, government
15 license, or similar intangible property that authorizes the holder to conduct
16 a business activity in a specific geographic area is used in this state if
17 the geographic area includes all or part of this state;

18 (ii) Receipts from intangible property
19 sales that are contingent on the productivity, use, or disposition of the
20 intangible property shall be treated as receipts from the rental, lease, or
21 licensing of such intangible property under subsection 17(a)(4)(B)(i) of this
22 article; and

23 (iii) All other receipts from a sale of
24 intangible property shall be excluded from the numerator and denominator of
25 the receipts factor.

26 (b) If the state or states of assignment under subsection
27 17(a) of this article cannot be determined, the state or states of assignment
28 shall be reasonably approximated.

29 (c) If the taxpayer is not taxable in a state to which a
30 receipt is assigned under subsection 17(a) or subsection 17(b) of this
31 article, or if the state of assignment cannot be determined under subsection
32 17(a) of this article or reasonably approximated under subsection 17(b) of
33 this article, such receipt shall be excluded from the denominator of the
34 receipts factor.

35 (d) The Director of the Department of Finance and
36 Administration may prescribe regulations as necessary or appropriate to carry

1 out the purposes of this article.

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

7 ~~(a)~~ (1) Separate accounting;

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

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

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

16 (b)(1) If the allocation and apportionment provisions of
 17 this article do not fairly represent the extent of business activity in this
 18 state of taxpayers engaged in a particular industry or in a particular
 19 transaction or activity, the director may, in addition to the authority
 20 provided in subsection 18(a) of this article, establish appropriate rules or
 21 regulations for determining alternative allocation and apportionment methods
 22 for such taxpayers.

23 (2) A regulation adopted pursuant to this subsection
 24 18(b) shall be applied uniformly, except that with respect to any taxpayer to
 25 whom such regulation applies, the taxpayer may petition for, or the director
 26 may require, adjustment pursuant to subsection 18(a) of this article.

27 (c) The party petitioning for, or the director requiring,
 28 the use of any method to effectuate an equitable allocation and apportionment
 29 of the taxpayer's income pursuant to subsection (a) of this article must
 30 prove:

31 (1) That the allocation and apportionment provisions
 32 of this article do not fairly represent the extent of the taxpayer's business
 33 activity in this state; and

34 (2) That the alternative to such provisions is
 35 reasonable.

36 (d) The same burden of proof shall apply whether the

1 taxpayer is petitioning for, or the director is requiring, the use of any
 2 reasonable method to effectuate an equitable allocation and apportionment of
 3 the taxpayer's income.

4 (e) Notwithstanding subsection 18(d) of this article, if
 5 the director demonstrates that in any two (2) of the prior five (5) tax
 6 years, the taxpayer had used an allocation or apportionment method at
 7 variance with its allocation or apportionment method or methods used for such
 8 other tax years, then the director shall not bear the burden of proof in
 9 imposing a different method pursuant to subsection 18(a) of this article.

10 (f) If the director requires a different method pursuant
 11 to subsection 18(a) of this article to effectuate an equitable allocation and
 12 apportionment of the taxpayer's income, the director may not impose any civil
 13 or criminal penalty with reference to the tax due that is attributable to the
 14 taxpayer's reasonable reliance solely on the allocation and apportionment
 15 provisions of this article.

16 (g) A taxpayer that has received written permission from
 17 the director to use a reasonable method to effectuate an equitable allocation
 18 and apportionment of the taxpayer's income shall not have that permission
 19 revoked with respect to transactions and activities that have already
 20 occurred unless there has been a material change in, or a material
 21 misrepresentation of, the facts provided by the taxpayer upon which the
 22 director reasonably relied.

23
 24 SECTION 2. Arkansas Code §§ 26-51-701 – 26-51-704 are amended to read
 25 as follows:

26 26-51-701. Definitions.

27 As used in this Act, unless the context otherwise requires:

28 (a) ~~“Business income” means income arising from transactions and~~
 29 ~~activity in the regular course of the taxpayer's trade or business and~~
 30 ~~includes income from tangible and intangible property if the acquisition,~~
 31 ~~management, and disposition of the property constitute integral parts of the~~
 32 ~~taxpayer's regular trade or business operation~~ "Apportionable income" means:

33 (1) All income that is apportionable under the United States
 34 Constitution and is not allocated under the laws of this state, including:

35 (A) income arising from transactions and activity in the
 36 regular course of the taxpayer's trade or business; and

1 (B) income arising from tangible and intangible property
 2 if the acquisition, management, employment, development, or disposition of
 3 the property is or was related to the operation of the taxpayer's trade or
 4 business; and

5 (2) Any income that would be allocable to this state under the
 6 United States Constitution, but that is apportioned rather than allocated
 7 pursuant to the laws of this state.

8 (b) "Commercial domicile" means the principal place from which the
 9 trade or business of the taxpayer is directed or managed.

10 (c) "Compensation" means wages, salaries, commissions, and any other
 11 form of remuneration paid to employees for personal services.

12 (d) ~~{Repealed.}~~ "Financial institution" means the same as defined in §
 13 26-51-1402.

14 (e) ~~"Nonbusiness Nonapportionable income"~~ means all income other than
 15 ~~business~~ apportionable income.

16 (f) ~~"Public utility" means any business entity which owns or operates~~
 17 ~~for public use any plant, equipment, property, franchise, or license for the~~
 18 ~~transmission of communications, transportation of goods or persons, or the~~
 19 ~~production, storage, transmission, sale, delivery, or furnishing of~~
 20 ~~electricity, water, steam, oil, oil products, or gas.~~

21 ~~(g)~~ "Sales" "Receipts" means all gross receipts of the taxpayer not
 22 allocated under §§ 26-51-704 – 26-51-708 and that are received from
 23 transactions and activity in the regular course of the taxpayer's trade or
 24 business; except that receipts of a taxpayer from hedging transactions and
 25 from the maturity, redemption, sale, exchange, loan or other disposition of
 26 cash or securities shall be excluded.

27 ~~(h)~~ (g) "State" means any state of the United States, the District of
 28 Columbia, the Commonwealth of Puerto Rico, any territory or possession of the
 29 United States, and any foreign country or political subdivision thereof.

30 (h) "This state" means the State of Arkansas.

31
 32 26-51-702. Apportionment of net income authorized.

33 Any taxpayer having income from business activity which is taxable both
 34 within and without this state, other than activity as a ~~public utility~~
 35 financial institution or the rendering of purely personal services by an
 36 individual, shall allocate and apportion his net income as provided in this

1 Act.

2

3 26-51-703. Taxpayer taxable in another state.

4 For purposes of allocation and apportionment of income under this Act,
 5 a taxpayer is taxable in another state if (1) in that state the taxpayer is
 6 subject to a net income tax, a franchise tax measured by net income, or any
 7 other tax measured by income or other measure of business activity in the
 8 state and the taxpayer files the requisite tax return in the other state, or
 9 (2) the state has no net income tax, franchise tax measured by net income, or
 10 any other tax measured by income or other measure of business activity in the
 11 state as provided in subdivision (1) of this section and the taxpayer has
 12 activities in the other state that exceed those protected by 15 U.S.C. §§ 381
 13 – ~~385~~ 384.

14

15 26-51-704. ~~Nonbusiness~~ Nonapportionable income.

16 Rents and royalties from real or tangible personal property, capital
 17 gains, interest, dividends, or patent or copyright royalties, to the extent
 18 that they constitute ~~nonbusiness~~ nonapportionable income, shall be allocated
 19 as provided in §§ 26-51-705 – 26-51-708.

20

21 SECTION 3. Arkansas Code § 26-51-709 is amended to read as follows:

22 26-51-709. ~~Business~~ Apportionable income.

23 All ~~business~~ apportionable income shall be apportioned to this state by
 24 multiplying the income by a fraction, the numerator of which is the property
 25 factor plus the payroll factor plus ~~double~~ two (2) times the ~~sales~~ receipts
 26 factor, and the denominator of which is four (4).

27

28 SECTION 4. Arkansas Code §§ 26-51-715 – 26-51-718 are amended to read
 29 as follows:

30 26-51-715. ~~Sales~~ Receipts factor.

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

35

36 26-51-716. ~~Sales~~ Receipts from sales of tangible personal property.

1 ~~Sales~~ Receipts from sales of tangible personal property are in this
 2 state if:

3 (a) the property is delivered or shipped to a purchaser, other
 4 than the United States ~~government~~ Government, within this state regardless of
 5 the f.o.b. point or other conditions of the sale; or

6 (b) the property is shipped from an office, store, warehouse,
 7 factory, or other place of storage in this state and (1) the purchaser is the
 8 United States ~~government~~ Government or (2) the taxpayer is not taxable in the
 9 state of the purchaser.

10
 11 26-51-717. ~~Sales—Income-producing activity~~ Receipts – Market for
 12 sales.

13 ~~Sales, other than sales of tangible personal property, are in this~~
 14 ~~state if:~~

15 ~~(a) the income-producing activity is performed in this state; or~~

16 ~~(b) the income-producing activity is performed both within and~~
 17 ~~without the state, in which event the portion of income allocable to this~~
 18 ~~state shall be the percentage that is used in the formula for allocating~~
 19 ~~income to Arkansas during the year of the sale.~~

20 (a) Receipts, other than receipts of sales of tangible personal
 21 property, are in this state if the taxpayer’s market for the sales is in this
 22 state. The taxpayer’s market for sales is in this state:

23 (1) in the case of sale, rental, lease, or license of real
 24 property, if and to the extent the property is located in this state;

25 (2) in the case of rental, lease, or license of tangible
 26 personal property, if and to the extent the property is located in this
 27 state;

28 (3) in the case of sale of a service, if and to the extent the
 29 service is delivered to a location in this state; and

30 (4) in the case of intangible property:

31 (A) that is rented, leased, or licensed, if and to the
 32 extent the property is used in this state, provided that intangible property
 33 utilized in marketing a good or service to a consumer is used in this state
 34 if that good or service is purchased by a consumer in this state; and

35 (B) that is sold, if and to the extent the property is
 36 used in this state, provided that:

1 (i) a contract right, government license, or similar
 2 intangible property that authorizes the holder to conduct a business activity
 3 in a specific geographic area is used in this state if the geographic area
 4 includes all or part of this state;

5 (ii) receipts from intangible property sales that
 6 are contingent on the productivity, use, or disposition of the intangible
 7 property shall be treated as receipts from the rental, lease, or licensing of
 8 such intangible property under subdivision (a)(4)(B)(i) of this section; and

9 (iii) all other receipts from a sale of intangible
 10 property shall be excluded from the numerator and denominator of the receipts
 11 factor.

12 (b) If the state or states of assignment under subsection (a) of this
 13 section cannot be determined, the state or states of assignment shall be
 14 reasonably approximated.

15 (c) If the taxpayer is not taxable in a state to which a receipt is
 16 assigned under subsection (a) or subsection (b) of this section, or if the
 17 state of assignment cannot be determined under subsection (a) of this section
 18 or reasonably approximated under subsection (b) of this section, such
 19 receipts shall be excluded from the denominator of the receipts factor.

20 (d) The Director of the Department of Finance and Administration may
 21 prescribe regulations as necessary or appropriate to carry out the purposes
 22 of this section.

23
 24 26-51-718. Procedure when allocation does not fairly represent
 25 taxpayer's business activity.

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

31 ~~(a)~~ (1) separate accounting;

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

33 ~~(c)~~ (3) the inclusion of one (1) or more additional factors

34 which will fairly represent the taxpayer's business activity in this state;

35 or

36 ~~(d)~~ (4) the employment of any other method to effectuate an

1 equitable allocation and apportionment of the taxpayer's income.

2 (b)(1) If the allocation and apportionment provisions of this Act do
3 not fairly represent the extent of business activity in this state of
4 taxpayers engaged in a particular industry or in a particular transaction or
5 activity, the director may, in addition to the authority provided in
6 subsection (a) of this section, establish appropriate rules or regulations
7 for determining alternative allocation and apportionment methods for such
8 taxpayers.

9 (2) A regulation adopted pursuant to this section shall be
10 applied uniformly, except that with respect to any taxpayer to whom such
11 regulation applies, the taxpayer may petition for, or the director may
12 require, adjustment pursuant to subsection (a) of this section.

13 (c) The party petitioning for, or the director requiring, the use of
14 any method to effectuate an equitable allocation and apportionment of the
15 taxpayer's income pursuant to subsection (a) of this section must prove:

16 (1) that the allocation and apportionment provisions of this Act
17 do not fairly represent the extent of the taxpayer's business activity in
18 this state; and

19 (2) that the alternative to such provisions is reasonable.

20 (d) The same burden of proof shall apply whether the taxpayer is
21 petitioning for, or the director is requiring, the use of any reasonable
22 method to effectuate an equitable allocation and apportionment of the
23 taxpayer's income.

24 (e) Notwithstanding subsection (d) of this section, if the director
25 demonstrates that in any two (2) of the prior five (5) tax years, the
26 taxpayer had used an allocation or apportionment method at variance with its
27 allocation or apportionment method or methods used for such other tax years,
28 then the director shall not bear the burden of proof in imposing a different
29 method pursuant to subsection (a) of this section.

30 (f) If the director requires a different method pursuant to subsection
31 (a) of this section to effectuate an equitable allocation and apportionment
32 of the taxpayer's income, the director may not impose any civil or criminal
33 penalty with reference to the tax due that is attributable to the taxpayer's
34 reasonable reliance solely on the allocation and apportionment provisions of
35 this act.

36 (g) A taxpayer who has received written permission from the director

1 to use a reasonable method to effectuate an equitable allocation and
 2 apportionment of the taxpayer's income shall not have that permission revoked
 3 with respect to transactions and activities that have already occurred unless
 4 there has been a material change in, or a material misrepresentation of, the
 5 facts provided by the taxpayer upon which the director reasonably relied.

6
 7 SECTION 5. Arkansas Code § 26-51-722 is repealed.

8 ~~26-51-722. Effective date.~~

9 ~~The provisions of this Act shall be applicable to all income earned or~~
 10 ~~accrued in the income years, both calendar and fiscal, beginning on or after~~
 11 ~~January 1, 1961.~~

12
 13 SECTION 6. EFFECTIVE DATE. This Act is effective for tax years
 14 beginning on and after January 1, 2018.

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