

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW ON THE TAXES LEVIED ON
9 PRODUCTS AND SERVICES; TO AMEND THE ARKANSAS GROSS
10 RECEIPTS ACT OF 1941; TO REQUIRE THE COLLECTION OF
11 SALES AND USE TAX BY REMOTE SELLERS; TO EXEMPT CAR
12 WASHES FROM SALES TAX; TO LEVY A FEE ON CAR WASHES IN
13 LIEU OF THE SALES TAX; TO REPEAL THE SALES AND USE
14 TAX EXEMPTION FOR PUBLICATIONS SOLD THROUGH A
15 SUBSCRIPTION; TO REQUIRE THAT THE SALES AND USE TAX
16 EXEMPTION FOR ALL-TERRAIN VEHICLES USED EXCLUSIVELY
17 FOR FARMING BE ADMINISTERED AS A REBATE; TO IMPLEMENT
18 A CAP ON THE TOTAL AMOUNT OF SALES AND USE TAX THAT
19 MAY BE LEVIED BY A COUNTY OR CITY; AND FOR OTHER
20 PURPOSES.
21

Subtitle

22
23 TO AMEND THE ARKANSAS GROSS RECEIPTS ACT
24 OF 1941 CONCERNING REMOTE SELLERS, CAR
25 WASHES, PUBLICATION SUBSCRIPTIONS, AND
26 FARMING MACHINERY AND EQUIPMENT; AND TO
27 IMPLEMENT A LOCAL SALES AND USE TAX CAP.
28
29
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
32

33 SECTION 1. DO NOT CODIFY. Legislative findings.

34 The General Assembly finds that:

35 (1) The inability to effectively collect any Arkansas sales or
36 use tax from remote sellers who deliver tangible personal property, other

1 property subject to Arkansas sales and use tax, or services directly into the
 2 state is seriously eroding the sales and use tax base of this state, causing
 3 revenue losses and imminent harm to the state through the loss of critical
 4 funding for state and local services;

5 (2) The harm from the loss of revenue is especially serious in
 6 Arkansas because sales and use tax revenues are essential in funding state
 7 and local services;

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

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

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

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

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

28
 29 SECTION 2. 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 3. Arkansas Code Title 26, Chapter 52, Subchapter 1, is
20 amended to add an additional section to read as follows:

21 26-52-111. Collection by remote sellers.

22 (a) A seller selling tangible personal property, other property
23 subject to Arkansas sales and use tax, or services for delivery into Arkansas
24 that does not have a physical presence in this state:

25 (1) Is subject to the provisions of this chapter and the
26 Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and

27 (2) Shall remit the sales and use tax and follow all applicable
28 procedures and requirements of law as if the seller had a physical presence
29 in the state if the seller meets either of the following criteria for the
30 previous calendar year or the current calendar year:

31 (A) The seller's gross revenue from the sale of tangible
32 personal property, other property subject to Arkansas sales and use tax, and
33 services for delivery into Arkansas exceeds one hundred thousand dollars
34 (\$100,000); or

35 (B) The seller sold tangible personal property, other
36 property subject to Arkansas sales and use tax, services, or any combination

1 of tangible personal property, other property subject to Arkansas sales and
2 use tax, and services for delivery into Arkansas in at least two hundred
3 (200) separate transactions.

4 (b) The obligation to remit the sales and use tax required under this
5 section shall not be applied retroactively.

6 (c) A taxpayer complying with this section may seek a recovery of
7 taxes, penalties, or interest only by following the procedures established in
8 the Arkansas Tax Procedure Act, § 26-18-101 et seq.

9 (d) This section does not limit the ability of a taxpayer to obtain a
10 refund for any other reason, including without limitation a mistake of fact
11 or a mathematical miscalculation of the applicable tax.

12 (e) A seller that remits sales and use tax under this section is not
13 liable to a purchaser if the seller was not required to collect sales and use
14 tax because a provision of this section is later deemed unlawful.

15 (f) This section does not affect the obligation of a purchaser from
16 this state to remit use tax on any applicable transaction in which the seller
17 does not collect and remit sales and use tax.

18 (g) This section does not affect or impair the:

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

23 (2) Ability of a state entity to immediately collect the taxes
24 described in subdivision (g)(1) of this section.

25
26 SECTION 4. Arkansas Code § 26-52-301(B)(3)(ii)(a)-(b), concerning the
27 levy of sales tax on certain products and services, is amended to read as
28 follows:

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

31 ~~(b)~~ As used in subdivision (3)(B)(ii)(a) of
32 this section, "coin-operated car wash" means a car wash in which the car
33 washing equipment is activated by the insertion of coins into a slot or
34 receptacle and the labor of washing the exterior of the car or motor vehicle
35 is performed solely by the customer or by mechanical equipment.

36

1 SECTION 5. Arkansas Code § 26-52-401(14), concerning various products
2 and services that are exempt from sales and use tax, is repealed.

3 ~~(14) Gross receipts or gross proceeds derived from sales of~~
4 ~~publications sold through regular subscription, regardless of the type or~~
5 ~~content of the publication or the place printed or published;~~
6

7 SECTION 6. Arkansas Code § 26-52-403(b) and (c), concerning the sales
8 and use tax exemption for farm equipment and machinery, is amended to read as
9 follows:

10 (b)(1) The gross receipts or gross proceeds derived from the sale of
11 new and used farm equipment and machinery are exempt from the Arkansas gross
12 receipts tax levied by this chapter.

13 (2) However, to the extent that the exemption provided for under
14 this section applies to all-terrain vehicles that are not subject to
15 licensing or registration for use on the highways, the exemption shall be
16 administered as a rebate.

17 (c) The Director of the Department of Finance and Administration shall
18 promulgate rules and prescribe forms for claiming the exemption and rebate
19 provided by this section.
20

21 SECTION 7. Arkansas Code Title 26, Chapter 57, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 16 – Car Washes
24

25 26-57-1601. Definitions.

26 As used in this subchapter:

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

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

33 (3) "Self-service bay" means a car wash bay that allows a person
34 to manually wash a motor vehicle using equipment and supplies provided by the
35 car wash operator.
36

1 26-57-1602. Registration.

2 (a) A person that is the operator of a car wash in this state that is
 3 made available for use by the general public shall pay the fee required under
 4 § 26-57-1603 in lieu of paying the sales tax under the Arkansas Gross
 5 Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax under
 6 the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

7 (b) A car wash operator that is required to pay a fee under § 26-57-
 8 1603 shall register with the Director of the Department of Finance and
 9 Administration before a self-service bay, an automatic car wash, or a car
 10 wash tunnel is made available for use by the general public.

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

- 12 (1) Be in the form prescribed by the director; and
- 13 (2) Contain the information required by rules adopted by the
 14 director to implement this subchapter.

15
 16 26-57-1603. Fees.

17 (a) A car wash operator that uses water from a public water system
 18 shall pay to the Director of the Department of Finance and Administration the
 19 following monthly fee:

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

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

26 (B) Multiply the product obtained under subdivision
 27 (a)(1)(A) of this section by seventy-five hundredths of one cent (\$0.0075);
 28 and

29 (2) For a car wash operator that operates one (1) or more car
 30 wash tunnels and one (1) or more self-service bays or automatic car washes,
 31 or both, the car wash operator shall calculate the monthly fee due under this
 32 subsection as follows:

33 (A) Multiply the number of self-service bays and automatic
 34 car washes by one-tenth (0.1);

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

1 (0.9);

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

6 (D) Multiply the product obtained under subdivision
 7 (a)(2)(C) of this section by seventy-five hundredths of one cent (\$0.0075).

8 (b)(1) Except as otherwise provided in this subsection, a car wash
 9 operator that uses water from a private well or nonpublic water system shall
 10 pay to the director an annual fee of:

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

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

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

19 (3) A fee paid for a self-service bay or automatic car wash
 20 operated only during the last six (6) months of the fiscal year shall be
 21 equal to one-half ($\frac{1}{2}$) of the annual fee levied under this subsection.

22
 23 26-57-1604. Distribution of revenues.

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

27
 28 SECTION 8. Arkansas Code Title 26, Chapter 73, Subchapter 1, is
 29 amended to add an additional section to read as follows:

30 26-73-116. Cap on local sales and use tax.

31 (a) As used in this section, "municipality" means a city of the first
 32 class, a city of the second class, or an incorporated town.

33 (b) The total aggregate amount of sales and use tax that may be levied
 34 by a county for any purpose shall not exceed a total aggregate rate of three
 35 percent (3%).

36 (c) The total aggregate amount of sales and use tax that may be levied

1 by a municipality for any purpose shall not exceed a total aggregate rate of
2 four percent (4%).

3 (d) A county or municipality that has a total aggregate sales and use
4 tax rate as of January 1, 2019, that exceeds the maximum amount allowed under
5 this section may continue to levy sales and use tax in excess of the maximum
6 amount until the total aggregate amount of sales and use tax falls below the
7 maximum amount by the expiration or abolishment of one (1) or more sales and
8 use tax levies.

9

10 SECTION 9. DO NOT CODIFY. Rules.

11 When adopting any initial rules required under this act, the final
12 rules shall be filed with the Secretary of State for adoption under § 25-15-
13 204(f):

14 (A) On or before January 1, 2020; or

15 (B) If approval under § 10-3-309 has not occurred by
16 January 1, 2020, as soon as practicable after approval under § 10-3-309.

17 (2) The Director of the Department of Finance and Administration
18 shall file the proposed rules with the Legislative Council under § 10-3-
19 309(c) sufficiently in advance of January 1, 2020, so that the Legislative
20 Council may consider the rules for approval before January 1, 2020.

21

22 SECTION 10. EFFECTIVE DATES.

23 (a) Sections 4 and 7 of this act are effective on and after July 1,
24 2019.

25 (b) Sections 1 - 3, 5, 6, 8, and 9 of this act are effective for tax
26 years beginning on and after January 1, 2019.

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1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

DRAFT JLL/JLL
SENATE BILL

4
5 By: Senator <NA>
6

For An Act To Be Entitled

7
8 AN ACT TO AMEND THE UNIFORM DIVISION OF INCOME FOR
9 TAX PURPOSES ACT; TO REPEAL THE THROWBACK RULE FOR
10 BUSINESS INCOME; TO PROVIDE FOR A SINGLE SALES FACTOR
11 APPORTIONMENT FORMULA FOR BUSINESS INCOME; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 TO AMEND THE UNIFORM DIVISION OF INCOME
16 FOR TAX PURPOSES ACT; TO REPEAL THE
17 THROWBACK RULE FOR BUSINESS INCOME; AND
18 TO PROVIDE FOR A SINGLE SALES FACTOR
19 APPORTIONMENT FORMULA FOR BUSINESS
20 INCOME.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. DO NOT CODIFY. The Arkansas Code Revision Commission shall
27 direct the publisher of the Arkansas Code to change the title of Title 26,
28 Chapter 51, Subchapter 7, to the "Division of Income for Tax Purposes Act".
29

30 SECTION 2. Arkansas Code § 26-51-709 is amended to read as follows:
31 26-51-709. Business income.

32 All business income shall be apportioned to this state by multiplying
33 the income by a fraction, the numerator of which is the ~~property factor plus~~
34 ~~the payroll factor plus double the sales factor,~~ total sales of the taxpayer
35 in this state during the tax period and the denominator of which is ~~four~~ the
36 total sales of the taxpayer everywhere during the tax period.

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2 SECTION 3. Arkansas Code §§ 26-51-710 – 26-51-715 are repealed.

3 ~~26-51-710. Real and tangible personal property – Factor.~~

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

9
10 ~~26-51-711. Original cost of property – Annual rental rate.~~

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

15
16 ~~26-51-712. Average value of property.~~

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

22
23 ~~26-51-713. Payroll factor.~~

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

28
29 ~~26-51-714. Compensation for service – Determination of payment in~~
30 ~~state.~~

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

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

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

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

7

8 ~~26-51-715. Sales factor.~~

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

13

14 SECTION 4. Arkansas Code § 26-51-716 is amended to read as follows:

15 26-51-716. Sales of tangible personal property.

16 Sales of tangible personal property are in this state if:

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

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

24

25 SECTION 5. Arkansas Code § 26-51-718 is amended to read as follows:

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

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

33 (a) separate accounting;

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

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

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

3
4 SECTION 6. Arkansas Code § 26-51-1403(n), concerning the apportionment
5 and allocation of net income of financial institutions, is amended to read as
6 follows:

7 (n) All Other Receipts. The numerator of the receipts factor includes
8 all other receipts ~~pursuant to~~ under the rules set ~~forth out~~ in §§ ~~26-51-715~~
9 - 26-51-716 and 26-51-717.

10
11 SECTION 7. EFFECTIVE DATE. Sections 1 through 6 of this act are
12 effective for tax years beginning on or after January 1, 2019.

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
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A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO PHASE IN AN EXTENSION OF THE NET OPERATING
9 LOSS CARRY-FORWARD PERIOD FOR COMPUTING ARKANSAS
10 INCOME TAX; TO PHASE IN AN EXTENSION OF THE NET
11 OPERATING LOSS CARRY-FORWARD PERIOD FOR COMPUTING
12 ARKANSAS INCOME TAX FOR QUALIFIED MANUFACTURERS OF
13 STEEL; AND FOR OTHER PURPOSES.
14

Subtitle

15
16
17 TO PHASE IN AN EXTENSION OF THE NET
18 OPERATING LOSS CARRY-FORWARD PERIOD FOR
19 COMPUTING ARKANSAS INCOME TAX FOR ALL
20 TAXPAYERS.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 15-4-2404 is amended to read as follows:
26 15-4-2404. Net operating loss deduction – Carry forward.

27 (a) (1) Taxpayers qualified for the benefits of this subchapter and
28 entitled to a net operating loss deduction as provided in § 26-51-427 may
29 carry forward that deduction to the next-succeeding taxable year following
30 the year of the net operating loss and annually thereafter for a total period
31 of ten (10) years or until the net operating loss has been exhausted,
32 whichever is earlier.

33 (2) Taxpayers qualified for the benefits of this subchapter and
34 entitled to a net operating loss deduction as provided in § 26-51-427 may
35 carry forward that deduction to the next-succeeding taxable year following
36 the year of the net operating loss and annually thereafter for the total

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1 period set out in this subdivision (a)(2) or until the net operating loss has
 2 been exhausted, whichever is earlier:

3 (A) For the tax year beginning January 1, 2020, eleven
 4 (11) years;

5 (B) For the tax year beginning January 1, 2021, fourteen
 6 (14) years;

7 (C) For the tax year beginning January 1, 2022, seventeen
 8 (17) years; and

9 (D) For tax years beginning on or after January 1, 2023,
 10 twenty (20) years.

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

14 SECTION 2. Arkansas Code § 26-51-427 is amended to read as follows:

15 26-51-427. Deductions – Net operating loss carryover.

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

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

29 (B) The net operating loss ~~as hereinbelow defined~~ for any
 30 year ending on or after the passage of the Income Tax Act of 1929, § 26-51-
 31 101 et seq., and for any succeeding taxable year before January 1, 2019, may
 32 be carried over to the next-succeeding taxable year and annually thereafter
 33 for a total period of five (5) years next succeeding the year of the net
 34 operating loss or until the net operating loss has been exhausted or absorbed
 35 by the taxable income of any succeeding year, whichever is earlier, if the
 36 net operating loss occurred in an income year beginning on or after January

1 1, 1987, but before January 1, 2019. The net operating loss deduction ~~must~~
 2 shall be carried forward in the order ~~named above~~ stated in this subdivision
 3 (1)(B).

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

22 (a) For the tax year beginning January 1,
 23 2019, a total period of eight (8) years;

24 (b) For the tax year beginning January 1,
 25 2020, a total period of eleven (11) years;

26 (c) For the tax year beginning January 1,
 27 2021, a total period of fourteen (14) years;

28 (d) For the tax year beginning January 1,
 29 2022, a total period of seventeen (17) years; and

30 (e) For tax years beginning on or after
 31 January 1, 2023, a total period of twenty (20) years.

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

34 (D) As used in this section, "taxable income" or "net
 35 income" ~~shall be deemed to be~~ means the net income computed without benefit
 36 of the deduction for income taxes, personal exemptions, and credit for

1 dependents. The net income of the taxable period to which the net operating
2 loss deduction, as adjusted, is carried, ~~shall be~~ is the net income before
3 the deduction of federal income taxes, personal exemption, and credit for
4 dependents. ~~Such income~~ The income taxes, exemptions, and credits described
5 in this subdivision (1)(D) shall not be used to increase the net operating
6 loss ~~which~~ that may be carried to any other taxable period.

7 (E)(i) As used in this section, "qualified medical
8 company" means a corporation engaged in:

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

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

14 (ii) In the case of a qualified medical ~~companies,~~
15 ~~as defined herein,~~ company, a net operating loss for any a taxable year shall
16 ~~be~~ is a net operating loss carryover to each of the fifteen (15) taxable
17 years following the taxable year of the loss.

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

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

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

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

32 (B) In the case of a taxpayer other than a corporation,
33 deductions, not including federal income taxes, not attributable to the
34 operation of the trade or business ~~shall be~~ are eliminated from the
35 deductions otherwise allowable for the taxable year to the extent that they
36 exceed gross income not derived from trade or business. Personal exemptions

1 and credit for dependents ~~shall not be~~ are not a deduction for the purpose of
 2 computing a net operating loss;

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

5 (D) In the case of a taxpayer other than a "C
 6 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,
 7 1985:

8 (i) For income years beginning after December 31,
 9 1986, the amount deductible on account of losses from sales or exchanges of
 10 capital assets shall not exceed the amount includable on account of gains
 11 from sales or exchanges of capital assets; and

12 (ii) For income years beginning after December 31,
 13 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202
 14 [repealed], as in effect on January 1, 1985, shall not be allowed; and

15 (3) In the case of the acquisition of assets of one (1)
 16 corporation by another corporation, the acquiring corporation shall succeed
 17 to and take into account any net operating loss carryover apportionable to
 18 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-
 19 701 et seq., that the acquired corporation could have claimed had it not been
 20 acquired, subject to the following conditions:

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

25 (B) The net operating loss may not be carried forward to a
 26 taxable year ~~which~~ that ends more than five (5) years after the taxable year
 27 in which the net operating loss occurred if the net operating loss occurred
 28 in an income year beginning on or after January 1, 1987, but before January
 29 1, 2019; and

30 (C) The net operating loss may not be carried forward to a
 31 taxable year that ends more than the number of years stated in subdivisions
 32 (1)(B) and (C) of this section after the taxable year in which the net
 33 operating loss occurred if the net operating loss occurred in an income year
 34 beginning on or after January 1, 2019; and

35 ~~(G)~~ (D) The net operating loss may be claimed only when
 36 the ownership of both the acquired and acquiring corporations is

1 substantially the same, ~~that is, where~~ in that not less than eighty percent
2 (80%) of the voting stock of each corporation is owned by the same person or,
3 ~~where prior to~~ before the acquisition, the acquiring corporation owned at
4 least eighty percent (80%) of the voting stock of the acquired corporation.
5 The carryover losses will be allowed only in those cases ~~where~~ in which the
6 assets of the corporation going out of existence earn sufficient profits
7 apportionable to Arkansas under the Uniform Division of Income for Tax
8 Purposes Act, § 26-51-701 et seq., in the post-merger period to absorb the
9 carryover losses claimed by the surviving corporation.

10
11 SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this act are effective
12 for tax years beginning on or after January 1, 2019.
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Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE INCOME TAX EXEMPTION FOR CAPITAL
9 GAINS; TO REPEAL THE CAPITAL GAINS EXEMPTION FOR
10 CAPITAL GAINS OVER A CERTAIN AMOUNT; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 TO REPEAL THE CAPITAL GAINS EXEMPTION FOR
15 CAPITAL GAINS OVER A CERTAIN AMOUNT.
16
17
18

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

21 SECTION 1. Arkansas Code § 26-51-815(b)(3), concerning the income tax
22 deduction for capital gains, is amended to read as follows:

23 (3) The amount of net capital gain in excess of ten million
24 dollars (\$10,000,000) from a gain realized on or after January 1, 2014, and
25 before January 1, 2019, is exempt from the state income tax.
26

27 SECTION 2. EFFECTIVE DATE. This act is effective for tax years
28 beginning on or after January 1, 2019.
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Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO REPEAL THE LAW PROVIDING FOR AN INCOME TAX
9 CREDIT FOR CERTAIN POLITICAL CONTRIBUTIONS THAT
10 RESULTED FROM INITIATED MEASURE 1 OF 1996; AND FOR
11 OTHER PURPOSES. *req. 2/3 vote, straight repeal, Jan 2019*
12
13

Subtitle

15 TO REPEAL THE LAW PROVIDING FOR AN INCOME
16 TAX CREDIT FOR CERTAIN POLITICAL
17 CONTRIBUTIONS THAT RESULTED FROM
18 INITIATED MEASURE 1 OF 1996.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 7-6-222 is repealed.

24 ~~7-6-222. Tax credits for certain individual political contributions.~~

25 ~~(a) Pursuant to regulations to be adopted by the Department of Finance~~
26 ~~and Administration, a credit against individual Arkansas income taxes shall~~
27 ~~be allowed for money contributions made by the taxpayer in a taxable year to~~
28 ~~one (1) or more of the following:~~

29 ~~(1) A candidate seeking nomination or election to a public~~
30 ~~office at an election or to the candidate's campaign committee;~~

31 ~~(2) An approved political action committee as defined in § 7-6-~~
32 ~~201; or~~

33 ~~(3) An organized political party as defined in § 7-1-101.~~

34 ~~(b) The credit allowed by subsection (a) of this section shall be the~~
35 ~~aggregate contributions, not to exceed fifty dollars (\$50.00), on an~~
36 ~~individual tax return, or the aggregate contributions, not to exceed one~~

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1 ~~hundred dollars (\$100), on a joint return.~~

2 ~~(e) Credits for contributions qualifying under this section and made~~
3 ~~prior to April 15 in a calendar year may be applied to the return filed for~~
4 ~~the previous taxable year.~~

5

6 SECTION 2. EFFECTIVE DATE. This act is effective for tax years
7 beginning on or after January 1, 2019.

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Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

DRAFT JLL/JLL
SENATE BILL

4
5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO CREATE AN INCOME TAX CREDIT FOR PROPERTY
9 TAXES PAID ON BUSINESS INVENTORY; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 TO CREATE AN INCOME TAX CREDIT FOR
14 PROPERTY TAXES PAID ON BUSINESS
15 INVENTORY.
16
17
18

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

21 SECTION 1. Arkansas Code § 26-23-204 is amended to read as follows:
22 26-23-204. Tax bill information.

23 (a) In order to assist property taxpayers to better understand their
24 property tax bills, the following information shall be included on each tax
25 bill sent by the county collector: *from what they paid*

26 (1) The dollar amount of the taxpayer's total tax bill
27 distributed to each taxing unit in the county where the taxpayer's property
28 is taxed;

29 *Actual credit* (2) The millage rate levied by each taxing unit used to
30 determine the tax distribution to each taxing unit and the percentage of the
31 full value of the taxpayer's property that each millage rate levy represents;

32 (3) The percentage of the full value of the taxpayer's property
33 shall be calculated by multiplying the legal assessment level by the
34 appropriate millage rate levy;

35 (4) The sum of the millage rates levied by each taxing unit, the
36 percentage of the full value of the taxpayer's property that the sum of the

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1 millage rate levies represents, and the total dollar amount due and billed;
2 and

3 (5) The internet address for the county's official website.

4 (b) To aid taxpayers in claiming the income tax credit allowed under §
5 26-51-515, each property tax bill sent by a county collector shall identify
6 the portion of property tax owed, if any, that is attributable to business
7 inventory.

8
9 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is
10 amended to add an additional section to read as follows:

11 26-51-515. Credit for property tax paid on inventory.

12 (a) As used in this section:

13 (1)(A) "Inventory" means the tangible personal property of a
14 merchant or manufacturer assessed as business inventory for ad valorem tax
15 purposes under §§ 26-26-1201, 26-26-1203, 26-16-1205, or 26-26-1207,
16 including without limitation the following:

17 (i) For a merchant, tangible personal property
18 purchased with a view to the tangible personal property being sold at a
19 profit or held by consignment for sale; and

20 (ii) For a manufacturer, tangible personal property
21 held for the purpose of adding to the value of the tangible personal property
22 by process of manufacturing, refining, or rectifying, or by combination of
23 different materials, with a view of making a gain or profit by so doing,
24 including without limitation a raw material, work-in-progress, or finished
25 good of a manufacturer.

26 (B) "Inventory" includes without limitation livestock and
27 harvested crops.

28 (C) "Inventory" does not include:

29 (i) The supplies of a merchant that are not held for
30 sale;

31 (ii) The supplies of a manufacturer that are not
32 consumed and are not raw materials;

33 (iii) Tangible personal property of a public carrier
34 or utility that is assessed under § 26-26-1601 et seq.; or

35 (iv) An item that is otherwise exempt from ad
36 valorem taxation;

