Department of Finance and Administration

Legislative Impact Statement

Bill: HB2100
Bill Subtitle: TO AMEND AND MODERNIZE THE LAW CONCERNING THE APPORTIONMENT OF INCOME DERIVED FROM MULTISTATE OPERATIONS; TO CHANGE THE METHOD FOR SOURCING OF RECEIPTS FOR SERVICES AND INTANGIBLES.

Basic Change :

Sponsor: Representative Jett

The Arkansas General Assembly adopted the Multistate Tax Compact (Compact) in 1961. Arkansas is a member state of the Multistate Tax Commission (Commission). The Multistate Tax Commission amended the Compact in 2014 in five major areas. These changes include the following:

- Changing the method for sourcing of receipts from services and intangibles from “cost of performance” to “market based” sourcing;
- Broadening the definition of “business income” and changing the definition to “apportionable income”;
- Changing the rules for the sales factor and changing the name to “receipts factor”;
- Changing the Compact recommended apportionment formula from an equally weighted three factor formula to a three factor formula with a double weighted sales factor formula (Arkansas previously made this change in 1995);
- Modifying the rules concerning alternative apportionment methods.

HB2100 adopts the various changes to the Compact to update the Arkansas Code, including changing or amending the definitions of "business income" to "apportionable income", "nonbusiness income" to "nonapportionable income", the definition of “public utility” is removed, the term "sales factor" is changed to "receipts factor", the requirements for a taxpayer to be taxable in another state are changed to agree with § 26-51-703.

The bill also changes Arkansas law to adopt market based sourcing of sales for sales other than sales of tangible personal property and clarify rules concerning alternative apportionment methods when the statutory method does not fairly represent the extent of a taxpayer's business activity. States that require market based sourcing include: Alabama, California, Connecticut, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wisconsin. Arizona and Missouri allow an election for market based sourcing.

The bill is effective for tax years beginning on and after January 1, 2018.

Revenue Impact :

Expect moderate net revenue gain of an unknown amount beginning in FY2018.

Taxpayer Impact :

Taxpayers will need to change their method of determining where intangible or service transactions are sourced for receipts factor purposes, include more types of income to be apportioned, modify which sales to include in the receipts factor and will have new rules for when and how to use alternative apportionment methods.

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Resources Required :

Instruction booklet changes, procedure and training manuals and possibly computer programs changes will be needed.

Time Required :

Adequate time is provided to implement this bill.

Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

HB2100 amends existing law concerning the apportionment of income derived from multistate operations to adopt the recent revisions to Article IV of the Multistate Tax Compact (Compact) and the Uniform Division of Income for Tax Purposes Act (UDITPA). This bill amends Arkansas law by changing the method for sourcing of receipts from services and intangibles from "cost of performance" to "market based sourcing"; broadening the definition of "business income" by changing the name to "apportionable income;" changing the rules for the sales factor and changing the name to "receipts factor;" and modifying the rules concerning alternative apportionment methods.

The bill incorporates two deviations to both the MTC and the UDITPA revisions, which include the deletion of the "public utility" definition and the deviation from what is meant to be "taxable in another state." The "public utility" deviation will require multistate public utilities to apportion their income in the same manner as all other taxpayers. The "taxable in another state" deviation is consistent with the UDITPA language previously adopted by Arkansas. This deviation concerns the preservation of the "throwback rule" to prevent a taxpayer from escaping income tax in Arkansas as a result of being subject to tax in another state wherein such state was unaware of the taxpayer and the taxpayer's failure to file returns in that state.

The bill is amended to repeal the existing effective date and adds language that the effective date will be for tax years beginning on and after January 1, 2018.