

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 482

By: Senator J. Dismang
By: Representative Eaves

For An Act To Be Entitled

AN ACT TO AMEND THE INCOME TAX ACT OF 1929; TO PROVIDE AN APPORTIONMENT FORMULA FOR THE INCOME OF RAILROADS; TO AMEND THE MULTISTATE TAX COMPACT AND THE DIVISION OF INCOME FOR TAX PURPOSES ACT CONCERNING THE DIVISION OF INCOME FOR RAILROADS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE INCOME TAX ACT OF 1929; AND TO PROVIDE AN APPORTIONMENT FORMULA FOR THE INCOME OF RAILROADS.

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

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

(a) The General Assembly finds that:

(1) The Department of Finance and Administration promulgated Corporation Income Tax Rule 1.26-51-204 to require a railroad to apportion its net operating income attributable to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor doubled and the denominator of which is four (4); and

(2) Acts 2019, No. 822, §§ 2 and 7, amended the Multistate Tax Compact, § 26-5-101 et seq., and the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq., to adopt sales factor apportionment for purposes of calculating Arkansas corporate income tax liability and



eliminated inclusion of the property and payroll factors for tax years beginning on or after January 1, 2021.

(b) It is the intent of the General Assembly that, for tax years beginning on or after January 1, 2023, a railroad shall apportion and allocate its income using one (1) of the apportionment methods provided in this act.

SECTION 2. Arkansas Code § 26-5-101, Article IV, paragraph 2, concerning the division of income under the Multistate Tax Compact, is amended to read as follows:

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

SECTION 3. Arkansas Code § 26-51-204 is amended to read as follows:

26-51-204. Railroads and public utilities - Apportionment.

(a) Every railroad or other public utility, whether organized under the laws of this state or any other state or the federal government, shall be subject to the provisions of the Income Tax Act of 1929, § 26-51-101 et seq., and shall pay the state income tax levied by this subchapter upon that proportion of its entire net income applicable to the State of Arkansas.

(b)(1) An organization operating a railroad partly within this state and partly without this state shall apportion the net operating income attributable to this state by multiplying the organization's income by:

(A) The sales factor described in subdivision (b)(2) of this section; or

(B) A fraction, the numerator of which is the sum of the property factor described in subdivision (b)(3) of this section, the payroll factor described in subdivision (b)(4) of this section, and two (2) times the sales factor described in subdivision (b)(2) of this section, and the denominator of which is four (4).

(2) The sales factor is a fraction, the numerator of which is the sum of the taxpayer's gross revenue from within this state and the proportionate part of the taxpayer's interstate revenues determined on the basis of the taxpayer's miles operated within this state compared to the taxpayer's total miles operated within the railway system, and the denominator of which is the total operating revenues of the taxpayer.

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

(B) The average value of the taxpayer's operating equipment, including without limitation locomotives, freight and passenger cars, and work and miscellaneous equipment, shall be apportioned to this state in the ratio of the total miles the taxpayer's property is operated within this state to the total miles the taxpayer's property is operated throughout the railway system.

(C) The average value of the taxpayer's real and tangible personal property owned in this state is the average of the original cost of the real and tangible personal property at the beginning and the end of the tax year.

(D) The taxpayer's real and tangible personal property rented and used in this state is valued at eight (8) times the net annual rental amount.

(4) The payroll factor is a fraction, the numerator of which is the sum of the compensation paid by the taxpayer for services performed entirely within the state and a proportionate part of the compensation paid by the taxpayer for services performed both within and without the state based on the ratio of the taxpayer's total miles traveled within the state to the taxpayer's total miles traveled, and the denominator of which is total compensation paid by the taxpayer during the tax year.

(5) As used in this subsection:

(A) "Nonoperating income" means all income other than operating income; and

(B) "Operating income" means income arising from transactions and activity in the regular course of the taxpayer's trade or

business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(c) The Secretary of the Department of Finance and Administration may promulgate rules to administer this section.

SECTION 4. Arkansas Code § 26-51-702 is amended to read as follows:
26-51-702. Apportionment of net income authorized.

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

SECTION 5. DO NOT CODIFY. TEMPORARY LANGUAGE. Rules.

Any rules or provisions of rules adopted by the Department of Finance and Administration that conflict with this act are void, including without limitation the conflicting provisions of Corporation Income Tax Rule 1.26-51-204.

SECTION 6. EFFECTIVE DATE. Sections 1-5 of this act are effective for tax years beginning on or after January 1, 2023.