

## **Title 26. Taxation**

### **Chapter I. Generally, Department of Finance and Administration**

#### **Subchapter E. Corporate Income Tax**

#### **Part 130. Arkansas Corporation Income Tax**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Pursuant to the authority vested in the Commissioner of Revenue and in compliance with Ark. Code Ann. §26-18-301 and §26-51-104, the Commissioner of Revenue of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rules for the enforcement and administration of Ark. Code Ann. §26- 51-101 et seq.

EFFECTIVE DATE: These rules shall be effective for tax years beginning on and after January 1, 1998. All currently existing Arkansas corporate income tax rules (with the exception of 1996-3) are hereby specifically repealed as of the effective date of these rules."

"Issued and hereby effective this 10th day of December, 1998 in the city of Little Rock, Arkansas.

Tim Leathers

Commissioner of Revenue and Acting Director

Arkansas Department of Finance and Administration"

#### **Subpart 1. Generally**

##### **26 CAR § 130-101. Purpose.**

(a) This part is promulgated to implement and clarify the Arkansas Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq., as amended.

(b) All persons affected by or relying upon this part are advised to read it in its entirety, as the meaning of the provisions of one (1) section may depend upon the provisions contained in another section.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-102. Interpretation.**

In those instances where Arkansas has adopted a section of the Internal Revenue Code as its own law, the regulations promulgated by the United States Department of the Treasury to aid in interpreting the Internal Revenue Code section should be used for guidance in applying Arkansas's law.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-103. Biotechnology development and research —  
Biotechnology tax credit — Arkansas Code § 2-8-101 [repealed].**

(a) Biotechnology tax credits are issued and verified through the Tax Credits/Special Refunds Section of the Department of Finance and Administration.

(b) Original certificates must be:

- (1) Obtained from the Arkansas Economic Development Commission; and
- (2) Attached to the corporation income tax return in order to claim the credit.

(c) Credit is limited to:

(1) The first fifty thousand dollars (\$50,000) of income tax liability arising during each year; and

(2) Fifty percent (50%) of any remaining income tax liability for each year.

(d) Unused tax credits may be carried forward for up to nine (9) consecutive tax years following the tax year in which the credit originated.

(e) A taxpayer that receives a biotechnology tax credit for the purchase of machinery or equipment shall not be entitled to claim any other state or local tax

credits or deductions based on the purchase of such machinery or equipment (other than the deduction for normal depreciation).

(f) This tax credit shall be available for tax years beginning on January 1, 1997, and thereafter.

**Example:** The tax liability before credits of ABC Corporation for 1997 is eighty-one thousand two hundred seventy-three dollars (\$81,273). The ABC Corporation has available a seventy-five-thousand-dollar biotechnology tax credit. The 1997 tax liability for ABC Corporation is computed as follows:

1997 tax liability	\$ 81,273
Less: credit limit of \$50,000	<u>(50,000)</u>
Pre-adjusted tax liability	\$ 31,273
Less: 50% of remaining liability	<u>(15,636)</u>
Adjusted tax liability	\$ 15,637
Biotechnology tax credits	\$ 75,000
Less: credits applied towards tax	<u>(65,636)</u>
Available tax credit carryforward	\$ 9,364

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 2-8-101 et seq., was repealed by Acts 2009, No. 716, § 1.

**26 CAR § 130-104. County and Regional Industrial Development Corporation Act — Arkansas Code § 15-4-1224 [repealed].**

**(a) Income tax credit — Arkansas Code § 15-4-1224 [repealed].**

(1) The original purchaser of common stock in a county or regional industrial development corporation shall be entitled to a credit against any Arkansas income tax liability that the purchaser may have.

(2) The credit shall be determined as follows:

**Example:**

Purchase price	\$1,000,000
Credit allowed is 33% of the purchase price of the common stock	\$330,000

Tax year	1991	1992	1993
Tax liability	20,000	50,000	80,000
Credit allowed (50% of tax liability)	10,000	25,000	40,000

**(b) Gain or loss upon sale or disposition of common stock — Arkansas Code § 15-4-1224 [repealed].**

(1) The basis for computation of gain or loss upon the sale of the common stock in a county or regional industrial development corporation shall be reduced by the amount of the income tax credits previously deducted.

(2) The basis shall be further reduced by ten percent (10%) of the original purchase price if the stock is disposed of within five (5) years of its original purchase date.

**Example:**

Stock purchased in 1991, sold in 1994	
Purchase price	\$1,000,000
Less credit claimed	- 75,000
Less 10% of purchase price	<u>-100,000</u>
Basis of stock for Arkansas tax purposes	825,000

Selling price	<u>1,500,000</u>
Taxable gain	\$ 675,000

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 15-4-1224 was repealed by Acts 2017, No. 374, § 5.

**26 CAR § 130-105. Arkansas Enterprise Zone Act — Income tax credits — Arkansas Code § 15-4-1704.**

(a)(1) Enterprise zone credits are issued and verified through the Tax Credits/Special Refunds Section of the Department of Finance and Administration.

(2) Original certificates must be attached to the corporation income tax return in order to claim the tax credits.

(3) The tax credits must be used for the tax year in which the increase in average annual employment occurred.

(4) The tax credits should be used to the full extent of the computed tax for the initial and succeeding tax years.

(5) Any unused credits may be carried forward for up to:

(A) Four (4) consecutive tax years following the tax year in which the credit originated if approved prior to March 25, 1997; or

(B) Nine (9) consecutive tax years following the tax year in which the credit originated if approved on or after March 25, 1997.

(6)(A) If more than one (1) credit is involved, the taxpayer should specify in which order the credits should be claimed.

(B) If the taxpayer does not specify the order, the credits will be applied in the order that will be of best advantage to the taxpayer.

(b)(1) Regional headquarters and steel service centers (SIC 5051) may qualify for the tax incentive credits.

(2) These taxpayers must:

- (A) Employ fifty (50) or more new permanent employees; and
- (B) Not make retail sales to the general public.

(c)(1) Under prior law, new employees were required to be Arkansas residents.

(2) The law now requires only that a new employee be an Arkansas taxpayer during the tax year in which the credit was issued.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** "SIC" means Standard Industrial Classification.

**26 CAR § 130-106. Affordable neighborhood housing — Housing tax credit — The Affordable Neighborhood Housing Tax Credit Act of 1997, Arkansas Code § 15-5-1301 et seq.**

(a)(1) This tax credit applies to any taxpayer that provides affordable housing assistance that has been qualified by the Arkansas Development Finance Authority.

(2) The authority:

- (A) Establishes the requirements for this credit; and
- (B) Issues a certificate of eligibility for tax credit.

(3) This certificate must be attached to the taxpayer's income tax return upon which the tax credit is first taken.

(b)(1) The allowable credit cannot exceed thirty percent (30%) of the total amount invested in affordable housing assistance activities by the taxpayer.

(2) If not fully used in the year established, this credit may be carried forward for up to five (5) consecutive tax years following the tax year in which the credit originated.

(c) The affordable neighborhood housing tax credit:

- (1) Applies to tax years ending after August 1, 1997; and
- (2) Is available on a first-come, first-served basis until a seven-hundred-fifty-thousand-dollar per year limit for all taxpayers is reached.

**Authority.** Arkansas Code §§ 15-5-1305, 26-18-301.

**26 CAR § 130-107. Tax penalties — Arkansas Code § 26-18-208.**

**(a) Estimated tax penalty — Arkansas Code § 26-18-208(6)(A).**

(1)(A) Payments made with an extension of time to file corporation income tax returns do not constitute estimated tax payments.

(B) Estimated tax payments must be made by the required due dates.

(2)(A) Underestimate penalty is calculated by:

(i) Multiplying the underpayment for each quarter by .00027397; and

(ii) Then multiplying that figure by the number of days underpaid.

(B) There can be several calculations for each quarter when partial payments are received.

**Example 1:** Corporation A, FEIN 99-9999991, is a calendar-year filer. The tax liability for tax year 12/94 was forty thousand dollars (\$40,000) and for tax year 12/95, the tax liability was twenty thousand dollars (\$20,000). Corporation A has a two-thousand-dollar estimated credit carryforward from tax year 12/94. Corporation A

filed

an extension payment of three thousand dollars (\$3,000) on May 15, 1996. The 12/95 income tax return was filed September 15, 1996. Corporation A paid estimated tax payments for tax year 12/95 as follows:

PAYMENT DATE	VOUCHER NO.	AMOUNT
05/15/95	1	\$3,000
01/15/96	4	10,000

The required estimated tax due per quarter is four thousand five hundred dollars (\$4,500) ( $\$20,000 \times 90\% \div 4$ ). Five hundred dollars

(\$500) of the first quarter overpayment (\$3,000 + \$2,000 - \$4,500) is applied to the second quarter estimate. The ten-thousand-dollar fourth quarter payment will be applied to the second, third, and fourth quarter required estimates as follows: (1) Four thousand dollars (\$4,000) to the second quarter, (2) four thousand five hundred dollars (\$4,500) to the third quarter, and (3) one thousand five hundred dollars (\$1,500) to the fourth quarter. The amount subject to underestimate penalty and the penalty calculations are as follows:

Quarter	Quarterly Due Date	Payment Date	Underpay Amount	Underpaid Days	U/P amt X U/P days X .00027397
2nd	6/15/95	1/15/96	\$ 4,000	214	\$235
3rd	9/15/95	1/15/96	4,500	122	150
4th	1/15/96	*5/15/96	3,000	121	99
Total UEP					\$484

\*5-15-96 is the original income tax return due date.

**Example 2:** Corporation B, FEIN 99-9999992, is a fiscal-year filer. The tax liability for tax year 3/94 was fifteen thousand ten dollars (\$15,010) and for tax year 3/95, the tax liability was sixteen thousand six hundred forty-four dollars (\$16,644). Corporation B filed an extension payment of seven thousand nine hundred forty dollars (\$7,940) on August 15, 1995. The income tax return was filed on December 15, 1995. Corporation B paid estimated tax payments for tax year 3/95 as follows:

PAYMENT DATE	VOUCHER NO.	AMOUNT
08/15/94	1	\$3,000
12/15/94	4	\$10,000

The required estimated tax due per quarter is three thousand seven hundred forty-five dollars (\$3,745) ( $\$16,644 \times 90\% \div 4$ ). The ten-thousand-dollar fourth quarter overpayment will be applied to the first, second, and third quarters as follows: (1) Seven hundred forty-five dollars (\$745) to the first quarter, (2) three thousand seven hundred forty-five dollars (\$3,745) to the second quarter, (3) three thousand seven hundred forty-five dollars (\$3,745) to the third quarter, and (4) one thousand seven hundred sixty-five dollars (\$1,765) to the fourth quarter. The amount subject to underestimate penalty and the penalty calculations are as follows:

Quarter	Quarterly Due Date	Payment Date	Underpay Amount	Underpaid Days	U/P amt X U/P days X .00027397
1st	8/15/94	12/15/94	\$ 745	122	\$25
2nd	9/15/94	12/15/94	3,745	91	93
4th	4/15/95	*8/15/95	1,765	122	59
Total UEP					\$177

\*8-15-95 is the original income tax return due date.

**(b) Estimated tax penalty — Exceptions — Arkansas Code § 26-18-208(6)(B)(iii).**

(1) The estimated tax penalty will not be imposed if estimated tax payments equal or exceed the amount of tax liability shown on the taxpayer's return for the preceding tax year.

(2) The taxpayer's preceding tax year must have been for a period of twelve (12) months.

(3) "Tax liability shown on the taxpayer's return" means total tax, as reported, less business and incentive credits.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-108. Refund and credit claims — Arkansas Code § 26-18-306.**

(a) Claims for a refund or credit — Arkansas Code § 26-18-306(i)(1).

(b) A verified claim for an income tax credit or refund may be submitted on an amended return (AR1100CTX) or on the taxpayer's letterhead as set forth in 26 CAR § 130-112.

(c) Upon request by the Department of Finance and Administration, it shall be the burden of the taxpayer to prove that all claimed prior income tax payments that are reflected on an amended return or verified claim for credit or refund were made.

(d) The department will accept legible copies of the front and back of canceled checks as proof of prior payments.

(e) Where the taxpayer paid the tax at issue via electronic funds transfer, documentation from the taxpayer's bank will be necessary to establish proof of payment.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-109. Taxpayer relief — Protesting proposed assessments — Arkansas Code § 26-18-404.**

(a) A taxpayer may file a protest based upon a Notice of Tax Adjustment and need not wait until a Notice of Proposed Assessment is received.

(b)(1) Taxpayers must protest a Notice of Proposed Assessment in writing within thirty (30) days of service of the notice.

(2) The protest must include the taxpayer's grounds for protesting the assessment.

(3) The grounds should be explained as thoroughly as possible to enable the Department of Finance and Administration to better understand the taxpayer's position.

(4) If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the next succeeding day that is not a Saturday, Sunday, or legal holiday is considered to be the thirtieth day for purposes of meeting the prescribed time period in which to file the protest.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-110. Taxpayer relief — Administrative and judicial review — Arkansas Code § 26-18-406.**

(a)(1) Taxpayers that receive a Notice of Proposed Assessment or Notice of Proposed Disallowance of a Claim for Refund may obtain an administrative review of the matter by the Office of Hearings and Appeals of the Department of Finance and Administration as set forth in Arkansas Code § 26-18-404.

(2) If the taxpayer is not satisfied with the decision issued by the Office of Hearings and Appeals, the taxpayer may request a further review of the matter by the Commissioner of Revenue of the Department of Finance and Administration as set forth in Arkansas Code § 26-18-405(d)(4).

(b) Taxpayers have the option of bypassing administrative review by the Department of Finance and Administration altogether by taking the disputed assessment or refund claim directly to Chancery Court.

(c) When a taxpayer chooses to bypass the administrative review process, the following procedure shall apply with respect to a Notice of Proposed Assessment:

(1) The taxpayer should not protest the Notice of Proposed Assessment within the thirty-day period following receipt of the notice (see Arkansas Code § 26-18-404(c));

(2) A Notice of Final Assessment will be issued by the department soon after the expiration of the thirty-day period (see Arkansas Code § 26-18-403(a)(2));

(3)(A) Within one (1) year from the issue date of the Notice of Final Assessment, the taxpayer must pay the entire amount of tax due for at least one (1) tax period covered by the final assessment.

(B) A tax period is equivalent to any one (1) tax year (full or short) for which an Arkansas corporation income tax return must be filed.

(C) Taxpayers that pay only part of an assessment should be aware that the department may proceed with collection activities, including the filing of liens as authorized under Arkansas Code § 26-18-701, within thirty (30) days of the issuance of the final assessment, for any assessed but unpaid taxes, penalties, or interest owed by the taxpayer for all remaining tax periods covered by the final assessment;

(4) Within one (1) year from the date of the taxpayer's full or partial payment as addressed above, the taxpayer must file its lawsuit with the Pulaski County Chancery Court or the Chancery Court of the county in which the taxpayer has its principal place of business; and

(5) If the taxpayer has already made its full or partial payment of the assessment before the Notice of Final Assessment is actually issued, the taxpayer shall then have one (1) year from the date the Notice of Final Assessment is eventually issued within which to file its lawsuit.

(d) When a taxpayer chooses to bypass the administrative review process, the following procedure shall apply with respect to a Notice of Proposed Disallowance of a Claim for Refund:

(1) The taxpayer should not protest the Notice of Proposed Disallowance of a Claim for Refund within the thirty-day period following receipt of the notice (see Arkansas Code § 26-18-404(c));

(2) A Notice of Final Disallowance of a Claim for Refund will be issued by the department soon after the expiration of the thirty-day period (see Arkansas Code § 26-18-507(e)(2)(C)); and

(3) Within one (1) year from the issue date of the Notice of Final Disallowance of a Claim for Refund, the taxpayer must file its lawsuit with the Pulaski County Chancery Court or the Chancery Court of the county in which the taxpayer has its principal place of business.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-111. Extension of time for filing returns — Arkansas Code § 26-18-505.**

**(a) First ninety-day state extension — Arkansas Code § 26-18-505(a)(3).**

(1) Taxpayers may request a ninety-day state extension for filing the Arkansas corporation income tax return from the Corporate Income Tax Section of the Department of Finance and Administration.

(2) This request shall be made:

(A) In writing; and

(B) On or before:

(i) The original due date of the return; or

(ii) If applicable, the due date for the federal return as extended by the Internal Revenue Service's six-month automatic extension.

(3) Upon receipt by the Department of Finance and Administration, the extension request will be approved or disapproved and a confirmation will be sent back to the taxpayer.

(4) If approved, the confirmation must be attached to the return when filed.

(5) An approved extension only extends the filing due date and does not extend the due date for payment of any income tax due.

(6) If any tax due is reflected on the filed return but was not paid on or before the original due date, interest at the rate of ten percent (10%) per annum will be assessed from the original due date until the tax is paid.

(7) Likewise, a failure-to-pay penalty under Arkansas Code § 26-18-208(2)(A) will apply to any tax not paid on or before the extended due date.

(8)(A) Refer to 26 CAR § 130-149(a) and (b) for important related information on federal extensions of time.

(B) Any federal extensions that have been taken should be applied first.

(C) Arkansas (that is, state) extensions should be applied after any federally granted extensions.

**Example:**

Without a federal extension: Calendar year ending December 31, 1993, therefore Arkansas return's original due date is May 15, 1994. Arkansas extension request must be filed on or before May 15, 1994, on Arkansas Form AR1055, stating the reason for the request. If a ninety-day extension is granted, the Arkansas return must be filed on or before August 15, 1994.

**(b) Second ninety-day state extension — Arkansas Code § 26-18-505(a)(3)(B).**

(1) The Secretary of the Department of Finance and Administration may issue a second ninety-day state extension for extraordinary circumstances.

(2) This additional extension will run consecutively with the first extension.

(3) This request shall be made on or before the expiration of the first ninety-day extended due date.

(4) Refer to 26 CAR § 130-149(a) and (b) for important related information on federal extensions of time.

(5)(A) Any federal extensions that have been taken should be applied first.

(B) Arkansas (that is, state) extensions should be applied after any federally granted extensions.

**Example:**

Without a federal extension: Calendar year ending December 31, 1993, with an approved Arkansas ninety-day extension. If the taxpayer requested an additional extension of sixty (60) days, the request must be filed on or before August 15, 1994 (the Arkansas income tax return's original due date of May 15, 1994, plus the first ninety-day extension). If the additional sixty-day extension is approved, the Arkansas return must be filed on or before October 15, 1994 (first Arkansas extended due date of August 15, 1994, plus the additional sixty-day extension).

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-18-505(a)(3)(A) and (a)(3)(B) were removed by Acts 2007, No. 369, § 1.

**26 CAR § 130-112. Refunds of overpayments — Arkansas Code § 26-18-507.**

(a) Refund claims – Arkansas Code § 26-18-507(a).

(b) A verified claim for a refund of an overpayment of income tax must be filed on a corporation income tax amended return, Form AR1100CTX.

(c) In lieu of filing an amended return, a verified claim for a refund of an overpayment of income tax may be filed on the taxpayer's letterhead, provided the following information is contained in the verified claim:

- (1) The federal employer identification number (FEIN) of the taxpayer;
- (2) The name of the taxpayer;
- (3) The address of the taxpayer (street or P.O. box, city, state, and zip code);

(4) The tax year end (month, day, and year) of the original return for which the verified claim is filed;

(5) A schedule detailing the original reported, net change, and corrected amounts for the following figures:

(A) Total income;

(B) Total deductions;

(C) Net operating loss;

(D) Taxable income;

(E) Tax;

(F) Estimated tax paid;

(G) Business and incentive tax credits;

(H) Tax paid with original return; and

(I) Amount of overpayment;

(6) Grounds upon which the refund is claimed;

(7)(A) The verified claim must be signed by an authorized officer or agent of the taxpayer.

(B) An agent must attach an executed power of attorney issued by an authorized officer of the taxpayer; and

(8) Any other information relative to the payment as may be required by the Department of Finance and Administration.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-113. Corporation income tax definitions — Arkansas Code § 26-51-102.**

**(a) Characteristics of corporations — Arkansas Code § 26-51-102(1).**

(1) The term "corporation" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization, such as a partnership or a trust.

(2)(A) There are a number of characteristics ordinarily found in a corporation that, when taken together, distinguish it from other organizations.

(B) These are:

- (i) Associates;
- (ii) An objective to carry on business and divide the gains therefrom;
- (iii) Continuity of life;
- (iv) Centralization of management;
- (v) Liability for corporate debts limited to corporate property; and
- (vi) Free transferability of interests.

(C) Whether a particular organization is to be classified as a corporation must be determined by taking into account the presence or absence of each of these corporate characteristics.

(D) Other factors may be found in some cases that may be significant in classifying an organization as a:

- (i) Corporation;
- (ii) Partnership; or
- (iii) Trust.

(3) An organization will be treated as a corporation if the corporate characteristics are such that the organization more nearly resembles a corporation than a partnership or trust.

(b) **Foreign corporation — Arkansas Code § 26-51-102(5).** A foreign corporation or association or partnership is one organized under the laws of any other state or country, whether or not its principal place of business is located within the State of Arkansas.

(c) **Fiduciary — Arkansas Code § 26-51-102(3).**

(1) A fiduciary is an individual or corporate guardian, trustee, executor, administrator, receiver, or conservator acting in any fiduciary capacity for any:

- (A) Person;
- (B) Trust;
- (C) Estate; or

(D) Business entity.

(2) A fiduciary relationship is considered one of trust and confidence.

(3) A fiduciary has a legal responsibility to act in the beneficiary's best interest.

(d) **Tax year.**

(1) **Arkansas Code § 26-51-102(16)(A).**

(A) "Tax year" means the calendar year or fiscal year upon which taxable income is computed.

(B) A "calendar year" means a period of twelve (12) months ending on December 31.

(C) A "fiscal year" means a period of twelve (12) months ending on the last day of any month other than December.

(D)(i) A tax return for the period January 1, 1993, through December 31, 1993, is a calendar-year return and is referred to as the 1993 tax year.

(ii) Any correspondence or assessments from the Department of Finance and Administration concerning this tax year will be designated as the tax year ending 12/93 or as tax year 1993.

(E)(i) A tax return for the period February 1, 1992, through January 31, 1993, is a fiscal-year return and is also considered a 1993 tax year return.

(ii) Any correspondence or assessments from the department will be designated as the tax year ending 01/93 or as tax year 1993.

(2) **Arkansas Code § 26-51-102(16)(A).**

(A)(i) A taxpayer may elect to compute his or her taxable income on the basis of an annual period that varies from fifty-two (52) or fifty-three (53) weeks.

(ii) A fifty-two-week or fifty-three-week tax year means the annual period that varies from fifty-two (52) or fifty-three (53) weeks, always ends on the same day of the week, and always ends on whatever date such same day of the week:

(a) Last occurs in a calendar month; or

(b) Falls that is nearest to the last day of a calendar month.

(B)(i) For example, if the taxpayer elects a tax year that always ends on the last Saturday in November, then for the year 1994, the tax year would end on November 26, 1994.

(ii) On the other hand, if the taxpayer had elected a tax year that always ends on the Saturday nearest to the end of November, then for the year 1994, the tax year would end on December 3, 1994.

(iii) Thus, in the case of a tax year described in subdivision (d)(2)(A)(ii)(a) of this section, the year will always end within the month and may end:

(a) On the last day of the month; or

(b) As many as six (6) days before the end of the month.

(iv) In the case of a tax year described in subdivision (d)(2)(A)(ii)(b) of this section, the year may end:

(a) On the last day of the month; or

(b) As many as three (3) days before or three (3) days after the last day of the month.

(C)(i) For the purpose of determining the effective date or the applicability of any corporate income tax statute that is expressed in terms of tax years beginning, including, or ending on the first or last day of a specified calendar month, a fifty-two-week or fifty-three-week tax year is deemed to:

(a) Begin on the first day of the calendar month beginning nearest to the first day of the fifty-two-week or fifty-three-week tax year; and

(b) End or close on the last day of the calendar month ending nearest to the last day of the fifty-two-week or fifty-three-week tax year.

(ii) This is illustrated by the following examples:

**Example 1:** Assume that an income tax provision applies to tax years beginning on or after January 1, 1994. For that purpose, a fifty-two-week or fifty-three-week tax year beginning on any day within the period December 26, 1993, to January 1, 1994, shall

be treated as beginning on January 1, 1994.

**Example 2:** Assume that an income tax provision requires that a return must be filed on or before the fifteenth day of the fifth month following the close of the tax year. For that purpose, a fifty-two-week or fifty-three-week tax year ending on any day during the period May 25 to June 3 shall be treated as ending on May 31, the last day of the month ending nearest to the last day of the tax year, and the return, therefore, must be made on or before October 15.

**Example 3:** X, a corporation created on January 1, 1994, elects a fifty-two-week or fifty-three-week tax year ending on the Friday nearest the end of December. Thus, X's first tax year begins on Saturday, January 1, 1994, and ends on Friday, December 30, 1994; its next tax year begins on Saturday, December 31, 1994, and ends on Friday, December 29, 1995; and its next tax year begins on Saturday, December 30, 1995, and ends on Friday, January 3, 1997. X's first tax year is deemed to begin on January 1, 1994, and end on December 31, 1994; its next tax year is deemed to begin on January 1, 1995, and end on December 31, 1995. Accordingly, each such tax year is treated

as

including one (1) and only one (1) December 31.

**(3) Arkansas Code § 26-51-102(16)(B).**

(A) A fractional part of a year (short tax year) means a period of less than twelve (12) months.

(B) If a short tax year ends on or before the fifteenth day of the month, then the short tax year shall be deemed to have ended on the last day of the previous month.

(C) If a short tax year ends on or after the sixteenth of the month, then the short tax year shall be deemed to have ended on the last day of the current month.

(D) **Note.** A taxpayer must calculate its Arkansas income tax liability using the same tax year for Arkansas income tax purposes as used for federal income tax purposes.

(e) **Carryforwards for short years — Arkansas Code § 26-51-102(16)(B).** Tax years for a fractional part of a year will be counted as a full tax year for carryforward of net operating losses and tax credits unless otherwise specified by law.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-114. Railroads and public utilities — Arkansas Code § 26-51-204.**

(a) **Railroads — Arkansas Code § 26-51-204.**

(1) Every organization operating a railroad, partly within and partly without the state, shall apportion the 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).

(2) **Property factor.** 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 period 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 period, provided that the average value of the operating equipment (locomotives, freight and passenger cars, work and miscellaneous equipment) shall be apportioned to the state in the ratio of total miles such property is operated within the state to total miles operated throughout the system.

(3)(A) Average value of the property owned by the taxpayer means the average of the original cost of the property at the beginning and ending of the tax period.

(B) Property rented is valued at eight (8) times the net annual rental.

(4) **Payroll factor.** The payroll factor is a fraction, the numerator of which is compensation paid for services performed entirely within the state plus a proportionate part of the compensation paid for services performed both within and without the state based on the ratio of total miles traveled within the state to total miles traveled and the denominator of which is total compensation paid during the tax period.

(5) **Sales factor.** The sales factor is a fraction, the numerator of which is the gross revenue from within the state plus a proportionate part of interstate revenues earned in the state determined on the basis of miles operated in the state to total miles operated in the system and the denominator of which is total operating revenues.

(6) To the net income thus determined shall be added nonoperating revenues from sources within Arkansas less any related expenses.

(7)(A) Operating income is the same as business income.

(B) Nonoperating income is the same as nonbusiness income.

**Example:** ABC Railroad

A. Average Property in Arkansas	\$1,000,000
B. Average Property in Texas	\$1,000,000
C. Average Locomotives & Equipment	\$1,000,000
D. Operating Miles in Arkansas	400,000
E. Operating Miles in Texas	600,000
F. Payroll in Arkansas	\$200,000
G. Payroll in Texas	\$200,000
H. Interstate Payroll	\$100,000
I. Arkansas Revenues	\$1,000,000
J. Texas Revenues	\$1,000,000
K. Interstate Revenues	\$500,000

L. Arkansas Non-business Revenues	\$150,000
M. Related Expenses	\$20,000
N. Total Non-business Revenues	\$500,000
O. Related Expenses	\$50,000

Federal Return:

P. Total Income	\$3,000,000
Q. Total Deductions	\$2,000,000
R. Line 28 Income	\$1,000,000

The Arkansas property factor is the average value of real and tangible property in Arkansas, plus the average value of interstate property, multiplied by Arkansas's total miles, divided by total miles, divided by average value of all property or:

$$A + (D \div [D + E] \times C) \div (A + B + C) = \text{Property Factor}$$

$$\begin{aligned} & \$1,000,000 + (400,000 \text{ mi} \div [400,000 \text{ mi} + 600,000 \text{ mi}] \times \\ & \$1,000,000) \div (\$1,000,000 + \$1,000,000 + \$1,000,000) = \\ & 46.666667\% \end{aligned}$$

The Arkansas payroll factor is Arkansas payroll, plus interstate payroll, multiplied by Arkansas total miles, divided by total miles, divided by total payroll or:

$$F + (D \div [D + E] \times H) \div (F + G + H) = \text{Payroll Factor}$$

$$\begin{aligned} & \$200,000 + (400,000 \text{ mi} \div [400,000 \text{ mi} + 600,000 \text{ mi}] \times \$100,000) \\ & \div (\$200,000 + \$200,000 + \$100,000) = 48.000000\% \end{aligned}$$

The sales factor is Arkansas revenues, plus interstate revenues, multiplied by Arkansas total miles, divided by total miles, divided by total revenues or:

$$I + (D \div [D + E] \times K) \div (I + J + K) = \text{Sales Factor}$$

$$\begin{aligned} & \$1,000,000 + (400,000 \text{ mi} \div [400,000 \text{ mi} + 600,000 \text{ mi}] \times \\ & \$500,000) \div (\$1,000,000 + \$1,000,000 + \$500,000) = \\ & 48.000000\% \times 2 = 96.00000\% \text{ (due to double weighted sales factor)} \end{aligned}$$

Arkansas apportionable income is Line 28 federal taxable income less net nonbusiness income or:

$$R - (N - O) = \text{Arkansas apportionable income}$$

$$\$1,000,000 - (\$500,000 - \$50,000) = \$550,000$$

This is assuming no other adjustments are necessary.

(8) The Arkansas apportionment factor is the property factor, plus the payroll factor, plus the sales factor, divided by four (4).

$$(46.666667\% + 48.000000\% + 96.000000\%) \div 4 = 47.666667\%$$

Income apportioned to Arkansas is \$550,000 x 47.666667%, or \$262,167. Direct income allocated to Arkansas is \$150,000 minus \$20,000, or \$130,000. Arkansas taxable income is \$392,167.

(b) **Private railcar operators — Arkansas Code § 26-51-204.** Every taxpayer, other than a railroad, engaged in the business of operating railcars or in the business of furnishing or leasing railcars, by whatever name known, for the transportation of freight or property whether or not owned by such taxpayer, over any railway lines partly within and partly without the state, shall determine the net income subject to tax by taking that portion of total net operating income that the total miles operated in the state bears to total system miles operated.

**Example:** A corporation that is a private railcar owner had two hundred thousand dollars (\$200,000) federal taxable income, and operated two million (2,000,000) total miles in Arkansas and twenty million (20,000,000) miles everywhere. The apportionment factor is 10.000000% and Arkansas taxable income is twenty thousand dollars (\$20,000), assuming no adjustments to federal taxable income are required.

Miles in Arkansas	2,000,000
Miles in Tennessee	<u>18,000,000</u>
Total System Miles	20,000,000
Operating Income	\$1,000,000
Operating Expenses	<u>800,000</u>
Total Net Operating Income	\$ 200,000

$$(2,000,000 \div 20,000,000) \times \$200,000 = \$20,000$$

(c) **Public utilities — Arkansas Code § 26-51-204.**

(1) Telephone, electric power, and gas distribution companies operating both inside and outside of Arkansas shall allocate and apportion to Arkansas their net income by use of the allocation and apportionment procedures provided under the Uniform Division of Income for Tax Purposes Act, Arkansas Code § 26-51-701 et seq.

(2) The Uniform Division of Income for Tax Purposes Act applies to all taxpayers doing business both inside and outside of Arkansas.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-115. Corporation income tax rates — Arkansas Code § 26-51-205.**

(a) Every domestic and foreign corporation doing business within Arkansas shall pay a graduated income tax on its entire Arkansas net taxable income based on the following tax rate:

- (1) First three thousand dollars (\$3,000) of net income, one percent (1.0%);
- (2) Second three thousand dollars (\$3,000) of net income, two percent (2.0%);
- (3) Next five thousand dollars (\$5,000) of net income, three percent (3.0%);
- (4) Next fourteen thousand dollars (\$14,000) of net income, five percent (5.0%);
- (5) Next seventy-five thousand dollars (\$75,000) of net income, six percent (6.0%); and
- (6) Over one hundred thousand dollars (\$100,000) of net income, six and five-tenths percent (6.5%).

(b) **Note.** A tax table is provided in each corporation income tax booklet and should be used in determining the tax.

**Example 1:**

Twenty-five thousand dollars (\$25,000) through one hundred thousand dollars (\$100,000): Tax is nine hundred forty dollars (\$940) plus six percent (6%) of excess over twenty-five thousand dollars (\$25,000).

Arkansas Net Taxable Income	\$75,000
Tax on 1st \$25,000 (Per Tax Table)	\$ 940

Tax on next \$50,000 ( $\$50,000 \times 6\%$ )	<u>3,000</u>
Total Tax	\$3,940

**Example 2:**

Over one hundred thousand dollars (\$100,000): Tax is five thousand four hundred forty dollars (\$5,440) plus six and five-tenths percent (6.5%) of the excess over one hundred thousand dollars (\$100,000).

Arkansas Net Taxable Income	\$110,000
Tax on 1st \$100,000 (Per Tax Table)	\$ 5,440
Tax on next \$10,000 ( $\$10,000 \times 6.5\%$ )	<u>650</u>
Total Tax	\$ 6,090

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-116. Exempt organizations — Definitions and guidelines for claiming tax-exempt status — Arkansas Code § 26-51-303.**

(a) **Definitions.** As used in this section:

(1) "Association" means an entity operating under articles of association, a constitution, or other creating documents with a declaration or other evidence the organization was formed by adoption of the document by more than one (1) person and having bylaws;

(2) "Cooperative association" is a group of individuals formed to participate in a productive enterprise, the profits being shared in accordance with the capital or labor contributed by each;

(3) "Corporation" means an entity operating under articles of incorporation, being properly registered with Arkansas, and meeting the requirements of Arkansas Code § 26-51-303 for recognition of tax-exempt status;

(4) "Internal Revenue Service ruling letter" means an official notification by the Internal Revenue Service of acceptance of tax-exempt status of the organization;

(5) "Partnership" includes a syndicate, group, joint venture, or other unincorporated organization operating under the terms and conditions of a partnership agreement;

(6) "Trust" means an entity operating under a trust indenture or agreement; and (7) "Unrelated income" means any income earned from activities carried on by the organization that is not substantially related to its exempt purposes.

(b)(1) Nonprofit corporations, unincorporated groups or associations, and trusts shall be eligible to receive income tax-exempt status under Arkansas Code § 26-51-303 or § 26-51-309 upon submitting proper documentation and application to:

Department of Finance and Administration  
Revenue Division, Corporation Income Tax Section  
P.O. Box 919  
Little Rock, Arkansas 72203-0919

(2) The following information must be submitted for a determination of state income tax-exempt status:

(A) Organizations with an Internal Revenue Service ruling letter:

(i) Copy of Internal Revenue Service ruling letter;

(ii) Copy of pages 1 and 2 of Internal Revenue Service form 1023 or 1024; and

(iii) Statement declaring Arkansas Code under which exempt; or

(B) Organizations without an Internal Revenue Service ruling letter:

(i) Arkansas form AR1023CT;

(ii) Copy of Articles of Incorporation, Articles of Association, Trust Indenture, or Trust Agreement; and

(iii) Copy of bylaws.

(c)(1) Acts 1993, No. 1147, known as the Nonprofit Corporation Act of 1993, adopted Section 664 of the Internal Revenue Code as in effect on January 1, 1993, for

the purpose of computing the tax liability of charitable remainder trusts and their beneficiaries.

(2) See Arkansas Code § 26-51-309.

(d)(1) Any unrelated income of a nonprofit corporation operating in Arkansas as well as in other states shall be reported to the state in which it is earned.

(2) Any unrelated income attributable to Arkansas would be subject to Arkansas income tax.

(e)(1) Revocation of tax-exempt status shall be effective on the same date as the Internal Revenue Service revocation (if made) or upon notification to the taxpayer by the Revenue Division of the Department of Finance and Administration upon investigation and discovery of sufficient grounds for revocation.

(2) Sufficient grounds for revocation shall mean any investigation in which it is determined that the organization is not operating in the manner under which it originally obtained exempt status.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-117. Accounting methods — Arkansas Code § 26-51-401.**

**(a) Accounting and recordkeeping requirements — Arkansas Code § 26-51-401(a).**

(1) Arkansas taxpayers must use the same accounting method as that used for federal income tax purposes.

(2)(A) Each taxpayer is required by Arkansas law to file an income tax return reflecting its true and correct income.

(B) Therefore, adequate accounting records and source documents must be retained to justify that the filed income tax returns are a true and correct accounting of the taxpayer's transactions for each tax year.

(C) As a general rule, the accounting records and source documents should be retained for a minimum of six (6) years after the return that such records support has been filed.

(3) Essential accounting requirements are as follows:

(A) In all cases in which the production, purchase, or sale of merchandise of any kind is an income-producing factor, inventories of the merchandise on hand (including finished goods, work in process, raw materials, and supplies) should be taken at the beginning and end of the year and used in computing the net income for the tax year;

(B)(i) Expenditures made during the tax year should be properly classified as between capital and expense.

(ii) Expenditures for items of plant, equipment, etc., that have a useful life extending substantially beyond the tax year should be charged to a capital account and not to an expense account; and

(C) In any case in which the cost of capital assets is being recovered through deductions for wear and tear, depletion, or obsolescence, any expenditure (other than ordinary repairs) made to restore the property or prolong its useful life should be added to the property account or charged against the appropriate reserve and not to current expenses.

**(b) Accounting requirements — Arkansas Code § 26-51-401(a).**

(1) Only those methods of accounting that clearly indicate the taxpayer's income will be accepted.

(2) All items of gross income and all deductions must be treated with reasonable consistency.

(3)(A) All items of gross income subject to taxation shall be included in gross income for the tax year in which they are received by the taxpayer, unless in order to clearly reflect income such amounts are to be properly accounted for as of a different period.

(B) See Arkansas Code § 26-51-404(a)(2).

(C) For instance, in a case where it is necessary to use an inventory, no other accounting method with respect to purchases and sales will correctly reflect income except an accrual method.

(4) A taxpayer is deemed to have received items of gross income that have been credited to or set apart for him or her without restriction.

(5) On the other hand, appreciation in value of property is not an accrual of income to a taxpayer prior to the realization of such appreciation through sale or conversion of the property.

(c) **Change in accounting methods — Arkansas Code § 26-51-401(b).** If for any reason the method of reporting income subject to tax is changed, the taxpayer shall attach to his or her income tax return a copy of the Internal Revenue Service certification or approval of the change in accounting method.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-118. Basis for determining liability — Arkansas Code § 26-51-402.**

(a) Tax year – Arkansas Code § 26-51-402(a).

(b) No income tax return can be made for a period of more than twelve (12) months, unless the return is based on a fifty-two-week or fifty-three-week tax year.

(c) A separate income tax return for a fractional part of a year is therefore required whenever there is a change (with the approval of the Secretary of the Department of Finance and Administration) in the basis of computing net income from one (1) tax year to another tax year.

(d) The requirements for filing a separate income tax return and payment of tax for a part of a tax year are the same as for the filing of an income tax return and the payment of tax for a full tax year closing at the same time.

(e) The tax on net income computed for the period for which a separate income tax return is made shall be computed at the rate for the tax year in which such period is included.

(f) Arkansas taxpayers must use the same tax year as that used on the federal income tax return.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-119. Gross income generally — Arkansas Code § 26-51-404.**

**(a) Definitions — Arkansas Code § 26-51-404(a)(1).**

(1) Corporation income tax is imposed upon net income.

(2)(A) In the computation of the tax, various classes of income must be considered.

(B)(i) "Gross income" means all income that flows to the taxpayer, other than a return of capital, and includes the forms of income specifically described as gains and profits, including gains derived from the sale or other disposition of capital assets.

(ii) Many factors must be taken into consideration in accurately determining gross income, among which are:

*(a)* Inventories;

*(b)* Accounts receivable;

*(c)* Property exhaustion;

*(d)* Accounts payable for expenses incurred; and

*(e)* Exemptions as allowed by Arkansas law.

(C)(i) "Net income" is gross income less statutory deductions.

(ii) The statutory deductions are generally, though not exclusively, expenditures (other than capital expenditures) connected with the production of income.

**(b) Receipt of income — Arkansas Code § 26-51-404(a)(1).**

(1) Income that is credited to the account of or set apart for a taxpayer and that may be drawn upon by it at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession.

(2) To constitute receipt in such a case, the income must be:

(A) Credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made; and

(B) Made available to the taxpayer so that it may be drawn upon at any time.

(3) The income must be brought within the taxpayer's own control and disposition.

(4) A book entry, if made, should indicate an absolute transfer from one (1) account to another.

(5) Where a corporation contingently credits its employees with bonus stock, but the stock is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute receipt.

**(c) Manufacturing, merchandising, and mining — Arkansas Code § 26-51-404(a)(1).**

(1) In the case of a manufacturing, merchandising, or mining business, "gross income" means the total sales less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources.

(2) In determining the gross income, subtractions should not be made for:

(A) Depreciation;

(B) Depletion;

(C) Selling expenses;

(D) Losses; or

(E) Items not ordinarily allowable in computing the cost of goods sold.

**(d) Contract with United States Government — Arkansas Code § 26-51-404(a)(1).** The income of an independent contractor from a contract with the United States Government must be included in gross income.

**(e) Payment in forms other than cash — Arkansas Code § 26-51-404(a)(1).**

(1)(A) Where services are paid for with something other than money, the fair market value for the item taken in payment is the amount to be included as income.

(B) Unless there is evidence to the contrary, services rendered at a stipulated price will be presumed to be the fair market value of the compensation received.

(2) Compensation paid to an employee of a corporation in the corporation's own stock is to be treated as if the corporation:

- (A) Sold the stock for its fair market value; and
- (B) Then paid the employee in cash.

**(f) Promissory notes — Arkansas Code § 26-51-404(a)(1).**

(1) Notes or other evidence of indebtedness, received as payment for goods or services or other types of income and not merely as security for such payment, constitute income to the amount of their fair market value.

(2)(A) Such notes not bearing interest shall be discounted at the fair market rate and the discounted value recognized as income at the time of receipt.

(B) The amount of the discount of such notes is amortized and recognized as income when received by the taxpayer.

**(g) Leased property — Arkansas Code § 26-51-404(a)(1).** Rents received by a lessor corporation that are based on a rate of dividend or interest on capital stock or outstanding indebtedness, including any fixed tax or insurance payments, shall be reported by the lessor corporation as rental income.

**(h) Sale of stock shares — Arkansas Code § 26-51-404(a)(1).** The proceeds from the sale by a corporation of its capital stock, either through original issue or secondary transactions, whether in excess of or less than par value or purchase cost:

- (1) Constitute a capital transaction of the company; and
- (2) Will not produce taxable income nor a deductible loss for the corporation.

**(i) Corporate bonds — Arkansas Code § 26-51-404(a)(1).**

(1) When bonds are originally issued by a corporation at a fair market value that results in a premium or a discount compared to face value, the premium (income) or discount (expense) should be prorated or amortized over the life of the bonds.

(2)(A) When a corporation purchases and retires any of its bonds at a fair market price greater than or less than the issuing price:

(i) The amount of the purchase price over the issue price (excess amount) is a deductible expense for the tax year; or

(ii) The amount of the issue price over the purchase price (lesser amount) is income for the tax year.

(B) The deductible excess amount is:

(i) Reduced by any previously amortized issue discount; or

(ii) Increased by any previously amortized issue premium of the bonds.

(C) The taxable lesser amount is:

(i) Increased by any previously amortized issue discount; or

(ii) Reduced by any previously amortized issue premium.

**(j) Farming — Arkansas Code § 26-51-404(a)(1).**

(1) The term "farm" is to be interpreted in its ordinary, accepted sense.

(2) A farm is used to produce agricultural products such as:

(A) Livestock (including fish);

(B) Dairy products;

(C) Crops;

(D) Fruits; and

(E) Nuts.

(3) A taxpayer engaged in forestry or the growing of timber or trees is not engaged in farming.

(4) A person cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the business of farming.

(5) See I.R.C. Regulations § 1.61-4(d) and § 1.175-3.

**(k) Sale of property — Arkansas Code § 26-51-404(a)(1).**

(1) When property is acquired and later sold for an amount in excess of the cost or other basis, the gain on the sale is income.

(2) When a taxpayer sells its capital assets in whole or in part, it shall include in its gross income for the tax year in which the sale was made the gain from such sale computed as provided in Arkansas Code §§ 26-51-411 – 26-51-413.

(3) If the purchaser takes possession of the assets and assumes the liability, then the amount so assumed is part of the selling price.

**(l) Corporate dissolution — Arkansas Code § 26-51-404(a)(1).**

(1) When a corporation is dissolved, its affairs are usually settled by a receiver or trustee in dissolution.

(2) The corporate existence is continued for the purpose of liquidating the assets and paying the debts, and the receiver or trustee may act for the corporation for such purposes.

(3) Any sale of property by them is to be treated as if made by the corporation for the purpose of ascertaining the gain or loss.

(4) No gain or loss is realized by a corporation from the distribution of its assets in a partial or complete liquidation, even though the assets may have appreciated or depreciated in value since their acquisition.

**(m) Voluntary shareholder payments — Arkansas Code § 26-51-404(a)(1).**

(1) Where a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders and the amount so received is credited to its surplus account or to a special capital account, such amounts will not be considered income, even though there is no increase in the outstanding shares of stock of the corporation.

(2) The payments in such circumstances:

(A) Are in the nature of voluntary assessments that represent an additional price paid for the shares of stock held by the individual shareholder; and

(B) Will be considered as an addition to and a part of the operating capital of the company.

**(n) Trusts — Arkansas Code § 26-51-404(a)(1).** If a corporation, for the purpose of ensuring payment of its bonds or other indebtedness, places property in trust or sets aside certain amounts in a sinking fund under the control of a trustee who may be authorized to invest and reinvest such sums from time to time, the property or fund thus set aside by the corporation and held by the trustee is an asset of the corporation and any gain arising therefrom is income of the corporation and shall be included as such in its gross income.

**(o) Annuities — Arkansas Code § 26-51-404(a)(1).**

(1) Amounts received as an annuity are subject to tax except receipts that are considered to represent a reduction or return of consideration paid.

(2)(A) The proportionate part of each annuity payment that is excludable from gross income is a fraction.

(B) The numerator is the investment in the contract on the annuity starting date.

(C) The denominator is the expected return under the contract on that date.

(3) Investment in the contract is the total amount paid, less amounts received prior to the annuity starting date that were not included in gross income.

(4) The annuity starting date is the later of the:

(A) First day a benefit payment is received under the annuity contract; or

(B) Fixed date in the contract.

**Example:** Brown received ten thousand dollars (\$10,000) on a ten-year endowment contract that matured in 1993. He had paid premiums of eight thousand five hundred dollars (\$8,500) and had received dividends of two hundred dollars (\$200) before the contract matured. Brown's cost to be recovered tax free is eight thousand three hundred dollars (\$8,300) (\$8,500 minus \$200). If payments are received in installments, eighty-three percent (83%) of each payment ( $8,300 \div 10,000$ ) will be a nontaxable return of consideration paid and the remaining seventeen percent (17%) will be taxable.

**(p) Real estate — Arkansas Code § 26-51-404(a)(1).**

(1) Where a tract of land is purchased with the intent of selling subdivided lots or parcels, the cost or other basis shall be:

(A) Equitably apportioned to the several lots or parcels; and

(B) Made a matter of record on the books of the taxpayer.

(2) To the extent that any gain derived from the sale of any such lots or parcels constitutes taxable income, it may be reported as income for the tax year in which the sale is made.

(3)(A) This section contemplates that there must be a measure of gain or loss on every lot or parcel sold, and not measured on the entire tract as a whole.

(B) The sale of each lot or parcel must be treated as a separate transaction and gain or loss computed accordingly.

**(q) Lease of buildings — Arkansas Code § 26-51-404(a)(1).**

(1) When buildings are erected or improvements made by a lessee pursuant to an agreement with the lessor and such buildings or improvements are not subject to removal by the lessee, the lessor may report the income therefrom upon either of the following bases:

(A) The lessor may report as income, at the time when such buildings or improvements are completed, the fair market value of such buildings or improvements subject to the lease; or

(B) The lessor may spread over the life of the lease the estimated depreciated value of such buildings or improvements at the termination of the lease and report as income for each tax year of the lease an allocated part thereof.

(2)(A) If the lease is terminated and the lessor comes into possession or control of the property prior to the time originally fixed for the termination of the lease, the lessor receives additional income for the tax year in which the lease is so terminated to the extent that the value of such buildings or improvements exceeds the amount already reported as income on account of the erection of such buildings or improvements.

(B) No appreciation in value due to causes other than the premature termination of the lease shall be included.

(3) Conversely, if the buildings or improvements are destroyed prior to the expiration of the lease, the lessor is entitled to deduct as a loss for the tax year when such destruction takes place the amount previously reported as income because of the

erection of such buildings or improvements, less any salvage value and only to the extent that such loss was not compensated for by insurance.

**(r) Long-term contracts — Arkansas Code § 26-51-404(a)(1).**

(1) Income from long-term contracts is taxable for the period in which the income is generated.

(2) The determination of taxable income is dependent upon the nature and terms of the contract.

(3) Arkansas taxpayers must use the same accounting method as that used for federal income tax purposes.

(4) "Long-term" contracts are contracts that will take more than one (1) year to be fully and completely performed.

**(s) Stock distributions — Arkansas Code § 26-51-404(a)(1).**

(1)(A) The issuance of its own stock by a corporation as a dividend to its shareholders does not result in taxable income to such shareholders.

(B) However, any gain derived from the sale of such stock by the shareholders is taxable to the shareholders.

(2) Distributions received by shareholders from regulated investment companies are, by reason of the shareholder's option to receive the equivalent of cash or new stock, deemed to be a cash dividend and are therefore taxable.

**(t) Receipt of income — Arkansas Code § 26-51-404(a)(2).** All items of gross income received by a taxpayer must be included in the taxpayer's gross income for the tax year in which such items were received.

**(u) Installment sales of personal property — Arkansas Code § 26-51-404(a)(2).**

(1) Dealers who sell personal property on an installment plan must include all installment payments received during any given tax year in the dealer's gross income for such tax year.

(2) The income from installment sales cannot be reported evenly over the life of the installment contract when payments are accelerated or delayed compared to the contractual amortization.

(3) A dealer is one who is engaged in buying and selling personal property of the same type or real estate as his or her principal business.

(4) For treatment of gain or loss on such sales, see 26 CAR § 130-120(d).

**(v) Installment sales of real estate — Arkansas Code § 26-51-404(a)(2).**

(1) A taxpayer that sells real estate on an installment plan must include all installment payments received during any given tax year in the taxpayer's gross income for such tax year.

(2) The income from installment sales cannot be reported evenly over the life of the installment contract when payments are accelerated or delayed compared to the contractual amortization.

**(w) Gain on compulsorily or involuntarily converted property — Arkansas Code § 26-51-404(b)(1).**

(1) Section 1033 of the Internal Revenue Code of 1986, as in effect on January 1, 1997, relating to the exclusion from gross income of gain resulting from the involuntary conversion of a taxpayer's property, has been adopted for the purpose of computing Arkansas income tax liability.

(2) Refer to Treasury Regulations § 1.1033(a)-1 et seq., for guidance on such matters.

**(x) Life insurance proceeds — Arkansas Code § 26-51-404(b)(3).**

(1)(A) Proceeds of life insurance policies paid by reason of death of the insured to his or her estate or any beneficiary either in a lump sum or otherwise, except a transferee for valuable consideration, is excluded from the gross income of the beneficiary.

(B) Interest paid on the proceeds is included in gross income.

(2) Transferees for valuable consideration and recipients, paid due to reasons other than insured death, of life insurance, endowment, or annuity contracts include in gross income the proceeds and interest that are in excess of the total consideration, premiums, and other sums paid to obtain the contract.

**(y) Interest on United States Government obligations — Arkansas Code § 26-51-404(b)(5).**

(1) Interest earned on obligations of the United States or its possessions is not included in gross income.

(2) "Obligations of the United States" means any United States Government obligation used to finance the national debt, such as:

(A) United States Treasury bills;

(B) United States Treasury savings bonds; or

(C) Any other instrument acknowledged by the United States Secretary of the Treasury as an obligation of the United States.

(3) These obligations must:

(A) Be specifically exempt from state taxation by federal law; or

(B)(i) Meet the four (4) criteria established by *Smith v. Davis*, 323 U.S. 111, 89 L Ed 107, 65 S Ct 157 (1944).

(ii) The requirements are that the obligations must:

(a) Be in writing;

(b) Bear specific interest;

(c) Bind the United States Government to pay specific sums at specific dates; and

(d) Have congressional authority to pledge the full faith and credit of the United States in support of the promise to pay.

(iii)(a) For example, interest received from the Federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation does not meet all four (4) of the above stated requirements and therefore is not tax exempt.

(b) This is not intended to be an all-inclusive list.

**(z) Interest on State of Arkansas obligations — Arkansas Code § 26-51-404(b)(6).**

(1) Interest earned on obligations of the State of Arkansas or any political subdivision thereof is not included in gross income.

(2) "Obligations of the State of Arkansas" means any obligation backed by credit of the State of Arkansas.

(3) "Any political subdivision" means a county, city, or town, including special assessment districts such as road, water, sewer, reclamation, drainage, levee, school, or similar districts.

(aa) **Cancellation or forgiveness of indebtedness — Arkansas Code § 26-51-404(b)(11).**

(1) The cancellation and forgiveness of indebtedness may amount to a payment of income, a gift, or a capital transaction, depending upon the circumstances.

(2) If, for example, an individual performs services for a creditor in exchange for cancellation of a debt, income equal to the debt is realized by the debtor as compensation for his or her services.

(3) If, however, a creditor merely desires to benefit a debtor, and, without any consideration therefore, cancels the debt, the amount of the debt is a gift from the creditor to the debtor and need not be included in the debtor's gross income.

(4) If a shareholder in a corporation that is indebted to him or her gratuitously forgives the debt, the transaction amounts to a contribution to the capital of the corporation.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. Regulations § 1.61-4(d) and § 1.175-3 are codified at 26 C.F.R. § 1.61-4(d) and § 1.175-3.

Treasury Regulations § 1.1033(a)-1 et seq., are codified at 26 C.F.R. § 1.1033(a)-1 et seq.

**26 CAR § 130-120. Gain or loss — Sales of property — Arkansas Code § 26-51-411.**

(a) **Amount realized on sale of property — Arkansas Code § 26-51-411.**

(1)(A) The amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received.

(B) The fair market value of property is a question of fact, but only in rare and extraordinary cases does property have no fair market value.

(2)(A) In computing the amount of gain or loss, the cost or other basis of the property sold shall be adjusted for items properly chargeable to the seller's capital account.

(B) Adjustments include:

- (i) Expenditures, such as to maintain effective usefulness;
- (ii) Losses;
- (iii) Improvements;
- (iv) Carrying charges, such as taxes, on nonproductive property; and
- (v) Deductions for:
  - (a) Exhaustion;
  - (b) Wear and tear;
  - (c) Obsolescence; and
  - (d) Depletion.

(3)(A) Any carrying charges deducted to compute taxable income will not be used to increase basis.

(B) Deductions allowable since the acquisition of the property, whether or not actually claimed by the taxpayer or formally allowed, will be used to adjust basis.

(C) Reduction in basis due to depletion shall not exceed such a deduction computed without reference to discovery for:

- (i) Mines;
- (ii) Oil; and
- (iii) Gas wells.

(D) The basis of stock shares must be reduced by the amount of previous distributions made as returns of capital.

**(b) Sale of shares of stock — Arkansas Code § 26-51-411.**

(1)(A) When shares of stock in a corporation are sold from lots purchased at different dates and at different prices and the identity of the lots cannot be determined, the stock sold shall be charged against the earliest purchases of such stock.

(B) The excess of the amount realized on the sale over the cost or other basis of the stock will constitute gain.

(2) When a dividend is paid with the stock of the dividend payor, the basis for determining gain or loss from the sale of shares of such stock shall be the difference between the sale price and the quotient (or result) of the cost or other basis of the original shares of stock divided by the total number of the old and new shares.

(3)(A) When common stock is received as a bonus with the purchase of preferred stock or bonds, the total purchase price shall be fairly apportioned between such common stock and the securities purchased for the purpose of determining the portion of the cost attributable to each class of stock or securities.

(B) However, should that not be feasible, no profit on any subsequent sale of any part of the stock or securities will be realized until the total cost is recovered from the sale proceeds.

(4)(A) When a corporation issues to its shareholders rights to subscribe to its stock, the value of the rights do not constitute taxable income to a shareholder, although gain may be derived or loss sustained by a shareholder from the sale of such rights.

(B)(i) The following rules shall apply.

(ii)(a) If the shareholder does not exercise, but rather sells his or her rights to subscribe, the cost or other basis of the stock with respect to which the rights are issued shall be apportioned between the rights and the stock in proportion to their respective values at the time the rights are issued.

(b) The basis for determining gain or loss from the sale of a right or a share of such stock will be the quotient (or result) of the cost or other basis assigned to the right or the stock divided by the number of rights issued or by the number of shares held;

(iii) If the shareholder exercises his or her rights to subscribe, the basis for determining gain or loss from a subsequent sale of a share of the stock obtained through exercising the rights shall be determined by dividing the part of the cost or other basis of the old shares assigned to the rights, including the subscription price of the new shares, by the number of new shares obtained; and

(iv) If the stock with respect to which the rights are issued was purchased at different times and at different prices and the identity of the lots cannot be determined, or if such stock was purchased at different times and at different prices and the stock rights cannot be identified as having been issued with respect to any particular lot of such stock, the basis for determining the gain or loss from the sale of the old shares, the rights in cases where the rights are sold, or the old or new shares in cases where the rights are exercised, shall be calculated by applying the cost or ascertained value of the rights from the earliest purchased stock.

(5)(A) The taxpayer may, at its option, include the entire proceeds from the sale of stock rights in its gross income.

(B) The basis for determining gain or loss from the subsequent sale of stock with respect to which the rights were issued shall be the same as though the rights had not been issued.

(c) **Loss carryforwards — Arkansas Code § 26-51-411.** For corporations, all losses shall be deducted in the year in which they occur with no carryforwards except for:

- (1) Net operating losses; and
- (2) Those provided for by Arkansas Code § 26-51-436.

(d) **Sales of real estate or personal property — Arkansas Code § 26-51-411(e).**

(1) Gain or loss on installment sales of real estate or personal property will be treated as provided in Sections 453, 453A, and 453B of the Internal Revenue Code of 1986, as in effect on January 1, 1995.

(2) Refer to 1995 Treasury Regulations § 1.453-4 et seq. [removed and reserved], and § 1.453A-1 et seq., for guidance in applying Internal Revenue Code Sections 453, 453A, and 453B.

(3) For proper reporting of installment payments, see 26 CAR § 130-119(u) and (v).

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Treasury Regulation § 1.453-4 et seq., was codified at 26 C.F.R. § 1.453-4, and was removed and reserved at 84 FR 9231, 923.

Treasury Regulation § 1.453A-1 is codified at 26 C.F.R. § 1.453A-1.

**26 CAR § 130-121. Gain or loss — Exchange of property — Arkansas Code § 26-51-412.**

**(a) Exchange of property for like property — Arkansas Code § 26-51-412(a).**

(1) For purposes of corporation income tax, no gain or loss shall be recognized in an exchange of property for like property of a similar value.

(2)(A) If property held for productive use in a trade or business or for investment is exchanged solely for property of like kind to be held either for productive use in a trade or business or for investment, no gain or loss is recognized.

(B) Such property does not include stock in trade or other property held primarily for sale, nor:

- (i) Stocks;
- (ii) Bonds;
- (iii) Notes;
- (iv) Certificates of trust;
- (v) Beneficial interests;
- (vi) Other securities; or

(vii) Evidence of indebtedness.

(3)(A) The words "like kind" have reference to the nature or character of the property and not its grade or quality.

(B) Therefore, no gain or loss is realized by a taxpayer, other than a dealer, from the exchange of real estate for other real estate.

(C) However, one (1) kind or class of property may not be exchanged for property of a different kind or class, such as real estate for personal property.

(4) A dealer is one who:

(A) Regularly buys and sells securities to customers in the ordinary course of business; and

(B) Treats such securities as inventory.

(5) If common or preferred stock in a corporation is exchanged solely for the same category or type of stock in the same corporation, no gain or loss shall be recognized.

(6)(A) If property is transferred to a corporation by one (1) or more parties solely in exchange for stock or securities in such corporation and, immediately after the exchange, such parties are in control of the corporation, no gain or loss shall be recognized.

(B) When more than one (1) party is involved in the transfer to the corporation and the amount of stock and securities received by each is substantially in proportion to their interest in the property prior to the exchange, no gain or loss will be recognized.

(7) If property is exchanged for stock and cash or other property, gain, but not loss, will be recognized to the extent of the cash or fair market value of the other property received.

**(b) Exchange of property for property not of like kind — Arkansas Code § 26-51-412(a).**

(1) When property is exchanged for other property not of a like kind, the property received in exchange shall be treated as the equivalent of cash up to the amount of its fair market value for the purpose of determining gain or loss.

(2) If no market exists in which all of the property so received can be disposed of at the time of exchange for a reasonably certain and definite price in cash, the exchange shall be considered a conversion of assets from one (1) form to another form, and no gain or loss shall be deemed to arise.

(3) The property received in exchange shall be taken into the records of the taxpayer at the same cost or assessed value as the property which was exchanged, including additions and minus any allowable depreciation and depletion.

**(c) Dividends paid in the form of securities or other property — Arkansas Code § 26-51-412(a).**

(1) Dividends paid in securities (other than the corporation's own stock) or other property in which the earnings of a corporation have been invested are income to the shareholders in the amount of the market value of such property.

(2) When a corporation declares a dividend payable in the stock of another corporation, setting aside the stock to be distributed and notifying its shareholders of its action, the income attributable to the recipients of such stock is its market value at the time the dividends become payable.

(3) Scrip dividends are subject to tax in the year in which the warrants are issued.

**(d) Property acquired as a result of an involuntary conversion — Arkansas Code § 26-51-412(a).**

(1) In the case of property acquired as a result of an involuntary conversion, the basis of the property shall be the same as that of the property so converted with the following adjustments:

(A) Decreased in the amount of any money received by the taxpayer that was not expended;

(B) Increased in the amount of the gain; and

(C)(i) Decreased in the amount of loss to the taxpayer recognized upon such conversion applicable to the year in which the conversion was made.

(ii) See 26 CAR § 130-119(w).

(2)(A) In any case where the taxpayer elects to replace or restore the converted property but it is not feasible to do so immediately, the taxpayer may obtain permission to establish a replacement fund in which part or all of the compensation received shall be held, without any deduction for the payment of a mortgage.

(B) The taxpayer should apply to the Department of Finance and Administration for permission to establish a replacement fund.

(C) The application should:

(i) Recite all the facts relating to the transaction; and

(ii) Declare that the taxpayer will proceed as quickly as possible to replace or restore such property.

(D) The taxpayer will be required to furnish a surety bond in an amount not to exceed double the estimated additional income taxes that would be payable if no replacement fund were established.

(E) The estimated additional taxes for the amount of which the taxpayer is required to furnish security should be computed at the rates at which the taxpayer would normally be required to pay.

(F) Only surety companies will be approved as sureties.

(G) The application should be executed in triplicate, so that the department, the taxpayer, and the surety or depository may each have a copy.

**(e) Basis of stock received for property — Arkansas Code § 26-51-412(b).**

(1) During the initial start-up of a corporation, the stock or securities of the corporation exchanged for real or personal property transferred to the corporation shall be deemed to have the same value or cost as the property so transferred, and no gain or loss shall arise from the transaction.

(2)(A) The cost or value of the property transferred (adjusted as to depreciation and depletion) shall be entered in the records of the taxpayer as the purchase price of its stock in the corporation and a record of such cost must be maintained.

(B) Gain or loss in future sales of such stock shall be measured by the difference between the individual cost per share determined as above to the selling price of such stock.

**(f) Reorganization, merger, and consolidation — Arkansas Code § 26-51-412(c).**

(1) A "merger" or "consolidation" includes:

(A) The acquisition by one (1) corporation of a majority of the voting stock and a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the property of another corporation;

(B) A transfer by one (1) corporation of all or a part of its assets to another corporation if, immediately after the transfer, the transferor, its stockholders, or both are in control of the corporation to which the assets are transferred;

(C) A recapitalization; or

(D) A mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization", as used in Arkansas Code § 26-51-412, includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one (1) corporation of at least a majority of the voting stock of another corporation.

(3) A person is, or two (2) or more persons are, "in control" of a corporation within the meaning of Arkansas Code § 26-51-412 when owning at least:

(A) Eighty percent (80%) of the voting stock; and

(B) Eighty percent (80%) of the total number of shares of all other classes of stock of the corporation.

**(g) Exchange of property in a reorganization — Arkansas Code § 26-51-412(c).** No gain or loss shall be recognized if, pursuant to a reorganization plan:

(1) Stock or securities in a corporation are exchanged solely for stock or securities in the same corporation or in another party to the reorganization; or

(2) A party to a reorganization exchanges property solely for stock or securities in another party to the reorganization.

**(h) Exchange of property in a reorganization — Arkansas Code § 26-51-412(c).**

(1)(A) Pursuant to a reorganization plan, if stock or securities in a corporation are exchanged for stock or securities in the same corporation or in another party to the reorganization including other property or money as well, any gain to the recipient shall be recognized in an amount not to exceed the sum of the money and the fair market value of the other property.

(B) No loss from such an exchange will be recognized.

(2)(A) Pursuant to a reorganization plan, if property is exchanged by a party to the reorganization for stock or securities in another party to the reorganization, including other property or money as well, if the other property or money received by the corporation is distributed by it pursuant to the reorganization plan, no gain to the corporation will be recognized.

(B) If the other property or money received by the corporation is not distributed by it pursuant to the plan of reorganization, any gain to the corporation from the exchange will be recognized in an amount not to exceed the sum of the money and the fair market value of the other property so received.

(C) In either case, no loss from the exchange will be recognized.

**(i) Securities received in a reorganization — Arkansas Code § 26-51-412(c).** If, without any surrender of his or her stock or securities, a shareholder of a party to a reorganization receives stock or securities in such corporation or in another party to the reorganization pursuant to a reorganization plan, no gain to the shareholder will be recognized.

**(j) Securities received in a reorganization — Basis — Arkansas Code § 26-51-412(c).**

(1)(A) In the case of stock or securities acquired by a shareholder in connection with the transactions described in subsection (h) of this section, the cost or assessed value of the stock upon which the distribution was made shall be apportioned between such stock and the stock or securities distributed to the shareholder.

(B) The basis of each share will be the quotient (or result) of the cost or assessed value of the old shares of stock divided by the total number of the old and new shares.

(2)(A) When the stock distributed in a reorganization is materially different from the stock upon which the distribution is made, the cost or other basis of the old shares of stock shall be divided between such old stock and the new stock in proportion to the respective values of each class of stock, old and new, at the time the new shares of stock are distributed.

(B) The basis of each share of stock will be the quotient (or result) of the cost or other basis of the class with which such share belongs, divided by the number of shares in the class.

(3) When the stock upon which a distribution in reorganization is made was purchased at different times and prices, and the identity of the lots cannot be determined:

(A) Any sale of the original stock will be charged to the earliest purchases of such stock (see 26 CAR § 130-120(b)); and

(B) Any sale of the stock distributed in the reorganization will be presumed to have been made from the stock distributed upon the earliest purchased stock.

(4) Where the stock upon which a distribution in reorganization is made was purchased at different times and prices, and the stock distributed in the reorganization cannot be identified as having been distributed upon any particular lot of such stock, then any sale of the stock distributed in the reorganization will be presumed to have been made from the stock distributed upon the earliest purchased stock.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-122. Corporate liquidations — Arkansas Code § 26-51-413.**

**(a) Treatment of amounts distributed in liquidation — Arkansas Code § 26-51-413.**

(1)(A) Amounts distributed in complete liquidation of a corporation are to be treated as full payment for all stock issued.

(B) Amounts distributed in partial liquidation are to be treated as full payment for the stock that was canceled or redeemed.

(2)(A) The gain or loss to a shareholder from a distribution in liquidation is to be determined by comparing the amount of the distribution with the cost or other basis of the stock.

(B) In the case of amounts distributed in partial liquidation (other than a distribution pursuant to a reorganization plan as described in Arkansas Code § 26-51-412), the part of such distribution that is properly chargeable to the capital account shall not be considered a distribution of earnings or profits within the meaning of Arkansas Code § 26-51-411 for the purpose of determining the taxability of a subsequent distribution by the corporation.

**(b) Election of Subchapter S corporation status — Arkansas Code § 26-51-413.**

(1)(A) A taxpayer that has elected to be treated as a Subchapter S corporation for federal income tax purposes but not for state income tax purposes (therefore retaining its Subchapter C corporation status), must file an I.R.C. § 338 election with the Individual Income Tax Section of the Department of Finance and Administration stating that it desires to be taxed in accordance with I.R.C. § 338.

(B) This is so despite the fact that the taxpayer may already have an I.R.C. § 338 election on file with the Internal Revenue Service.

(2)(A) If the taxpayer has elected to be treated as a Subchapter S corporation for both federal and state income tax purposes and the taxpayer has also filed an I.R.C. § 338 election with the Internal Revenue Service, the taxpayer need not file a separate I.R.C. § 338 election with the Department of Finance and Administration.

(B) The taxpayer will automatically receive I.R.C. § 338 treatment by the department for state income tax purposes as well.

(3)(A) If the taxpayer has elected to be treated as a Subchapter C corporation for both federal and state income tax purposes and the taxpayer has also filed an I.R.C.

§ 338 election with the Internal Revenue Service, the taxpayer need not file a separate I.R.C. § 338 election with the department.

(B) The taxpayer will automatically receive I.R.C. § 338 treatment by the department for state income tax purposes as well.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. § 338 is codified at 26 U.S.C. § 338.

**26 CAR § 130-123. Deferred compensation plans — Savings Incentive Match Plan for Employees (SIMPLE) — Arkansas Code § 26-51-414.**

(a)(1) Beginning in tax years after 1996, eligible employers may maintain SIMPLE retirement plans to provide a tax-favored means of providing for employees' retirement.

(2) An eligible employer is an employer that:

(A) Employs no more than one hundred (100) employees who each received at least five thousand dollars (\$5,000) of compensation from the employer the preceding year; and

(B) Does not maintain another employer-sponsored retirement plan to which contributions were made or benefits accrued.

(b) An eligible employer that establishes and maintains a SIMPLE plan for at least one (1) year, but thereafter fails to qualify, continues to be treated as an eligible employer for the two (2) years following the last year in which it did qualify.

(c)(1) An employee is eligible to participate in any calendar year if he or she:

(A) Received at least five thousand dollars (\$5,000) of compensation from the employer during each of the two (2) preceding calendar years; and

(B) Is reasonably expected to receive at least five thousand dollars (\$5,000) in compensation during the current calendar year.

(2) A self-employed individual is treated as an employee and may participate in a SIMPLE plan if the compensation threshold is met.

(d) There are two (2) types of SIMPLE plans:

(1) Cash or deferred arrangement (CODA) incorporated in a qualified plan (I.R.C. § 401(k)(11)(c)); or

(2) An IRA established for each participating employee.

(e)(1) A SIMPLE plan must permit each eligible employee to elect to have the employer make payments either:

(A) Directly to the employee in cash; or

(B) As a contribution to the SIMPLE account.

(2) No contribution, other than elective contributions, employer matching contributions, and nonelective employer contributions may be made to a SIMPLE account.

(3) However, a rollover from another SIMPLE account may be received.

(f)(1) Elective contributions are limited to six thousand dollars (\$6,000) for any calendar year.

(2) The employer must match the elective contribution of an employee in an amount not exceeding three percent (3%) of the employee's compensation.

(3)(A) However, the employer may elect to limit its match, for all eligible employees, to a smaller percentage of compensation not less than one percent (1%).

(B) The election may not be made in more than two (2) out of every five (5) years.

(g)(1) Nonelective contributions may be made as an alternative to matching contributions.

(2) The employer may elect to make nonelective contributions of two percent (2%) of compensation for each employee who:

(A) Is eligible to participate; and

(B) Has at least five thousand dollars (\$5,000) of compensation from the employer for the calendar year.

(3)(A) The compensation that may be taken into account in determining the two percent (2%) nonelective contribution may not exceed an indexed dollar amount.

(B) For 1996, this amount is one hundred fifty thousand dollars (\$150,000) for most plans.

(h)(1) Elective contributions of employees are not includable in gross income when made.

(2)(A) They are taxed only under the distribution rules that govern distributions from conventional IRAs.

(B) I.R.C. § 408(p)(1)(A).

(3)(A) Any elective contributions under this plan are included in the sum of elective deferrals, subject to an annual limit on the amount that can be excluded from income.

(B) I.R.C. § 402(g)(3)(D).

(i)(1) The employer is entitled to a deduction for its contributions to a SIMPLE account.

(2) For deduction purposes, the employer contributions to a SIMPLE account are treated as if they were made to a plan subject to the requirements of I.R.C. § 404(m).

(j)(1) For self-employed persons, the contribution is not a business expense, therefore it is not deductible on the Schedule C.

(2) In the case of a sole proprietorship, the contribution may only be claimed as an adjustment to income.

**Example:** XYZ Company maintains a SIMPLE retirement plan for its eligible employees. Melinda Jones earns thirty thousand dollars (\$30,000) from XYZ Company. The company matches the elective contribution in the amount of three percent (3%) of the employee's compensation. Ms. Jones elects to contribute six thousand dollars (\$6,000) to her SIMPLE account. Ms. Jones has no other income deferrals. XYZ Company makes a matching contribution of seven hundred twenty dollars (\$720) to Ms. Jones' SIMPLE account  $((\$30,000 - \$6,000) \times 3\%)$ . Ms. Jones' wages reported on her W-2 are twenty-four thousand dollars (\$24,000), and XYZ Company may deduct the seven hundred twenty dollars (\$720) as an expense.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** "IRA" means individual retirement account.

"SIMPLE" means Savings Incentive Match Plan for Employees.

I.R.C. § 408(p)(1)(A) is codified at 26 U.S.C. § 408(p)(1)(A).

I.R.C. § 402(g)(3)(D) is codified at 26 U.S.C. § 402(g)(3)(D).

I.R.C. § 404(m) is codified at 26 U.S.C. § 404(m).

**26 CAR § 130-124. Deductions — State income taxes — Arkansas Code § 26-51-416.**

(a) No deduction will be allowed for Arkansas state income taxes in the computation of net income.

(b) All other states' income taxes are deductible.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-125. Deductions — Charitable contributions — Arkansas Code § 26-51-419.**

(a) Arkansas has adopted I.R.C. § 170 as referenced in Arkansas Code § 26-51-419.

(b)(1) I.R.C. § 170(d)(2)(B) does not allow unused contributions to increase NOL carry forward.

(2) It merely decreases net taxable income by current year contributions first, then any accumulated contribution carryforwards up to a ten percent (10%) limitation.

(3) This decreases the amount of NOL used and increases the NOL available for future years.

### Example:

	1989	1990	1991	1992	1993	1994	1995
Income	\$107,000	\$107,000	\$107,000	\$108,000	\$110,000	\$ 80,000	\$150,000
Deductions Excluding Amortization & Charitable Deductions	<u>105,000</u>	<u>105,000</u>	<u>105,000</u>	<u>105,000</u>	<u>105,000</u>	<u>105,000</u>	<u>105,000</u>
Taxable Income Before Amortization, Charitable Deductions and NOL	2,000	2,000	2,000	3,000	5,000	(25,000)	45,000
Amortization of Organizational Expenditures	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	0	0
Charitable Deductions Allowed	<u>0</u>	<u>0</u>	<u>0</u>	<u>(100)</u>	<u>(300)</u>	<u>0</u>	<u>(4,500)</u>
Taxable Income (Loss) before NOL	0	0	0	900	2,700	(25,000)	40,500
Net Operating Loss	0	0	0	0	0	0	(25,000)
Taxable Income (Loss)	0	0	0	900	2,700	(25,000)	15,500
Taxable Income Before Amortization, Contributions and NOL	2,000	2,000	2,000	3,000	5,000	(25,000)	45,000
Organizational Expenses	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>0</u>	<u>0</u>	<u>0</u>
Contribution Limitation Base	0	0	0	1,000	3,000	N/A	45,000
Limitation	<u>X .10</u>	<u>X .10</u>	<u>X .10</u>	<u>X .10</u>	<u>X .10</u>	N/A	<u>X .10</u>
Contributions Allowed	0	0	0	100	300	N/A	4,500

### LIMITS ON CHARITABLE CONTRIBUTIONS

Year	Contributions	Utilized Current Year Limit	Current Year Balance	Prior Years Contribution Utilized	Year End Cumulative Carryforward	expired
1989	1,000	0	1,000	0	1,000	0
1990	1,000	0	1,000	0	2,000	0
1991	1,000	0	1,000	0	3,000	0
1992	1,000	100	900	0	3,900	0
1993	1,000	300	700	0	4,600	0
1994	1,000	0	1,000	0	4,600	1,000*
1995	1,000	1,000	0	3,500	1,100	0

Southern Arkansas Timber, Inc. started business on January 1, 1989. Organization expenses amounted to ten thousand dollars (\$10,000). Amortization of organization expenditures is deducted before the ten percent (10%) limit is allowed. Any unused charitable contributions cannot be added to NOLs when they expire.

\* Contribution carryover from 1989 expired at the end of 1994, as shown in chart. For charitable contributions for consolidated filers, refer to Arkansas Code § 26-51-805(f).

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** "NOL" means net operating loss.

I.R.C. § 170(d)(2)(B) is codified at 26 U.S.C. § 170(d)(2)(B).

**26 CAR § 130-126. Deductions — Expenses — Arkansas Code § 26-51-423.**

(a) Travel and entertainment – Arkansas Code § 26-51-423(b).

(b) For tax years beginning before January 1, 1995, I.R.C. § 274 as in effect January 1, 1989, shall apply.

(c) For tax years beginning on or after January 1, 1995, I.R.C. § 274 as in effect January 1, 1995, shall apply.

(d) Eighty percent (80%) of qualified expenses will be allowed in tax years beginning before January 1, 1995, and fifty percent (50%) of qualified expenses will be allowed in tax years beginning on or after January 1, 1995.

(e) For tax years beginning on or after January 1, 1997, I.R.C. § 274 as in effect on January 1, 1997, shall apply.

(f) The percentage will gradually rise beginning in 1998 as set forth below:

For taxable years beginning in	The applicable calendar year percentage is -
1998 or 1999	55%
2000 or 2001	60%
2002 or 2003	65%
2004 or 2005	70%
2006 or 2007	75%
2008 or thereafter	80%

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. § 274 is codified at 26 U.S.C. § 274.

**26 CAR § 130-127. Deductions — Losses — Arkansas Code § 26-51-424.**

**(a) Losses — Arkansas Code § 26-51-424(a)(1).**

(1) Losses sustained during the tax year, not compensated for by insurance or otherwise, are fully deductible.

(2) Losses must usually be evidenced by closed and completed transactions.

(3) The basis for determining the amount of the deduction for loss is the same as is provided in Arkansas Code § 26-51-411 for determining the gain or loss from the sale or other disposition of property.

(4) Proper adjustments must be made in each case for:

(A) Expenditures, receipts, losses, or other items properly chargeable to the capital account; and

(B) Depreciation, obsolescence, amortization, or depletion.

(5) Moreover, the amount of the loss must be reduced by the amount of any insurance or other compensation received and by the salvage value, if any, of the property.

**(b) Removal or demolition of buildings — Arkansas Code § 26-51-424(a)(1).**

(1) Losses due to the voluntary removal or demolition of old buildings and the scrapping of old machinery or equipment incidental to renewal or replacement are deductible from gross income.

(2)(A) When a taxpayer buys real estate upon which is located a building which he or she proceeds to raze with the intent of erecting thereon another building, the taxpayer has incurred no deductible loss or expense on account of the demolition of the old building.

(B) The basis in the real estate will be increased by the cost of the demolition.

**(c) Obsolescence of capital assets — Arkansas Code § 26-51-424(a)(1).**

(1) When the usefulness of some or all of a taxpayer's capital assets ends causing the taxpayer to discontinue use of, or permanently discard, such assets from use in the business, the taxpayer may claim as a loss for the year in which it takes such action the difference between the cost of the assets (less depreciation, etc.) and the salvage value thereof.

(2) This deduction does not extend to a case where the useful life of property ends solely as a result of those gradual processes for which depreciation allowances may be taken (wear and tear), nor does it apply to inventories or to any assets other than capital assets.

(3) Moreover, this deduction applies to:

(A) Buildings only when they are permanently abandoned; and

(B) Machinery only when its intended use has been permanently discontinued.

(4) Any loss to be deducted under this provision must be fully explained in the taxpayer's income tax return.

**(d) Shrinkage in value of stock — Arkansas Code § 26-51-424(a)(1).**

(1) Unless the lower of cost or market or mark to market methods are used for tax purposes, the owner of stock in a corporation cannot deduct from gross income a loss due to shrinkage in value of such stock through fluctuations in the market or otherwise until the stock is sold.

(2) The allowable loss is the amount realized when the stock is sold.

(3) If the stock of a corporation becomes worthless, the stock's tax basis may be deducted in the tax year in which the stock became worthless.

**(e) Farm losses — Arkansas Code § 26-51-424(a)(1).**

(1)(A) Losses incurred in the operation of farms as business enterprises are deductible from gross income.

(B) If farm products are held for a more favorable market, no deductions for shrinkage in weight or physical value by reason of deterioration in storage shall be allowed.

(C) Shrinkage may be allowed if an inventory is used to determine profits.

(2) The total loss by frost, storm, flood, or fire of a crop not yet harvested is not a deductible loss in computing net income.

(3)(A) A farmer engaged in raising and selling livestock, such as poultry, hogs, cattle, sheep, horses, etc., is not entitled to claim as a loss the value of such animals raised on the farm that perish, unless an inventory is used.

(B) The cost of any feed, pasture, or care that has been deducted as an expense of operation shall not be included as part of the cost of the livestock for the purpose of ascertaining the amount of deductible loss.

(4) If a taxpayer owns and operates a farm in addition to being engaged in another trade, business, or calling and sustains a farm-related loss, the amount of the farming loss sustained may be deducted from gross income received from all sources, provided the farm is operated for profit and not for recreation or pleasure.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-128. Deductions — Worthless debts — Arkansas Code § 26-51-425.**

**(a) Worthless debts — Arkansas Code § 26-51-425.**

(1)(A) Where a debt is worthless, either wholly or in part, the amount that is worthless and charged off or written down to a nominal amount on the books of the taxpayer shall be allowed as a deduction in computing net income.

(B) There shall accompany the return a statement showing the propriety of any deduction claimed for bad debts.

(C) Before a taxpayer may charge off and deduct a debt in part, he or she must ascertain and be able to demonstrate with a reasonable degree of certainty the amount that is uncollectible.

(D) An amount subsequently received on account of a bad debt previously charged off and allowed as a deduction for income tax purposes must be included in gross income in the tax year in which received.

(2)(A) Bankruptcy of the debtor is generally an indication of the worthlessness of at least part of an unsecured and unpreferred debt.

(B) Actual determination of worthlessness in bankruptcy cases is sometimes possible before and, at other times, only when settlement in bankruptcy has been made.

(C) Where a taxpayer ascertained a debt to be worthless and charged it off in one (1) tax year, the fact that the debtor's bankruptcy proceedings are terminated in a later tax year (confirming that the debt is worthless) will not authorize shifting the deduction to such later tax year.

(D) If a taxpayer computes its income upon the basis of valuing its notes or accounts receivable at their fair market value when received (which may be less than their face value), the amount deductible as a bad debt is limited to such original valuation.

(3)(A) Worthless debts arising from unpaid wages, salaries, rents, and similar items of taxable income will not be allowed as a deduction unless such items have been entered as income in the books of the taxpayer in a prior tax year or in the tax year in which the deduction was made.

(B) Only the difference between the amount received in distribution of the assets of a bankruptcy and the amount of the claim may be deducted as a bad debt.

(C) The difference between the amount received by a creditor of a decedent in distribution of the assets of the decedent's estate and the amount of the creditor's claim may be considered a worthless debt.

(D) A purchaser of uncollectible accounts receivable that are subsequently charged off the purchaser's books as bad debts is entitled to deduct them, the amount of the deduction to be based upon the price actually paid for the accounts receivable and not upon their face value.

**(b) Sale of mortgaged or pledged property — Arkansas Code § 26-51-425.**

(1) Where mortgaged or pledged property is sold for less than the amount of the debt and the mortgagee or pledgee determines that the portion of the debt remaining unsatisfied after such sale is uncollectible and charges it off, such amount

may be deducted as a bad debt for the tax year in which it is determined to be worthless and charged off.

(2) Accrued interest may be included as part of the deduction only when it has previously been reported as income.

**(c) Bonds and other similar obligations — Arkansas Code § 26-51-425.**

(1)(A) Bonds, when determined to be worthless, may be treated as bad debts to the amount actually paid for them.

(B) Bonds of an insolvent corporation secured only by a mortgage from which, on foreclosure, nothing is realized for the bondholders are regarded as worthless no later than the tax year of the foreclosure sale.

(C) No deduction for a bad debt is allowable in computing a bondholder's income for any subsequent tax years.

(2)(A) A taxpayer (other than a dealer in securities) possessing debts evidenced by bonds or other similar obligations cannot deduct from gross income any losses on account of market fluctuations that occur prior to maturity of the debt instruments.

(B) However, when a taxpayer determines upon maturity that it will recover none or only a part of the debt evidenced by the bonds or other similar obligations, the taxpayer may deduct the uncollectible part of such debt.

(C) In order for this deduction to be properly taken, the taxpayer must include with its return an explanation or other proof that substantiates the deduction.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-129. Deductions — Reserve for bad debts or liabilities —  
Bad debt expense — Arkansas Code § 26-51-426.**

(a) A business is generally allowed to take a bad debt expense.

(b) Any bank, savings and loan, or any other institution chartered and supervised under federal or state laws shall be allowed a bad debt expense deduction computed in

accordance with Internal Revenue Code Sections 582, 585, and 593, as in effect on January 1, 1997.

(c) Banks with assets over five hundred million dollars (\$500,000,000) must use the specific charge-off method for bad debts.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Internal Revenue Code Sections 582, 585, and 593 are codified at 26 U.S.C. §§ 582, 585, and 593.

**26 CAR § 130-130. Deductions — Net operating loss (NOL) — Arkansas Code § 26-51-427.**

**(a) NOL adjustments beyond statutory limits — Arkansas Code § 26-51-427.**

(1) The fact that the statutory period for assessment or refund of income taxes for the year in which the loss was sustained has expired does not prevent the making of adjustments necessary to correct the NOL deduction.

(2) The NOL may be increased or decreased by any such adjustment.

**Example:** Corporation took a nondeductible expense in 1993. This was not detected until a return claiming a NOL was filed in 1997.

Tax Year 1993

	As Filed	As Corrected
NTI as reported by taxpayer	\$(15,000)	\$(15,000)
Add back: Nondeductible Expense	--	<u>20,000</u>
Corrected Net Taxable Income	--	\$ 5,000

Tax Year 1997

NTI as reported by taxpayer	\$25,000	\$25,000
NOL claimed by taxpayer	(15,000)	- -
NOL available from 1993	--	<u>- 0 -</u>
Net Taxable Income as filed	\$10,000	- -
Corrected Net Taxable Income	- -	\$25,000

The 1993 tax year is outside the statute of limitations and cannot be assessed. However, the NOL for 1993 can be adjusted to the allowed or disallowed amount.

**(b) NOL carryover due to merger — Arkansas Code § 26-51-427(3)(D).**

(1) In the case of a merger between two (2) corporations that are owned by the same entity and that same entity owns at least eighty percent (80%) of the voting stock of each corporation, the formula for establishing that the assets of the merged corporation (that is, the corporation going out of existence) are still producing income is as follows:

$$\frac{\text{Original Cost of Merged Assets}}{\text{Original Cost of All Assets}} \times \text{Total Income}$$

(2) The carryover losses will be allowed only in those cases where the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas under the Uniform Division of Income for Tax Purposes Act, Arkansas Code § 26-51-701 et seq., in the post-merger period to absorb the carryover losses claimed by the surviving corporation.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-131. Deductions — Depreciation and expensing of property — Arkansas Code § 26-51-428.**

**(a) Depreciation — Arkansas Code § 26-51-428(a).**

(1)(A) For property placed in service during tax years beginning before January 1, 1995, Sections 167, 168, and 179 of the Internal Revenue Code as in effect on January 1, 1991, shall apply.

(B) The I.R.C. § 179 deduction is limited to ten thousand dollars (\$10,000).

(2) For tax years beginning on or after January 1, 1995, and beginning on or before December 31, 1996, the deduction is limited to seventeen thousand five hundred dollars (\$17,500).

(3) The schedule below shows the phase-in adopted under I.R.C. § 179 as in effect on January 1, 1997.

Tax Period Beginning in:	Applicable Amount:
1997	\$18,000
1998	\$18,500
1999	\$19,000
2000	\$20,000
2001	\$24,000
2002	\$24,000
2003 & thereafter	\$25,000

(4) Any I.R.C. § 179 expense disallowed because of the limitation may be:

(A) Depreciated by regular depreciation methods appropriate for that property; or

(B) Carried forward.

(5)(A) Property placed in service during tax years beginning before January 1, 1995, will have a useful life as determined by I.R.C. § 168 as in effect on January 1, 1991.

(B) Property placed in service during tax years 1995 and 1996 will have a useful life as determined by I.R.C. § 168 as in effect on January 1, 1995.

(C) Property placed in service beginning on or after January 1, 1997, will have a useful life as determined by I.R.C. § 168 as in effect on January 1, 1997.

(6) Any differences in basis because of depreciation differences must be included in the calculation of gain or loss upon disposition of the property.

**(b) Amortization of intangibles — Arkansas Code § 26-51-428(c).**

(1)(A) For tax years beginning before January 1, 1995, I.R.C. § 167 regarding amortization of intangibles shall apply.

(B) For tax years beginning on or after January 1, 1995, I.R.C. § 197 shall apply.

(2) Any differences in Arkansas and federal law concerning the computation of basis must be considered in calculating gain or loss upon disposition of the intangibles.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. § 179 is codified at 26 U.S.C. § 179.

I.R.C. § 168 is codified at 26 U.S.C. § 168.

I.R.C. § 167 is codified at 26 U.S.C. § 167.

**26 CAR § 130-132. Federal Subchapter M — Federal Subchapter M adopted — Arkansas Code § 26-51-440.**

(a)(1) Subchapter M of the Internal Revenue Code as in effect on January 1, 1997, has been adopted with the exception of its tax rates.

(2) Arkansas tax rates remain in effect as set forth in Arkansas Code § 26-51-205.

(3) If a federal election is made relating to a RIC, REIT, FASIT, or any other corporation registered as an investment company, the same election is automatically deemed to have been made for Arkansas income tax purposes.

(b) If a corporation no longer qualifies as initially elected, then it must file an Arkansas corporation income tax return and be taxed as a Subchapter C corporation.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** "FASIT" means financial asset securitization investment trust.

"REIT" means real estate investment trust.

"RIC" means regulated investment company.

### **26 CAR § 130-133. FASITs — Arkansas Code § 26-51-440.**

#### **(a) Definition — Arkansas Code § 26-51-440.**

(1) A new type of statutory entity called a financial asset securitization investment trust (FASIT) has been created to facilitate the securitization of debt obligations such as:

- (A) Credit card receivables;
- (B) Home equity loans; and
- (C) Auto loans.

(2) An entity that qualifies as a FASIT can issue instruments that are treated as debt for federal income tax purposes whether or not they would be so treated under normal tax principles.

(3) In addition, a FASIT itself generally is not taxable, and any taxable income or net loss that it has flows through to the equity owner of the FASIT.

(4) The interest on debt instruments issued by FASITs is deductible.

#### **(b) Qualification requirements — Arkansas Code § 26-51-440.**

(1)(A) To qualify for status as a FASIT, an entity must meet several requirements, which are specifically set forth at I.R.C. § 860L(a)(1) [repealed].

(B) Any entity, including a corporation, partnership, or trust may be treated as a FASIT.

(2)(A) The ownership of a FASIT (that is, the "ownership interest") must be held directly by an eligible corporation.

(B) I.R.C. § 860L(a)(1)(C) [repealed].

(C) An eligible corporation is a nonexempt domestic Subchapter C corporation that does not qualify as a:

- (i) RIC;
- (ii) REIT;
- (iii) REMIC; or
- (iv) Cooperative.

(D)(i) Moreover, the ownership interest of a FASIT must generally be entirely held by a single domestic Subchapter C corporation.

(ii) I.R.C. § 860L(a)(2) [repealed].

(3)(A) The FASIT issues debt instruments called "regular interests", which are in the nature of bonds.

(B) These regular interests would normally be purchased by investors and feature the following characteristics:

(i) The investor is unconditionally entitled to receive a specified amount of principal;

(ii) Interest is paid on the principal;

(iii) A stated term to maturity of usually no more than thirty (30) years; and

(iv)(a) In some cases, a FASIT may issue a high-yield interest rather than a regular interest.

(b) The tax treatment to investors of a high-yield interest is different from a regular interest.

(c) I.R.C. § 860L(b)(1)(B) [repealed].

(4)(A) For an entity to qualify as a FASIT, substantially all of its assets must consist of "permitted assets" as defined at I.R.C. § 860L(c)(1) [repealed].

(B) The assets of a FASIT are considered to be owned directly by the holder of the ownership interest.

**(c) Taxation of FASITs — Arkansas Code § 26-51-440.**

(1)(A) A FASIT is not:

(i) Subject to income tax; and

(ii) Treated as a:

*(a)* Trust;

*(b)* Partnership; or

*(c)* Corporation.

(B) Instead, all of the FASIT's assets and liabilities are treated as the assets and liabilities of the FASIT's owner.

(C) Any income, gain, deduction, credit, or loss of the FASIT is allocable directly to its owner.

(2)(A) Any FASIT income subject to Arkansas income tax shall be taxed at the corporate rates set forth in Arkansas Code § 26-51-205.

(B) No special Arkansas income tax return has been created specifically for FASITs.

(C) As noted above, FASIT income passes through to the FASIT's owner.

(D) The FASIT's owner is responsible for:

(i) Reporting any such income on the owner's return; and

(ii) Paying any Arkansas individual income tax due.

(E) Once an election to be a FASIT is made, the election applies for that tax year and all subsequent years until such time that the election is revoked with the consent of the Internal Revenue Service.

(3)(A) All members of an affiliated group filing a consolidated return are to be treated as one (1) taxpayer.

(B) I.R.C. § 860J(d) [repealed].

(C) Specifically, the provision that the taxable income of a holder of a FASIT ownership interest cannot be less than the taxable income with respect to the FASIT interest applies to any consolidated group of corporations of which the holder is a member as if the group were a single taxpayer.

(4)(A) The holder of a FASIT ownership interest cannot offset income or gain from the FASIT ownership interest with non-FASIT losses.

(B) I.R.C. § 860J [repealed].

(5)(A) The taxable income of a FASIT (in determining the taxable income of the holder of an ownership interest) should be calculated using an accrual method of accounting.

(B) I.R.C. § 860H(b)(2) [repealed].

**(d) Taxation of regular interests — Arkansas Code § 26-51-440.**

(1) The holder of a regular or high-yield interest in a FASIT (normally an investor) is generally taxed in the same manner as a holder of any other debt instrument.

(2) I.R.C. § 860H(c)(1) [repealed].

**(e) Prohibited transactions — Arkansas Code § 26-51-440.**

(1) In order to ensure that FASITs are not used for purposes other than securitization, a one hundred percent (100%) federal excise tax is imposed on any income not related to securitization (that is, income derived from prohibited transactions).

(2) Prohibited transactions are specifically set forth at I.R.C. § 860L(e)(1) and (2) [repealed].

**(f) Transfers of assets to FASITs — Arkansas Code § 26-51-440.**

(1)(A) Where the holder of the ownership interest in a financial asset securitization investment trust (FASIT) or a related person sells or contributes property to the FASIT, gain is recognized immediately in an amount equal to the excess (if any) of the property's value on the date of the contribution over its adjusted basis on that date.

(B) This gain is recognized notwithstanding any other income tax code provision, and the basis of any property is increased by the amount of gain recognized.

(C) I.R.C. § 860I [repealed].

(2) Losses on assets contributed to the FASIT are not allowed upon their contribution but may be allowed to the FASIT owner upon their disposition by the FASIT.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. § 860L was repealed by Pub. L. No. 108-357.

I.R.C. § 860J was repealed by Pub. L. No. 108-357.

I.R.C. § 860H was repealed by Pub. L. No. 108-357.

I.R.C. § 860L was repealed by Pub. L. No. 108-357.

I.R.C. § 860I was repealed by Pub. L. No. 108-357.

"REMIC" means real estate mortgage investment conduit.

"REIT" means real estate investment trust.

"RIC" means regulated investment company.

**26 CAR § 130-134. Youth apprenticeship program — Youth apprenticeship credits — Arkansas Code § 26-51-509.**

(a)(1) Youth apprenticeship programs under Arkansas Code § 26-51-1601 et seq. [repealed], are certified by the Division of Career and Technical Education.

(2) Program-related income tax credits are then verified and issued by the Tax Credits/Special Refunds Section of the Department of Finance and Administration.

(3) The original certificate issued by the section must be attached to the taxpayer's first-year income tax return upon which the credit is being claimed.

(4) The credit cannot exceed the amount of income tax due and can be carried forward for up to two (2) consecutive tax years immediately following the tax year in which the credit originated.

(b)(1) Arkansas Code § 26-51-1601 et seq. [repealed], enacted in 1997, extends the availability of the credit to youth who do not qualify under Arkansas Code § 26-51-509.

(2) Arkansas Code § 26-51-1601 et seq., applies to tax years beginning on and after January 1, 1998.

(3)(A) Arkansas Code § 26-51-509 applies to tax years beginning on and after January 1, 1996.

(B) Any registered apprenticeship program under Arkansas Code § 26-51-509 must conform to federal regulations in effect on January 1, 1995.

(c) Allowable credits and carryforward time are the same between Arkansas Code §§ 26-51-509 and 26-51-1601 [repealed].

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-1601 et seq., was repealed by Acts 2017, No. 1042, § 2.

**26 CAR § 130-135. Multistate business income — Arkansas Code § 26-51-701.**

(a) **Source of law — Arkansas Code § 26-51-701.** Arkansas has adopted the:

(1) Uniform Division of Income for Tax Purposes Act, Arkansas Code § 26-51-701 et seq.; and

(2) Multistate Tax Compact, Arkansas Code § 26-5-101 et seq.

**(b) Business versus nonbusiness income — Arkansas Code § 26-51-701.**

(1)(A) "Business income" means income arising from transactions and activities in the regular course of a taxpayer's trade or business.

(B) Business income also includes income from tangible and intangible property if the acquisition, management, and disposition (sale, exchange, etc.) of such property is an integral part of the taxpayer's regular trade or business operations.

(2) "Nonbusiness income" means all income other than business income.

(3)(A) The classification of income by labels, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., should not be the sole factor used in determining whether income is business or nonbusiness income.

(B) Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business.

(C) Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity that are the elements of a particular trade or business.

(D) In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business.

(4) Rental income from real and tangible property is business income if the property generating the rental income is:

(A) Used in the taxpayer's trade or business; and

(B) Includable in the property factor.

(5)(A) Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business.

(B) However, if the property was utilized for the production of nonbusiness income before its sale, exchange, or other disposition, the gain or loss will constitute nonbusiness income.

(6) Interest income is business income where the intangible receiving the interest arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(7) Dividends are business income where the stock earning such dividends arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to such trade or business operations.

(8) Patent and copyright royalties are business income where the patent or copyright receiving the royalties arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations.

(9) For intangible income from related parties, see Apportionment of Business Income Arising from Intragroup Intangible Licensing Transactions, 26 CAR pt. 131.

**(c) Unitary business principle — Arkansas Code § 26-51-701.**

(1)(A) The determination of whether income constitutes business income depends upon whether a unitary relationship exists between the income in question and a taxpayer's business activities in Arkansas.

(B) A unitary relationship exists when an activity conducted in one (1) state benefits or is benefited by an activity in another state.

(C)(i) Certain factors of profitability such as functional integration, centralization of management, and economies of scale may be used to indicate the contribution made to the overall business enterprise.

(ii) These factors help determine the existence of a unitary relationship for classifying income as business income.

(D) However, Arkansas will not accept returns filed on a unitary combined basis.

(2)(A) The determination of whether the activities of the taxpayer constitute a single trade or business or more than one (1) trade or business will turn on the facts in each case.

(B) In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon, or contribute to each other and the operations of the taxpayer as a whole.

(3) The following factors are considered to be reliable indicators of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

**(A) Same type of business.**

(i) A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line.

(ii) For example, a taxpayer that operates a chain of retail grocery stores will almost always be engaged in a single trade or business;

**(B) Steps in a vertical process.**

(i) A taxpayer is almost always engaged in a single trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise.

(ii) For example, a taxpayer that explores for and mines copper ores, concentrates, smelts, and refines the copper ores, and fabricates the refined copper into consumer products is engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the taxpayer's executive offices; and

**(C) Strong centralized management.**

(i) A taxpayer that might otherwise be considered as engaged in more than one (1) trade or business is properly considered as engaged in one (1) trade or business when there is a strong central management, coupled with the existence of

centralized departments for such functions as financing, advertising, research, or purchasing.

(ii) Thus, some conglomerates may properly be considered as engaged in only one (1) trade or business when:

(a) The central executive officers are normally involved in the operations of the various divisions; and

(b) There are centralized offices that perform for the divisions the normal matters that a truly independent business would perform for itself, such as:

(1) Accounting;

(2) Personnel;

(3) Insurance;

(4) Legal;

(5) Purchasing;

(6) Advertising; or

(7) Financing.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-136. Apportionment — Determination of nexus — Arkansas Code § 26-51-702.**

**(a) Apportionment of net income authorized — Arkansas Code § 26-51-702.**

(1) If a taxpayer's business activities occur both within and outside of Arkansas, the taxpayer shall apportion its business income and allocate any nonbusiness income to Arkansas as provided by Arkansas law.

(2) "Taxpayer" means any corporation, partnership, firm, association, or person acting as a business entity in more than one (1) state.

(3) See Arkansas Code § 26-5-101, Art. II(3).

**(b) Nexus generally — Arkansas Code § 26-51-702.** Generally, a taxpayer has nexus with Arkansas if its business activity in Arkansas goes beyond the mere

solicitation of orders for the sale of tangible personal property as set forth in Pub. L. No. 86-272, which is codified at 15 U.S.C. § 381.

**(c) Nature of property being sold — Arkansas Code § 26-51-702.**

(1) Only the solicitation to sell tangible personal property is afforded protection under 15 U.S.C. § 381.

(2) Therefore, the leasing, renting, licensing, or other disposition of tangible personal property, or transactions involving intangibles, such as franchises, patents, copyrights, trademarks, service marks, and the like, or any other type of property, are not protected activities under 15 U.S.C. § 381.

**(d) Solicitation of orders — Arkansas Code § 26-51-702.**

(1) For in-state activity to be protected under 15 U.S.C. § 381, it must be limited solely to the solicitation of orders that, if approved, will be filled by shipment or delivery from a point outside of Arkansas.

(2) Ancillary activities described in subsection (e) of this section, de minimis activities described in subsection (f) of this section, and those activities conducted by independent contractors described in subsection (g) of this section are protected activities that, by themselves, will not establish nexus.

(3) "Solicitation" means:

(A) Speech or conduct that explicitly or implicitly invites an order; and

(B) Activities that neither explicitly nor implicitly invite an order, but are entirely ancillary (that is, related) to requests for an order.

**(e) Ancillary activities — Arkansas Code § 26-51-702.**

(1) Ancillary activities are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

(2) Ancillary activities are related solely to the solicitation of orders.

(3) Activities that a seller engages in apart from soliciting orders shall not be considered as ancillary to the solicitation of orders.

(4) The mere assignment of certain activities to sales personnel does not, merely by such assignment, make such activities ancillary to the solicitation of orders.

(5)(A) Activities that seek to promote sales, such as some marketing activities, are not ancillary, as 15 U.S.C. § 381 does not protect activity that facilitates sales.

(B) 15 U.S.C. § 381 only protects ancillary activities that facilitate the request for an order.

(6) Engaging in activities that do not fall within the foregoing definition of solicitation will cause the taxpayer to lose the protection afforded by 15 U.S.C. § 381 unless the disqualifying activities, taken together, are de minimis as described in subsection (f) of this section.

**(f) De minimis activities — Arkansas Code § 26-51-702.**

(1) De minimis activities are those activities that, when taken together, establish only a trivial or minor connection with Arkansas.

(2) An activity conducted within Arkansas on a regular or systematic basis or pursuant to a company policy, whether such policy is in writing or not, will not be considered trivial.

(3)(A) Whether or not an activity establishes a trivial or nontrivial connection with Arkansas is to be measured on both a qualitative and quantitative basis.

(B) If such activity either qualitatively or quantitatively creates a nontrivial connection with Arkansas, then such activity exceeds the protection of 15 U.S.C. § 381.

(4) Establishing that the disqualifying activities account for only a relatively small part of the business conducted within Arkansas or that the economic importance of such activities is minimal will not be determinative of whether a de minimis level of activity exists.

**(g) Independent contractors — Arkansas Code § 26-51-702.**

(1) 15 U.S.C. § 381 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the taxpayer or its employees or other representatives.

(2) Independent contractors may engage in the following limited activities in Arkansas without the taxpayer's loss of protection:

(A) Soliciting sales;

(B) Making sales; or

(C) Maintaining an office.

(3) Sales representatives who represent a single principal are:

(A) Not considered to be independent contractors; and

(B) Subject to the same limitations as those provided under 15 U.S.C. § 381 and this part.

(4) Maintenance of a stock of goods in Arkansas by an independent contractor under consignment or any other type of holding arrangement with the taxpayer will remove the protection unless such stock is used only for purposes of display and solicitation.

**(h) Unprotected and protected activities — Arkansas Code § 26-51-702.**

(1) Examples of activities presently considered by the Department of Finance and Administration to be either protected or unprotected are as follows.

(2) **Unprotected activities.** The following in-state activities, assuming they are not of a de minimis level, are not considered to be solicitation of orders or ancillary thereto or otherwise protected under 15 U.S.C. § 381 and will cause otherwise protected sales to establish nexus:

(A) Making repairs or providing maintenance or service to the property sold or to be sold;

(B) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

(C) Investigating credit worthiness;

(D) Installation or supervision of installation after shipment and delivery;

(E) Conducting training courses, seminars, or lectures for people other than those involved only in solicitation;

(F) Providing any kind of technical assistance or service including, but not limited to, engineering assistance or design service, when one (1) of the purposes thereof is other than the facilitation of the solicitation of orders;

(G) Investigating, handling, or otherwise assisting in resolving customer complaints;

(H) Approving or accepting orders;

- (I) Repossessing property;
- (J) Securing deposits on sales;
- (K) Picking up or replacing damaged or returned property;
- (L) Hiring, training, or supervising personnel, other than personnel involved only in solicitation;
- (M) Using agency stock checks or any other similar instruments or processes by which sales are made within Arkansas by sales personnel;
- (N) Maintaining a sample or display room in excess of two (2) weeks (fourteen (14) days) at any one (1) location within Arkansas during the tax year;
- (O) Carrying samples for sale or for distribution in any manner in exchange for valuable consideration;
- (P) Owning, leasing, using, or maintaining any of the following facilities or property within Arkansas:
  - (i) Repair shop;
  - (ii) Parts department;
  - (iii) Any kind of office other than an in-home office as described and permitted under subdivisions (h)(2)(R) and (h)(3)(B) of this section;
  - (iv) Warehouse;
  - (v) Meeting place for the taxpayer's:
    - (a) Directors;
    - (b) Officers; or
    - (c) Employees;
  - (vi) Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;
  - (vii)(a) Telephone answering service that is publicly attributed to the taxpayer or to employees or an agent or agents of the taxpayer in their representative capacity.
    - (b) For example, a listing in a telephone directory would constitute a public attribution;

(viii) Mobile stores, such as vehicles with drivers who are sales personnel making sales from the vehicles; or

(ix) Real property or fixtures to real property of any kind;

(Q) Consigning a stock or inventory of goods or other tangible personal property to any person, including an independent contractor, for sale to customers;

(R)(i) Maintaining, by any employee or other representative, an office or place of business of any kind.

(ii) However, an in-home office will not cause a loss of protection if:

(a) Such an office is located within the residence of the employee or representative;

(b) Such an office is not publicly attributed to the taxpayer or to the employee or representative of the taxpayer in an employee or representative capacity; and

(c) The use of such office is limited to:

(1) Soliciting and receiving orders from customers;

(2) Transmitting such orders outside of Arkansas for acceptance or rejection by the taxpayer; and

(3) Such other activities that are protected under 15 U.S.C. § 381 or under subdivision (h)(3) of this section.

(iii) A telephone listing or other public listing within the state for the taxpayer or for an employee or representative of the taxpayer in such capacity or other indications through advertising or business literature that the taxpayer or its employees or representative can be contacted at a specific address within Arkansas shall normally be determined as the taxpayer maintaining within Arkansas an office or place of business attributable to the taxpayer or to its employee or representative in a representative capacity.

(iv) However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the taxpayer shall not, by themselves, be considered

as advertising or otherwise publicly attributing an office to the taxpayer or its employee or representative.

(v) The maintenance of any office or other place of business in Arkansas that does not strictly qualify as an in-home office as described above shall, by itself, cause the loss of protection under this part.

(vi) For the purpose of this part, it is not relevant whether the taxpayer pays directly, indirectly, or not at all for the cost of maintaining such in-home office;

(S) Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within Arkansas;

(T) Shipping or delivering goods into Arkansas by means of private vehicle, rail, water, air, or other carrier, regardless of whether a shipment or delivery fee or other charge is imposed, directly or indirectly, upon the purchaser; or

(U) Conducting any activity in Arkansas not listed in subdivision (h)(3) of this section, below, that is not entirely ancillary to requests for orders, even if such activity helps to increase purchases (such as some marketing and promotional activities).

(3) **Protected activities.** The following in-state activities will not cause the loss of protection for otherwise protected sales:

(A)(i) Soliciting orders for sales by any type of advertising.

(ii) However, other marketing and promotional activities conducted within Arkansas can cause a loss of protection;

(B) Soliciting of orders by an Arkansas resident employee or representative of the taxpayer, so long as such person does not maintain or use any office or other place of business in Arkansas other than an in-home office as described in subdivision (h)(2)(R) of this section, above;

(C) Carrying samples and promotional material only for display or for distribution without charge or other valuable consideration;

(D) Furnishing and setting up display racks and advising customers on the display of the taxpayer's products without charge or other valuable consideration;

(E) Providing automobiles to sales personnel for their use in conducting protected activities;

(F) Passing orders, inquiries, and complaints on to the home office;

(G)(i) Missionary sales activities, which is the solicitation of indirect customers for the taxpayer's goods.

(ii) For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise protected;

(H) Coordinating shipment or delivery without payment or other valuable consideration and providing information relating thereto either prior or subsequent to the placement of an order;

(I) Checking of customers' inventories without a charge therefor (for reorder, but not for other purposes such as quality control);

(J) Maintaining a sample or display room for two (2) weeks (fourteen (14) days) or less at any one (1) location within Arkansas during the tax year;

(K) Recruiting, training, or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel; or

(L)(i) Owning, leasing, using, or maintaining personal property for use in the employee's or representative's in-home office or automobile, where the use of such personal property is solely limited to the conducting of protected activities.

(ii) As such, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer, and computer software in an in-home office or automobile that is strictly limited to the conducting of protected solicitation or activities entirely ancillary to such solicitation would be protected.

**(i) Application to corporation incorporated in Arkansas — Arkansas Code § 26-51-702.**

(1) The protection afforded by 15 U.S.C. § 381 does not apply to any corporation incorporated by the Secretary of State.

(2) See the Arkansas Business Corporation Act of 1987, Arkansas Code § 4-27-101 et seq.

**(j) Registration or qualification to do business — Arkansas Code § 26-51-702.**

(1) A taxpayer that registers or otherwise formally qualifies to do business within Arkansas does not, by that fact alone, lose its protection under 15 U.S.C. § 381.

(2) However, if the taxpayer engages in activities within Arkansas that are not protected under 15 U.S.C. § 381, such protection will be lost.

(3) See Arkansas Code § 4-27-1501 et seq., of the Arkansas Business Corporation Act of 1987, Arkansas Code § 4-27-101 et seq.

**(k) Loss of protection for conducting unprotected activity during part of the tax year.**

(1) The protection afforded under 15 U.S.C. § 381 will be determined on tax-year-by-tax-year basis.

(2) Therefore, if at any time during a tax year the taxpayer conducts activities within Arkansas that are not protected under 15 U.S.C. § 381, all income earned by the taxpayer attributable to Arkansas during such tax year will be subject to Arkansas income tax.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-137. Nonbusiness income — Allocation of nonbusiness income — Arkansas Code § 26-51-704.**

(a) Generally, a taxpayer's nonbusiness income will be allocated to the state in which the taxpayer has its commercial domicile (that is, home office or corporate headquarters).

(b) However, under certain circumstances, a taxpayer's income from rents, royalties, and capital gains may be allocable to Arkansas even though the taxpayer's commercial domicile is not located in Arkansas.

(c) See Arkansas Code §§ 26-51-705 – 26-51-708.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-138. Apportionment — Business income — Determining apportionment factor — Arkansas Code § 26-51-709.**

(a) All business income of the taxpayer shall be apportioned to Arkansas by use of an apportionment formula.

(b) The apportionment formula consists of a fraction, of which the:

(1) Numerator is the property factor plus the payroll factor plus double the sales factor; and

(2) Denominator is four (4).

(c) A change in the law requires a double weighted sales factor for years beginning on or after January 1, 1995.

(d)(1) If the denominator is missing in one (1) or more of the three (3) factors, then the denominator of four (4) must be reduced by the number of missing factors.

(2) For example, the denominator shall be the same as the number of entries, other than zero (0), that apply to the total (everywhere) amounts of the property, payroll, and sales factors.

**Examples:** Examples 1 and 2 apply to tax years beginning before January 1, 1995. Examples 3 and 4 apply to tax years beginning after January 1, 1995.

**Example 1:**

	(A) Amounts in Arkansas	(B) Total Amounts	(C) Percentage (A) ÷ (B)
Total Tangible Property	200,000	1,000,000	20.000000%
Payrolls	-0-	1,000,000	-0-
Sales	400,000	1,000,000	40.000000%

Sum of the Percentages		60.000000%
Percentage Attributable to Arkansas:	$\frac{60.000000\%}{3} =$	20.000000%
Sum of the Percentages divided by 3 =		

**Example 2:**

	(A) Amounts <u>in Arkansas</u>	(B) Total <u>Amounts</u>	(C) Percentage <u>(A) ÷ (B)</u>
Total Tangible Property	100,000	1,000,000	10.000000%
Payrolls	-0-	-0-	-0-
Sales	400,000	1,000,000	<u>40.000000%</u>
Sum of the Percentages			50.000000%
Percentage Attributable to Arkansas:	$\frac{50.000000\%}{2} =$		25.000000%
Sum of the Percentages divided by 2 =			

**Example 3:**

	(A) Amounts <u>in Arkansas</u>	(B) Total <u>Amounts</u>	(C) Percentage <u>(A) ÷ (B)</u>
Total Tangible Property	200,000	1,000,000	20.000000%
Payrolls	-0-	1,000,000	-0-
Sales	400,000	1,000,000	40.000000%
Double Weighted Sales Factor			<u>80.000000%</u>
Sum of the Percentages			100.000000%
Percentage Attributable to Arkansas:	$\frac{100.000000\%}{4} =$		25.000000%
Sum of the Percentages divided by 4 =			

**Example 4:**

(A) Amounts <u>in Arkansas</u>	(B) Total <u>Amounts</u>	(C) Percentage <u>(A) ÷ (B)</u>
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Total Tangible Property	100,000	1,000,000	10.000000%
Payrolls	-0-	-0-	-0-
Sales	400,000	1,000,000	40.000000%
Double Weighted Sales Factor			<u>80.000000%</u>
Sum of the Percentages			90.000000%
Percentage Attributable to Arkansas:		<u>90.000000%</u>	
Sum of the Percentages divided by 3 =		3 =	30.000000%

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-139. Property factor — Arkansas Code § 26-51-710 [repealed].**

**(a) Includable property — Arkansas Code § 26-51-710 [repealed].**

(1) Property shall be included in the property factor if it is actually used or is available for use or capable of being used during the tax year in the regular course of the taxpayer's trade or business.

(2) Property held as reserves (including reserves of materials) and standby facilities shall be included in the factor.

(3) Property or equipment under construction during the tax year shall be excluded from the factor until such property is actually used in the regular course of the taxpayer's trade or business.

(4) Goods in process that can be or are included in the taxpayer's inventory shall be included in the property factor.

(5) If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property to the extent used shall be included in the property factor.

(6) Property used in the regular course of the taxpayer's trade or business shall remain in the property factor until its permanent withdrawal is established by an identifiable event, such as its conversion to the production of nonbusiness income, its

sale, or the lapse of an extended period of time, normally five (5) years, during which time the property sits idle and is held for sale.

**(b) Consistency — Arkansas Code § 26-51-710 [repealed].**

(1) If the taxpayer departs from or modifies the method of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in its Arkansas return for the current year the nature and extent of the modification.

(2) If the returns filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property or in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its Arkansas return the nature and extent of the variance.

**(c) Numerator — Arkansas Code § 26-51-710 [repealed].**

(1) The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Arkansas during the tax year in the regular course of the taxpayer's trade or business.

(2) Property in transit between locations of the taxpayer shall be considered to be at the destination for purposes of the property factor.

(3) Property in transit between a buyer and seller that is included by the taxpayer in the denominator of its property factor shall be included in the numerator according to the state of destination.

(4) The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located both inside and outside of Arkansas during the tax year shall be determined for purposes of the numerator of the factor on the basis of total time within Arkansas during the tax year.

(5) An automobile assigned to a traveling employee shall be included in the numerator of the factor on the basis of total miles driven within Arkansas compared to total miles driven everywhere during the tax year.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-710 was repealed by Acts 2019, No. 822, § 8.

**26 CAR § 130-140. Property factor — Valuation of property — Arkansas Code § 26-51-711 [repealed].**

**(a) Owned property — Arkansas Code § 26-51-711 [repealed].**

(1)(A) Property owned by the taxpayer shall be valued at its original cost.

(B) As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof by reason of sale, exchange, abandonment, etc.

(C) However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(2) If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

(3) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(4) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

**(b) Rented property — Arkansas Code § 26-51-711 [repealed].**

(1)(A) Property rented by the taxpayer is valued at eight (8) times its net annual rental rate.

(B) The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property less the aggregate annual subrental rates paid by subtenants of the taxpayer.

(2)(A) If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the

Secretary of the Department of Finance and Administration or requested by the taxpayer.

(B) In no case, however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

(3) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for the property.

(4)(A) Subrents are not deducted when they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing such income.

(B) Accordingly, there is no reduction in its value.

(5)(A) The term "annual rental rate" means the amount paid as rental for property for a twelve-month period.

(B) Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax year.

(C) However, where a taxpayer has rented property for a term of twelve (12) or more months and the current tax year covers a period of less than twelve (12) months, the rent paid for the short tax year shall be annualized.

(D) If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term.

(E) Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(6) The term "annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a:

(i) Fixed sum of money; or

(ii) Percentage of sales, profits, or otherwise; or

(B)(i) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc.

(ii) If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(7) Annual rent does not include the following:

(A) Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; or

(B)(i) Royalties based on extraction of natural resources, whether represented by delivery or purchase.

(ii) For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as:

*(a)* A royalty;

*(b)* An advance royalty;

*(c)* A rental; or

*(d)* Otherwise.

(8)(A) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease.

(B) Hence, the original cost of leasehold improvements shall be included in the property factor.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-711 was repealed by Acts 2019, No. 822, § 8.

**26 CAR § 130-141. Payroll factor — Arkansas Code § 26-51-713 [repealed].**

**(a) Payroll factor generally — Arkansas Code § 26-51-713 [repealed].**

(1)(A) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax year.

(B) Leased employees' salaries should be included in the payroll factor of the taxpayer that pays the salaries and issues the W-2 forms.

(2)(A) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method.

(B) If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

(C) Notwithstanding the taxpayer's method of accounting, compensation paid to employees may, at the election of the taxpayer, be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under that method for unemployment compensation purposes.

(3) The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the payroll factor.

(4)(A) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for their personal services.

(B) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

(C)(i) Only amounts paid directly to employees are included in the payroll factor.

(ii) Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal Internal Revenue Code.

(D) For those employees employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

(5)(A) The term "employee" means any officer of a corporation or any individual who, under the usual common-law rules applicable in determining the employer–employee relationship, has the status of an employee.

(B) Generally, a person will be considered to be an employee if he or she is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq., except that, since certain individuals are included within the term "employee" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of calculating the payroll factor.

(6)(A) The denominator of the payroll factor is the total compensation paid everywhere during the tax year.

(B) Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is protected from taxation, for example, by 15 U.S.C. § 381, is included in the denominator of the payroll factor.

**(b) Consistency — Arkansas Code § 26-51-713 [repealed].**

(1) If the taxpayer departs from or modifies the treatment of compensation paid that has been used in returns for prior years, the taxpayer shall disclose in its Arkansas return for the current year the nature and extent of the modification.

(2) If the returns filed by the taxpayer with all states to which the taxpayer reports are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its Arkansas return the nature and extent of the variance.

(c) **Numerator — Arkansas Code § 26-51-713 [repealed].** The numerator of the payroll factor is the total amount paid in Arkansas during the tax period by the taxpayer for compensation.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-713 was repealed by Acts 2019, No. 822, § 8.

**26 CAR § 130-142. Sales factor — Arkansas Code § 26-51-715 [repealed].**

**(a) Sales factor generally — Arkansas Code § 26-51-715 [repealed].**

(1) The term "sales" means all gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

(2) The following are rules for determining sales in various situations:

(A)(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax year) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(ii) "Gross receipts" for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales.

(iii) Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if the taxes are passed on to the buyer or included as part of the selling price of the product;

(B) In the case of cost-plus-fixed-fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost plus the fee;

(C) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services, including:

- (i) Fees;
- (ii) Commissions; and
- (iii) Similar items;

(D) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property;

(E) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom; and

(F)(i) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales.

(ii) For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program.

(iii) The gross receipts from the sales of the trucks are included in the sales factor.

(b) **Exceptions — Arkansas Code § 26-51-715 [repealed]**. The following special rules are established with respect to the sales factor of the apportionment formula:

(1)(A) Where substantial amounts of gross receipts arise from an occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor if such receipts will materially distort the sales factor.

(B) For example, gross receipts from the sale of a factory or plant will be excluded;

(2)(A) Where the income-producing activity with respect to business income from intangible personal property can be readily identified, the income is included in the

denominator of the sales factor and, if the income-producing activity occurs in Arkansas, in the numerator of the sales factor as well.

(B) For example, usually the income-producing activity can be readily identified with respect to:

(i) Interest income received on deferred payments on sales of tangible property; and

(ii) Income from the sale, licensing, or other use of intangible personal property; and

(3)(A) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor.

(B) For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends and interest shall be excluded from the denominator of the sales factor.

**(c) Consistency — Arkansas Code § 26-51-715 [repealed].**

(1) If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in its Arkansas return for the current year the nature and extent of the modification.

(2) If the returns filed by the taxpayer with all states to which the taxpayer reports are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its Arkansas return the nature and extent of the variance.

**(d) Numerator — Arkansas Code § 26-51-715 [repealed].**

(1) The numerator of the sales factor shall include gross receipts attributable to Arkansas and derived by the taxpayer from transactions and activity in the regular course of its trade or business.

(2) All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the:

- (A) Place where the accounting records are maintained; or
- (B) Location of the contract or other evidence of indebtedness.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-715 was repealed by Acts 2019, No. 822, § 8.

**26 CAR § 130-143. Sales factor — Other than tangible personal property — Arkansas Code § 26-51-717.**

(a) Gross receipts from transactions other than sales of tangible personal property are attributed to Arkansas if the income-producing activity is performed:

- (1) Entirely within Arkansas; or
- (2) Both inside and outside of Arkansas, in which event the portion of income reportable to Arkansas shall be the percentage that is used in the formula for apportioning income to Arkansas during the year of the sale.

(b) The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer, or by anyone acting on the taxpayer's behalf, in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit.

(c) Accordingly, income-producing activity includes, but is not limited to, the following:

- (1) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;
- (2) The sale, rental, leasing, licensing, or other use of real property;
- (3) The rental, leasing, licensing, or other use of tangible personal property; or
- (4) The sale, licensing, or other use of intangible personal property.

(d) The mere holding of intangible personal property is not, of itself, an income-producing activity.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-144. Modification of apportionment and allocation — Arkansas Code § 26-51-718.**

**(a) Construction contractors — Arkansas Code § 26-51-718(c).**

(1) The following special rules are established with respect to the apportionment of income of construction contractors.

(2)(A) When a taxpayer uses the percentage of completion method of accounting for long-term contracts and has income from sources both inside and outside of Arkansas, the amount of business income derived from such long-term contracts from sources within Arkansas shall be determined pursuant to this part.

(B) A long-term construction contract covers a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed.

(3)(A) Business income is apportioned to Arkansas by a three-factor formula consisting of property, payroll, and sales for all construction.

(B) The total of the property plus payroll plus two (2) times the sales percentage is divided by four (4) to determine the apportionment percentage.

(C) The apportionment percentage is then applied to business income to determine the amount apportioned to Arkansas.

**(4) Percentage of completion method.**

(A) Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract which has been completed during the tax year) exceeds all expenditures made during the tax year in connection with the contract.

(B) In so doing, account must be taken of the material and supplies on hand at the beginning and end of the tax year for use in each such contract.

**Example:** A taxpayer using the percentage of completion method of accounting for long-term contracts entered into a long-term contract to build a structure for nine million dollars (\$9,000,000). The contract allowed three (3) years for completion, and, as of the end of the second income year, the taxpayer's books of account (kept on the accrual method) disclosed the following:

	Receipts	Expenditures
End of 1st income year	\$2,700,000	\$2,400,000
End of 2nd income year	4,500,000	4,100,000
Totals	\$7,000,000	\$6,500,000

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each tax year. It was estimated that the contract was thirty percent (30%) completed at the end of the first tax year and eighty percent (80%) completed at the end of the second tax year. The amount to be included as business income for the first tax year is three hundred thousand dollars (\$300,000) (30% of \$9,000,000, or \$2,700,000, less expenditures of \$2,400,000 equals \$300,000). The amount to be included as business income for the second tax year is four hundred thousand dollars (\$400,000) (50% of \$9,000,000, or \$4,500,000, less expenditures of \$4,100,000 equals \$400,000).

**(5) Property factor.**

(A) In general the numerator and denominator of the property factor shall be determined as set forth in Arkansas Code §§ 26-51-710 [repealed] – 26-51-712 [repealed].

(B)(i) However, the following special rules also apply.

(ii)(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor.

(b) The value of any such construction costs attributable to construction projects in Arkansas shall be included in the numerator of the property factor.

**Example 1:** Taxpayer commenced a long-term construction project in Arkansas as of the beginning of a given year. By the end of its second year, its equity in the costs of production to be reflected in the numerator and denominator

of its property factor for such year is computed as follows:

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction Costs	-0-	1,000,000		
Progress billings		-600,000		
Balance 12/31-01/01		\$400,000	\$400,000	
Construction Costs – Total from beginning of project				\$5,000,000
Progress billings – Total from beginning of project				<u>\$4,000,000</u>
Balance 12/31				\$1,000,000

Balance beginning of year	<u>\$ 400,000</u>
Total	\$1,400,000
Average - One-half (1/2) of value used in property factor	\$ 700,000

(c)(1) **Note.** It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(2) See Arkansas Code § 26-51-712 [repealed].

**Example 2:** Same facts as in Example 1, except that progress billings exceeded construction costs. No negative value for the taxpayer's equity in the construction project is shown in the property factor.

(iii) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight (8) times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

**(6) Payroll factor.**

(A) In general, the numerator and denominator of the payroll factor shall be determined as set forth in Arkansas Code §§ 26-51-713 [repealed] and 26-51-714 [repealed].

(B)(i) However, the following special rules also apply.

(ii) Compensation paid to employees that is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(iii) Compensation paid to employees who perform their services in a state to which their employer does not report them for unemployment tax purposes shall be attributed to the state in which the services are performed.

**Example:** A taxpayer engaged in a long-term contract in Arkansas sends several key employees to Arkansas to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to another state where the main office is maintained and where the employees reside. For payroll factor purposes, the compensation is assigned to the numerator of Arkansas.

**(7) Sales factor.**

(A) In general, the numerator and denominator of the sales factor shall be determined as set forth in Arkansas Code §§ 26-51-715 [repealed] – 26-51-717.

(B)(i) However, the following special rules also apply.

(ii)(a) Gross receipts derived from the performance of a contract are attributable to Arkansas if the construction project is located in Arkansas.

(b) If the construction project is located both inside and outside of Arkansas, the gross receipts attributable to Arkansas are based upon the ratio that construction costs for the project in Arkansas incurred during the tax year bear to the total construction costs for the entire project incurred during the tax year.

**Example 1:** A construction project was undertaken in Arkansas by a calendar year taxpayer. The following gross receipts (progress billings) were derived from the contract during the three (3) tax years that the contract was in progress.

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>
Gross Receipts	\$1,000,000	\$4,000,000	\$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three (3) years are the amounts shown.

**Example 2:** A taxpayer contracts to build a dam on a river at a point that lies half within Arkansas and half within another state. During the taxpayer's first tax year, construction costs in Arkansas were two million dollars (\$2,000,000). Total construction costs for the project during the tax year were three million dollars (\$3,000,000). Gross receipts (progress billings) for the year were two million four hundred thousand dollars (\$2,400,000). Accordingly, gross receipts of one million six hundred thousand dollars (\$1,600,000) ( $\$2,000,000/\$3,000,000 \times \$2,400,000$ ) are included in the numerator of the sales factor.

(iii) The sales factor includes only that portion of the gross contract price that corresponds to the percentage of the entire contract that was completed during the tax year.

**Example:** A taxpayer entered into a long-term construction contract. At the end of its current tax year (the second since starting the project), it estimated that the project was thirty percent (30%) completed. The bid price for the project was nine million dollars (\$9,000,000) and it had received two million five hundred thousand dollars (\$2,500,000) from progress billings as of the end of its current tax year. The amount of gross receipts to be included in the sales factor for the current tax year is two million seven hundred thousand dollars (\$2,700,000) (30% of \$9,000,000), regardless of whether the taxpayer uses the accrual

method or the cash method of accounting for receipts and disbursements.

**(b) Television and radio broadcasting — Arkansas Code § 26-51-718(c).**

(1) The following special rules are established with respect to the apportionment of income from television and radio broadcasting by a broadcaster that is subject to income tax in both Arkansas and in one (1) or more other states.

(2) When a taxpayer in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated, or independent television or radio broadcasting station, has income from sources both inside and outside of Arkansas the amount of business income from sources within Arkansas shall be determined pursuant to Arkansas Code §§ 26-51-702 – 26-51-718 and the rules issued thereunder, except as modified by this part.

(3) **Definitions.** The following definitions apply to the terms contained in this part:

(A)(i) "Film" or "film programming" means any and all performances, events, or productions telecast on television, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works, through the use of:

(a) Video tape;

(b) Disc; or

(c) Any other type of format or medium.

(ii) Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one (1) or more tax periods;

(B) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables, and the

like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but that are not physically located in any particular state;

(C)(i) "Radio" or "radio programming" means any and all performances, events, or productions broadcast on radio, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works, through the use of:

(a) An audio tape;

(b) A disc; or

(c) Any other format or medium.

(ii) Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one (1) or more tax periods;

(D)(i) "Release" or "in release" means the placing of film or radio programming into service.

(ii) A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created.

(iii) Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic, or other purpose.

(iv) Each episode of a television or radio series is placed in service when it is first broadcast.

(v) A program is not placed in service merely because it is:

(a) Completed and therefore in a condition or state of readiness and availability for broadcast; or

(b) Previewed to prospective sponsors or purchasers;

(E) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming;

(F) A "subscriber" to a cable television system is the individual residence or other outlet that is the ultimate recipient of the transmission; and

(G) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, or satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

(4) **Apportionment of business income.** The property factor shall be determined in accordance with Arkansas Code §§ 26-51-710 [repealed] – 26-51-712 [repealed], the payroll factor in accordance with Arkansas Code §§ 26-51-713 and 26-51-714, and the sales factor in accordance with Arkansas Code §§ 26-51-715 [repealed] – 26-51-717, except as modified by this part.

(5) **The property factor.**

(A)(i) In the case of rented studios, the net annual rental rate shall include the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment (such as sound recording equipment).

(ii) The net annual rental rate shall also include the rental charges for any additional equipment rented from other sources or from the studio that is:

(a) Not covered in the basic or flat rental charge; and

(b) Used for one (1) week or longer (even though rented on a day-to-day basis).

(iii) Lump-sum net rental payments for a period that encompasses more than a single tax year shall be assigned ratably over the rental period.

(B) No value or cost attributable to any outer-jurisdictional film or radio programming property shall be included in the property factor at any time.

(6) **Property factor denominator.**

(A) All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(B)(i) Audio or video cassettes, discs, or similar media containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at the medium's original cost.

(ii) To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs, or other media containing film or radio programming for home viewing or listening, the value of such cassettes, discs, or other media shall include the license, royalty, or other fees received by the taxpayer capitalized at a rate of eight (8) times the gross receipts derived therefrom during the tax year.

(C) Outer-jurisdictional and film and radio programming property shall be excluded from the denominator of the property factor.

**(7) Property factor numerator.**

(A) With the exception of outer-jurisdictional and film and radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in Arkansas during the tax year shall be included in the numerator of the property factor as provided in Arkansas Code §§ 26-51-710 [repealed] – 26-51-712 [repealed].

(B) Outer-jurisdictional and film and radio programming property shall be excluded from the numerator of the property factor.

**Example:** XYZ Television Co. has a total value of all of its property everywhere of five hundred million dollars (\$500,000,000), including a satellite valued at fifty million dollars (\$50,000,000) that was used to telecast programming into Arkansas and one hundred fifty million dollars (\$150,000,000) in film property of which one million dollars' worth was located in Arkansas the entire year. The total value of real and tangible personal property, other than film programming property, located in Arkansas for the entire tax year was valued at two million dollars (\$2,000,000). Movable and mobile property was determined to have a value of four million dollars (\$4,000,000) and such movable and mobile property was used in Arkansas for one hundred (100) days. The total value of property to be attributed to

Arkansas would be determined as follows:

Value of property permanently located within Arkansas	\$2,000,000
Value of mobile and movable property (100/365 or .2739 x \$4,000,000):	\$1,095,600
Total value of property to be included in Arkansas' property factor numerator (outer-jurisdictional and film property excluded):	\$3,095,600
Total value of property to be used in the denominator (\$500,000,000-\$200,000,000):	\$300,000,000
Total property factor (\$3,095,600/\$300,000,000):	.01031867

**(8) The payroll factor.**

(A) **Payroll factor denominator.** The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the tax year, including that paid to directors, actors, newscasters, and other talent in their status as employees.

(B) **Payroll factor numerator.** Compensation for all employees shall be attributed to Arkansas as determined by the provisions of Arkansas Code §§ 26-51-713 [repealed] and 26-51-714 [repealed].

**(9) The sales factor.**

(A) **Sales factor denominator.** The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of the taxpayer's trade or business.

(B) **Sales factor numerator.** The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within Arkansas, including, but not limited to, the following:

(i) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by television and radio stations located in Arkansas;

(ii)(a) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to Arkansas in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in Arkansas bears to the total audience for such station (or owned and affiliated stations in the case of networks).

(b) The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's Arkansas viewing or listening audience bears to its total viewing or listening audience.

(c) Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer:

(1) Is consistently used from year to year and from state to state for such purpose; and

(2) Fairly represents the taxpayer's activity in Arkansas;

(iii)(a) Gross receipts from film programming in release to or by a cable television system shall be attributed to Arkansas in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in Arkansas bears to the total subscribers of such cable television system.

(b) If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year and from state to state for that purpose; or

(iv) Receipts from the sale, rental, licensing, or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Arkansas Code §§ 26-51-716 and 26-51-717.

**(c) Publishing — Arkansas Code § 26-51-718(c).**

(1) The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing, or other distribution of:

- (A) Books;
- (B) Newspapers;
- (C) Magazines;
- (D) Periodicals;
- (E) Trade journals; or
- (F) Other printed material.

(2) **In general.** Except as specifically modified by this part, when a taxpayer in the business of publishing, selling, licensing, or distributing newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both inside and outside of Arkansas, the amount of business income from sources within Arkansas from such business activity shall be determined pursuant to Arkansas Code §§ 26-51-702 [repealed] – 26-51-718.

(3) **Definitions.** The following definitions apply to the terms contained in this part:

(A) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables, and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling, or otherwise distributing printed material, but which are not physically located in any particular state;

(B)(i) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including without limitation:

- (a) A play;
- (b) A story;
- (c) An article;
- (d) A column; or

(e) Other literary, commercial, educational, artistic, or other written or printed work.

(ii) Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property;

(C)(i) "Purchaser" and "subscriber" mean the individual, residence, business, or other outlet that is the ultimate or final recipient of the print or printed material.

(ii) Neither of such terms shall include a wholesaler or other distributor of print or printed material; and

(D) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay, or carry any data, voice, image, or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

**(4) Apportionment of business income.**

**(A) The property factor.**

**(i) Property factor denominator.**

(a) All real and tangible personal property, whether owned or rented, that is used in the taxpayer's business shall be included in the denominator of the property factor.

(b) However, outer-jurisdictional property shall not be included in the property factor's denominator.

**(ii) Property factor numerator.**

(a) All real and tangible personal property owned or rented by the taxpayer and used in Arkansas during the tax year shall be included in the numerator of the property factor.

(b) However, outer-jurisdictional property owned or rented by the taxpayer and used in Arkansas during the tax year shall be excluded from the numerator of the property factor.

**Example:** ABC Newspaper Co. owns a total of four hundred million dollars (\$400,000,000) of property everywhere, and, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in Arkansas, as well as for communicating with its printing plants, news bureaus, employees, and agents located in other states and throughout the world. The total value of its real and tangible personal property that was permanently located in Arkansas for the entire tax year was valued at three million dollars (\$3,000,000). The total original cost of the satellite is one hundred million dollars (\$100,000,000) for the tax year. The taxpayer's mobile property that was used partially within Arkansas, consisting of forty (40) delivery trucks, was determined to have an original cost of four million dollars (\$4,000,000). The delivery trucks were used in Arkansas for ninety-five (95) days. The total value of property to be attributed to Arkansas would be determined as follows:

Value of property permanently located within Arkansas	\$3,000,000
Value of mobile property (95/365 or .260274 x \$4,000,000):	<u>\$1,041,096</u>
Total value of property attributable to Arkansas:	\$4,041,096
Total property factor % (\$4,041,096/\$400,000,000):	1.010274%

(B) **The payroll factor.** The payroll factor shall be determined according to Arkansas Code §§ 26-51-713 [repealed] and 26-51-714 [repealed] and the rules promulgated thereunder.

**(C) The sales factor.**

(i) **Sales factor denominator.** The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of the taxpayer's trade or business.

(ii) **Sales factor numerator.** The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within Arkansas, including, but not limited to, the following:

*(a)* Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in Arkansas;

*(b)(1)* Except as provided in subdivision (c)(4)(C)(ii)(c) of this section, below, gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to Arkansas as determined by the taxpayer's "circulation factor" during the tax year.

*(2)* The circulation factor shall be:

*(A)* Determined for each individual publication by the taxpayer of printed material containing advertising; and

*(B)* Equal to the ratio that the taxpayer's Arkansas circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

*(3)* The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Alliance for Audited Media or other comparable sources, provided that the source selected is consistently used from year to year and from state to state for such purpose.

*(4)* If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records;

*(c)(1)* When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which Arkansas is located, the taxpayer may

petition, or the Department of Finance and Administration may require, that a portion of such receipts be attributed to the sales factor numerator of Arkansas on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subdivision (c)(4)(C)(ii)(b) above.

(2) Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in Arkansas of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area.

(3) This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state; or

(d) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a certain other state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental, or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such other state, shall be included in the numerator of the sales factor of Arkansas if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business located in Arkansas.

(d) **Airlines — Arkansas Code § 26-51-718(c).** Every taxpayer engaged in the business of transportation of passengers or freight by air both inside and outside of Arkansas shall determine its net income subject to Arkansas income tax by taking that portion of total net operating revenue that the total passenger and freight receipts in Arkansas bears to total receipts from both inside and outside of Arkansas.

**Example:**

Airline apportionment:

Total Passenger & Freight Receipts	\$50,000,000
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Arkansas Passenger & Freight Receipts \$10,000,000

Operating Income \$ 2,000,000

Operating Expenses \$ 1,500,000

Net Operating Income \$ 500,000

$(\$10,000,000 \div \$50,000,000) \times \$500,000 = \$100,000$  Arkansas taxable income

**(e) Bus lines and trucking companies — Arkansas Code § 26-51-718(c).**

Every taxpayer engaged in the business of operating a bus line or trucking company both inside and outside of Arkansas shall determine its net income subject to Arkansas income tax by taking that portion of the total net operating income that the total number of miles operated within Arkansas bears to the total system miles.

**Example:** XYZ Trucking Company had federal taxable income of one million dollars (\$1,000,000). It operated ten million (10,000,000) total miles and five hundred thousand (500,000) miles in Arkansas. The Arkansas apportionment factor is five hundred thousand (500,000) divided by ten million (10,000,000), or five percent (5%), and, assuming no adjustments to federal taxable income are necessary to arrive at apportionable income, Arkansas taxable income is \$1,000,000 X 5%, or fifty thousand dollars (\$50,000).

**(f) Pipelines — Arkansas Code § 26-51-718(c).**

(1) Every taxpayer operating a pipeline for the transportation of oil or gas both inside and outside of Arkansas shall apportion its net operating income attributable to Arkansas by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus double the sales factor and the denominator of which is four (4).

**(2) Property factor.**

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

(B)(i) Average value of the property owned by the taxpayer means the average of the original cost of the property at the beginning and ending of the tax year.

(ii) Rental property is valued at eight (8) times the net annual rental.

(3) **Payroll factor.** The payroll factor is a fraction, the numerator of which is compensation paid for services performed entirely within Arkansas plus a ratable part of compensation paid for services performed both inside and outside of Arkansas, based on the total number of barrel or unit miles in Arkansas, divided by the total barrel or unit miles system wide and the denominator of which is the total compensation paid everywhere during the tax year.

(4) **Sales factor.** The sales factor is a fraction, the numerator of which is the total sales within Arkansas plus a proportionate part of system revenue earned in Arkansas determined on the basis of the total barrel or unit miles within Arkansas to the total barrel or unit miles in the system during the tax year and the denominator of which is the total revenue everywhere during the tax year.

**Example:**

**Pipeline company:**

Property Factor:

Total Property                      \$1,000,000

Arkansas Property                      \$ 100,000

$(\$100,000 \div \$1,000,000) = 10.000000\%$

Payroll Factor: (Assuming one pipeline and constant volume)

Total Payroll                              \$ 200,000

Multistate Payroll                              \$ 100,000

Arkansas Payroll	\$ 20,000
Total Barrels	500,000
Arkansas Barrels	50,000
Total Pipeline Miles	1,000
Arkansas Pipelines Miles	100

$$\begin{aligned} & \$20,000 + ([50,000 \times 100 \text{ miles}] \div [500,000 \times 1,000 \text{ miles}] \times \$100,000) \\ & \div \$200,000 = (\$20,000 + \$1,000) \div \$200,000 = 10.500000\% \end{aligned}$$

Sales Factor:

Total Sales	\$1,000,000
Arkansas Sales	\$ 200,000
Multistate Sales	\$ 500,000
Barrel Miles Ratio (from the payroll factor)	.01

$$\begin{aligned} & \$200,000 + (.01 \times \$500,000) \div \$1,000,000 = 20.500000\% \times 2 = \\ & 41.000000\% \end{aligned}$$

Operating Income	\$ 300,000
Operating Expense	\$ 200,000
Net Operating Income	\$ 100,000

Apportionment Factor:

$$10\% \text{ (property)} + 10.5\% \text{ (payroll)} + 41\% \text{ (sales)} = 61.5\%$$

$$61.500000\% \div 4 = 15.375000\%$$

$$\$100,000 \text{ (net operating income)} \times 15.375000\% = \$15,375$$

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code §§ 26-51-710 – 26-51-715 were repealed by Acts 2019, No. 822, § 8.

**26 CAR § 130-145. Partnership returns — Arkansas Code § 26-51-802.**

(a) Corporations with partnership interest — Arkansas Code § 26-51-802(b).

(b) Any taxpayer with an interest in a partnership that has gross income from sources within Arkansas must directly allocate the partnership's Arkansas income to Arkansas, rather than include partnership income and apportionment factors in the taxpayer's apportionment formula.

**Example:**

Partnership Total Income           \$100,000

Partnership Income Directly

Allocated to Arkansas           \$ 50,000

Corporation A's Ownership       10%

Corporation B's Ownership       90%

Corporation A:                   \$50,000 x .10 = \$5,000

Corporation B:                   \$50,000 x .90 = \$45,000

(c) The amount of partnership income directly allocated to Arkansas will be entered on page 1 of the "Other Income" line or on page 2, Schedule A, Part C, "Direct Income Allocated To Arkansas" line of Form AR1100CT.

(d) If the taxpayer's operations are multistate, all partnership income must be deducted on Schedule A, Part A, "Deduct Adjustments" line.

(e) The partnership's Arkansas income should then be entered on Schedule A, Part C, "Direct Income Allocated To Arkansas" line of Form AR1100CT.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-146. Corporation returns — Arkansas Code § 26-51-804.**

**(a) Federal employer identification number (FEIN) — Arkansas Code § 26-51-804(a).**

(1) Every corporation income tax return, information return, amended return, report, declaration of estimated tax return, or claim for refund must include a correct federal employer identification number (FEIN).

(2) FEINs are assigned by the Internal Revenue Service.

**(b) Bankruptcy, dissolution, and receivership — Arkansas Code § 26-51-804(d).**

(1) A receiver, assignee, or trustee operating the property or business of a taxpayer must file an income tax return for such taxpayer (Form AR1100CT) for each year or part of a year during which the fiduciary is in control.

(2) Because the powers and functions of the taxpayer are suspended and the taxpayer's property and business are for the time being in the custody of a fiduciary, the fiduciary stands in the place of the taxpayer's officers and is required to perform all the duties and assume all the liabilities that would normally rest with the taxpayer's officers were they in control.

(3) A fiduciary in charge of only part of the property of a taxpayer, such as a receiver in mortgage foreclosure proceedings involving only a small portion of the taxpayer's property, need not file an Arkansas corporation income tax return on behalf of the taxpayer.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-147. Consolidated corporate returns — Arkansas Code § 26-51-805.**

**(a) Generally — Arkansas Code § 26-51-805.**

(1) If two (2) or more members of a federal consolidated group file an Arkansas consolidated return, all members that have income from sources within Arkansas must join in the filing of the Arkansas consolidated return.

(2) If a corporation is acquired by a parent corporation that has members that file a consolidated Arkansas return, the acquired corporation must join in the filing of the Arkansas consolidated return.

(3) If members of an Arkansas consolidated group are acquired by a new parent corporation, they may elect to file separate returns if the acquiring parent has no members that file an Arkansas consolidated return.

**(b) Eligible members — Arkansas Code § 26-51-805(a)(1).**

(1) All eligible members of a federal affiliated group that join in the filing of a federal consolidated income tax return may elect to file an Arkansas consolidated income tax return.

(2) However, only those eligible members that have gross income from sources within Arkansas may join in the filing of an Arkansas consolidated income tax return.

(3) A member of a consolidated group that joins or leaves the group during a tax year must compute its Arkansas taxable income based on the period for which it was a member of the group.

**(c) Change of ownership — Arkansas Code § 26-51-805(d)(1).** If a corporation has a change of ownership under I.R.C. § 1501 et seq., it must submit a statement outlining the specific changes of ownership that qualify to file a federal consolidated return under I.R.C. § 1501 et seq., with the:

(1) Separate returns of any affected members; and

(2) Consolidated return of the remaining members, if applicable.

**(d) Allocation of tax credits — Arkansas Code § 26-51-805(e).**

(1) If any member of a consolidated group has an income tax credit, the credit may be applied to the group's consolidated income, regardless of whether or not the member earning the credit had taxable income.

(2)(A) If a member of a consolidated group that earns a credit leaves the group, the credit will first be applied to the last consolidated return in which the member participated.

(B) Any remaining balance will be applied to the next return of the member that earned the credit.

(3) If a corporation with an income tax credit merges into another corporation, the credit may be claimed by the surviving corporation only when the ownership of both the acquired and acquiring corporations is substantially the same and at least eighty percent (80%) of the voting stock is owned by the same person or, prior to the acquisition, the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation.

**(e) Separate computation of taxable income or loss — Arkansas Code § 26-51-805(f).**

(1)(A) Corporations filing a consolidated return and that select filing status 4 must complete a separate Form AR1100CT for each member with gross income from sources within Arkansas (including an Arkansas Schedule A if multistate).

(B) These separate returns should reflect taxable income before any allowable intercompany eliminations and adjustments.

(C) Each member's separate Form AR1100CT must be consolidated on a group Form AR1100CT, which should also reflect taxable income before any allowable intercompany eliminations and adjustments.

(D) In addition, a complete copy of the federal return must be attached.

(E) A schedule listing each allowable intercompany elimination and adjustment, identifying the entity by FEIN to which it applies, must be submitted if this information is not clearly shown in the federal return.

(2) Income tax will be computed on the Arkansas consolidated taxable income reported on the group Form AR1100CT.

(3)(A) Contribution limitations are computed on a separate corporation basis.

(B) In the case of multistate corporations, the contribution limitation is computed based on the total apportionable income as shown on Arkansas Schedule A, Part A, of Form AR1100CT.

(4)(A) In place of a separate Form AR1100CT for each member of the consolidated group, the taxpayer may submit a schedule showing the separate calculation of income.

(B) However, each corporation shown on the schedule must be identified by an FEIN and corporate name.

**Example 1:** The taxpayer uses the cash basis of reporting income.

	FEIN # Corp A	FEIN # Corp B	<u>Eliminating Entry</u>	Federal Return <u>Total</u>
Total Income	\$100,000	\$200,000	-0-	\$300,000
Total Deduction w/o contribution	(105,000)	(125,000)	-0-	(230,000)
Contributions	5,000	10,000	(8,000)	7,000
AR State Taxes (prior year)	1,000	500	--	--
Apport. Factor	100.000000%	10.000000%		

**CONTRIBUTION LIMITATION CALCULATION**

Income	\$100,000	\$200,000
Deductions	(105,000)	(125,000)
Taxes	<u>1,000</u>	<u>500</u>
	(\$4,000)	\$75,500
Contribution Limit	-0-	\$75,500 X 10% = \$7,550

TAXABLE INCOME CALCULATION

Income	\$100,000	\$200,000	
Deductions	*(104,000)	**(132,050)	
	(\$4,000)	\$67,950	
AR Consolidated			
Taxable Income	(\$4,000)	\$6,795	
Apport. Factor	<u>100.000000%</u>	<u>10.000000%</u>	
AR Taxable Income	(\$4,000)	\$6,795	
AR Consolidated			
Taxable Income	(\$4,000)	+ \$6,795 =	\$2,795

\*\$105,000 - \$1,000 Ark. Income Tax + \$-0- contributions

\*\*\$125,000 - \$500 Ark. Income Tax + \$7,550 contributions

Corporation A and B file a consolidated return for federal and state tax purposes. The contribution deduction is calculated on a consolidated basis for federal income tax purposes and would be seven thousand dollars (\$7,000). The contribution deduction is calculated on an individual corporation basis for state income tax purposes and would be seven thousand five hundred fifty dollars (\$7,550) as calculated above. The calculation is computed prior to apportioning. Any nondeductible amount can be carried forward for up to five (5) years.

**Example 2:**

Corp X	Corp Y	Corp Z	Federal Return Total
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Total Income	\$100,000	\$1,000,000	\$500,000	\$1,600,000
Total Deductions	111,000	900,000	520,000	1,530,000
Fed. Taxable Inc.	(11,000)	100,000	( 20,000)	69,000
Apport. Factor	100.000000%	10.000000%	50.000000%	
Contributions	500	5,000	1,000	6,500

CORP X AR1100CT

Total Income	\$ 100,000	
Less: Total Deductions	(110,500)	
Arkansas Taxable Income		(\$ 10,500)

CORP Y AR1100CT

Federal Taxable and Apportionable Income	\$ 100,000	
Times: Apport. Factor	X 10.000000%	
Arkansas Taxable Income		\$ 10,000

CORP Z AR1100CT

Federal Taxable Income	(\$ 20,000)	
Plus: Contributions per Federal Return not Deductible in Arkansas	+ 1,000	
Apportionable Income	(\$ 19,000)	
Times: Apport. Factor	X 50.000000%	
Arkansas Taxable Income		(\$ 9,500)

Consolidated Arkansas Taxable Income (\$ 10,000)

ARKANSAS NET OPERATING LOSS

	Corp X	Corp Y	Corp Z	Total
Ark Taxable Income (Loss)	(\$ 10,500)	\$ 10,000	(\$ 9,500)	(\$ 10,000)
Offset Income & Losses	\$ 5,250	(\$ 10,000)	(\$ 4,750)	-0-
Ark. Net Operating Loss	(\$ 5,250)	-0-	(\$ 4,750)	(\$ 10,000)

Corporation X and its subsidiaries file an Arkansas consolidated return. For federal income tax purposes, the group had taxable

income and deducted all contributions in the current year. However, for Arkansas income tax purposes, the two (2) members with losses were unable to deduct contributions because each member must calculate its taxable income separately. Corporation Y is able to deduct contributions because it had income, even though the group has a loss for Arkansas purposes. The unused contributions may be carried forward for up to five (5) years.

**(f) Separate computation of taxable income or loss — Arkansas Code § 26-51-805(f).**

(1) A consolidated net operating loss (NOL) carryover shall be allowed as a deduction from gross income on the consolidated return of an affiliated group under the following rules:

(A)(i) Consolidated NOL carryover shall consist of any consolidated net operating losses (as determined under subdivision (f)(1)(C) of this section) of the group plus any net operating losses incurred by members of the group in separate return years (as defined in subdivision (f)(1)(D) of this section) that may be carried over under the provisions of Arkansas Code § 26-51-427.

(ii) However, an NOL incurred by a member corporation in a separate return limitation year (as defined in subdivision (f)(1)(E) of this section) shall be subject to the limitation set forth in subdivision (f)(1)(B) of this section;

(B) With respect to the limitation on NOL carryovers from separate return limitation years, in the case of an NOL of a member of the group carried forward from a separate return limitation year, the amount of the NOL allowed to be carried to the consolidated return shall not exceed:

(i) The income of the member corporation that incurred the loss computed for the consolidated year; minus

(ii) The net operating losses attributable to such member which may be carried to the consolidated year arising in tax years prior to the separate return limitation year;

(C)(i) The consolidated NOL shall:

(a) Include the separate net income or loss of each member corporation separately apportioned or allocated to Arkansas; and

(b) Be subject to the NOL adjustments set forth in Arkansas Code § 26-51-427.

(ii) NOL deductions shall not be taken into account in computing separate net income or loss;

(D) "Separate return year" as used in this part means a tax year of a corporation for which it files a separate return or for which it joins in the filing of a consolidated return by another group;

(E)(i) "Separate return limitation year" as used in this part means any separate return year of a corporation that was not a member of a group for each day of the tax year.

(ii) However, a "separate return limitation year" does not apply in the case of a common parent for a consolidated year or to the separate return year of a predecessor of any member if such predecessor was a member of the group for each day of the tax year;

(F)(i) If a consolidated NOL can carry forward to a separate return year of a corporation that was a member of an affiliated group in the year in which the loss arose, then the portion of the NOL attributable to such corporation shall be:

(a) Apportioned to such corporation under the provisions of subdivision (f)(1)(G) of this section; and

(b) An NOL carryover to such separate return year.

(ii) However, such portions shall not be included in the consolidated NOL carryovers to the equivalent consolidated return year;

(G) The portion of a consolidated NOL attributable to a member of a group is the consolidated NOL multiplied by a fraction, the numerator of which is the separate NOL of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in the year in which such losses were incurred;

(H)(i) If a corporation ceases to be a member during a consolidated return year, any consolidated NOL carryover from a prior tax year must first be carried to such consolidated return year even though all or a portion of the consolidated NOL giving rise to the carryover is attributable to the corporation that ceases to be a member.

(ii) To the extent not absorbed in such consolidated return year, the portion of the consolidated NOL attributable to the corporation ceasing to be a member shall then be carried to the corporation's first separate return year; and

(I)(i) Complete schedules must be submitted for all net operating losses carried forward to or from consolidated returns.

(ii) Schedules must contain information to substantiate which corporations incurred net operating losses and the age of the net operating losses.

(iii) Schedules must also account for all nontaxable income for which adjustments are required to be made to an NOL carryover pursuant to subdivisions (f)(1)(A) and (C) of this section and Arkansas Code § 26-51-427.

(2)(A) The separate taxable income or loss of each member must first be determined as required by Arkansas Code § 26-51-805(f) and subdivision (f)(1)(C) of this section.

(B) The separate loss of each member is divided by the total losses of all members during the tax year and is then multiplied by the consolidated net loss.

(C) The resulting NOL shall then be subject to nontaxable income and adjustments as set forth in Arkansas Code § 26-51-427.

(D)(i) Add backs should be applied to each member of the group separately.

(ii) If a member with positive income has nontaxable income, no add back is necessary since that member will have no NOL carry forward.

(3)(A) A separate return limitation year, as defined in subdivision (f)(1)(E) of this section, is a year in which the corporation was not eligible to file a consolidated return with the rest of the group.

(B) Net operating losses from a separate return limitation year may not offset income of the entire group but may only be used to offset income of the member that has the separate return limitation year in accordance with subdivision (f)(1)(B) of this section.

(4)(A) A separate return year is different from a separate return limitation year.

(B) A separate return year, as defined in subdivision (f)(1)(D) of this section, is a year in which a corporation was eligible to file a consolidated return with the rest of the group but did not do so.

(C) Net operating losses from separate return years may offset income of the entire group in accordance with subdivision (f)(1)(A) of this section.

(5)(A) The NOL of the corporation ceasing to be a member is first applied to the final consolidated return in which it participates.

(B) Any remaining NOL is then carried to that corporation's separate returns in subsequent years or is subject to separate return limitation year restrictions if it joins another consolidated group.

**Example 1:**

Calculation of NOLs within a consolidated group:

	Parent Corporation A	Corporation B	Corporation C	Corporation D	Total
12/94 NTI (Loss)	\$ 5,168.00	(\$ 5,198.00)	(\$31,361.00)	\$1,807.00	(\$29,584.00)
		÷	÷		
		(\$36,559.00)	(\$36,559.00)		
Total Income	\$6,975.00	= .1422	= .8578		
Total Losses ( 36,559.00)		X(29,584.00)	X(29,584.00)		
Group Loss (\$29,584.00)					
NOL Carry Forward	-0-	(4,207.00)	(25,377.00)	-0-	(29,584.00)
12/94 NOL Claimed 12/95		<u>2,292.00</u>	<u>13,826.00</u>		<u>16,118.00</u>
New NOL Carry Forward to 12/96		(1,915.00)	(11,551.00)	-0-	(13,466.00)

Allocation of NOL		(4,207.00)	(25,377.00)		
		÷	÷		
		<u>(29,584.00)</u>	<u>(29,584.00)</u>		
		= .1422	= .8578		
		<u>X 16.118</u>	<u>X 16.118</u>		
		(2,292.00)	(13,826.00)		
12/95 NTI (Loss)	1,236.00	(2,035.00)	5,692.00	11,225.00	16,118.00
NOL Allowed	<u>-0-</u>	<u>(2,292.00)</u>	<u>(13,826.00)</u>	<u>-0-</u>	<u>(16,118.00)</u>
Taxable Income	1,236.00	(4,327.00)	(8,134.00)	11,225.00	-0-

12/94 FORMULA: (Entity Loss ÷ Total Loss) X Group Loss = NOL carry forward per entity.

12/95 FORMULA: (Entity Loss ÷ Group NOL) X NTI for current year = Amt. claimed from entity with available NOL.

### Example 2:

Common parent: Corporation A was a single entity through 1994 and formed a consolidated group when Corporation B was incorporated in 1995. Corporation B was never a part of another group nor did it ever file by itself. Corporation A's 1993 and 1994 NOL is used to offset the 1996 consolidated income from both A and B. The remaining balance of Corporation A's 1994 NOL carry forward is thirty-six thousand four hundred dollars (\$36,400) (\$40,000 less \$3,600) and may be used by the consolidated group subject to the five-year NOL carry forward provision stated in Arkansas Code § 26-51-427. This example assumes there are no nontaxable income adjustments for the loss years of 1993, 1994, and 1995.

	<u>A</u>	<u>B</u>	<u>Consolidated Total</u>
1993 NTI (Loss)	(\$5,000)	--	--
1994 NTI (Loss)	(40,000)	--	--
1995 NTI (Loss)	(7,000)	(3,000)	(10,000)
1996 NTI Before NOL	600	8,000	8,600
A's NOL Allowed from 1993	(5,000)	--	(5,000)
A's NOL Allowed from 1994	(3,600)	--	(3,600)
1996 NTI			-0-

**Example 3:** Separate return year: Corporation A and B are members of a federal consolidated group that filed separate Arkansas returns for 12/94 and 12/95 and a consolidated Arkansas return in 12/96. The 12/94 and 12/95 years are separate return years.

	A	B	Consolidated Total
12/94 Separate Arkansas Returns Filed	(\$ 5,000)	(\$ 2,000)	--
12/95 Separate Arkansas Returns Filed	3,000	( 3,000)	--
12/94 NOL Claimed in 12/95	(3,000)	-0-	--
12/95 Taxable Income	-0-	( 3,000)	--
12/96 Consolidated Arkansas Return Filed	3,000	3,000	6,000
Taxable Income Before NOL			
12/94 NOL Claimed in 12/96	(2,000)	(2,000)	(4,000)
12/95 NOL Claimed in 12/96 from Corp. B	-0-	( 2,000)	(2,000)
12/96 Taxable Income	1,000	( 1,000)	-0-

**Example 4:** Separate return limitation year: Corporation A and B filed as separate entities through 1994. On January 1, 1995, Corporation A bought one hundred percent (100%) of Corporation B. The NOL of Corporation B is limited by the separate return limitation year restrictions and can only offset its own income. This example assumes there are no nontaxable income adjustments for the loss years.

	A	B	Consolidated Total
1993 NTI (Loss)	(\$ 5,000)	(\$10,000)	--
1994 NTI (Loss)	( 2,000)	( 10,000)	--
1995 NTI (Loss)	10,000	( 1,000)	9,000
A's NOL Allowed from 1993	( 5,000)	--	(5,000)
A's NOL Allowed from 1994	<u>( 2,000)</u>	<u>--</u>	<u>(2,000)</u>
Net Taxable Income (for the 1995 tax year)	\$ 3,000	(\$ 1,000)	\$2,000
1996 NTI	5,000	2,000	7,000
B's NOL Allowed from 1993	<u>-0-</u>	<u>(2,000)</u>	<u>(2,000)</u>

Net Taxable Income	\$5,000	-0-	\$ 5,000
1997 NTI	2,000	5,000	7,000
B's NOL Allowed from 1993	<u>-0-</u>	<u>(5,000)</u>	<u>(5,000)</u>
Net Taxable Income	\$ 2,000	-0-	\$ 2,000
1998 NTI (Loss)			
(No NOL available since B has a loss)	5,000	(2,000)	\$3,000
B's NOL Carry forward for 1999			
1993 (Loss)		Expired	
1994 (Loss)		(10,000)*	

\* (Subject to SEPARATE RETURN LIMITATION YEAR RULE - Can only offset "B" corporation income.)

### Example 5:

Nontaxable add back: Corporation A has five thousand dollars (\$5,000) of nontaxable interest income.

	A	B	Total
1993 NTI (Loss)	(\$ 10,000)	\$ 2,000	(\$8,000)
Corporation B Income	2,000	( 2,000)	--
*Nontaxable Add-back	<u>5,000</u>	<u>-0-</u>	<u>5,000</u>
NOL Carry forward	(\$ 3,000) -	0-	(\$ 3,000)

Corporation A has six thousand dollars (\$6,000) of nontaxable interest income, but the add back is limited to the loss of the entity earning nontaxable income.

1994 NTI (Loss)	(\$ 5,000)	(\$ 3,000)	(\$8,000)
*Nontaxable Add-Back	<u>5,000</u>	<u>-0-</u>	<u>5,000</u>
NOL Carry forward	-0-	(\$ 3,000)	(\$3,000)

### Example 6:

Member leaving group: Corporations A, B, and C filed as a consolidated group through 12/95. On January 1, 1996, Corporation

C

was sold to Corporation D, and the NOL of Corporation C is taken to

the new group (but limited to SRLY). Corporation D has no NOL carryover.

	A	B	C	Total
1993 NTI (Loss)	(\$ 5,000)	\$ 2,000	(\$ 1,000)	(\$ 4,000)
Gains \$2,000				
Losses ( 6,000)	÷		÷	
Net Loss (\$ 4,000)	<u>( 6,000)</u>		<u>( 6,000)</u>	
	=.8333		=.1667	
	X( 4,000)		X( 4,000)	
NOL	(\$ 3,333)	-0-	(\$ 667)	(\$ 4,000)
Allocation of 1993 NOL to 1994	.8333		.1667	
	X( 2,000)		X( 2,000)	
	(\$ 1,667)		(\$ 333)	
1994 NTI (Loss)	1,000	(\$ 3,000)	\$ 4,000	\$ 2,000
NOL From 1993	( 1,667)		( 333)	(\$2,000)
	(\$ 667)	(\$ 3,000)	\$ 3,667	-0-
1995 NTI (Loss)	(\$ 5,000)	(\$ 4,000)	(\$ 1,000)	(\$10,000)

	A	B	C	D
NOL Carryover Summary:				
1993	(\$ 1,666)	-0-	(\$ 334)	-0-
1994	-0-	-0-	-0-	-0-
1995	(\$ 5,000)	(\$ 4,000)	(\$ 1,000)	-0-

	A	B	Total	C	D	Total
1996 NTI (Loss)	10,000	5,000	15,000	( 2,000)	5,000	3,000
NOL Allowed						
From 1993	( 1,666)	-0-	( 1,666)	SRLY	-0-	
From 1994	<u>( 5,000)</u>	<u>( 4,000)</u>	<u>( 9,000)</u>	<u>SRLY</u>	<u>-0-</u>	
	3,334	1,000	4,334	( 2,000)	5,000	3,000
1997 NTI (Loss)	1,000	( 500)	500	3,000	( 1,000)	2,000
NOL Allowed						
From 1993	-0-	-0-	-0-	Expired	-0-	-0-
From 1995	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>( 1,000)</u>	<u>-0-</u>	<u>( 1,000)</u>
	1,000	( 500)	500	2,000	( 1,000)	1,000

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** I.R.C. § 1501 et seq., is codified at 26 U.S.C. § 1501 et seq.

**26 CAR § 130-148. Filing returns — Arkansas Code § 26-51-806.**

**(a) Time and place — Arkansas Code § 26-51-806(a).**

(1) Income tax returns must be filed on or before the fifteenth day of May following the close of the calendar year.

(2) If the taxpayer files a return on the basis of a fiscal year, the return must be filed with the Secretary of the Department of Finance and Administration on or before the expiration of four and one-half (4 1/2) months from the end of the fiscal year.

(3) A corporation going into liquidation during any given tax year may, upon the completion of such liquidation, prepare a return for that year covering its income for the part of the year in which it was engaged in business and may immediately file such return with the secretary.

**(b) Time and place — Federal consolidated group — Arkansas Code § 26-51-806(a).**

(1) In the case of a member of a federal consolidated group that files a separate return in Arkansas and that ceases to be a member of the consolidated group at some point during the tax year, the due date for filing the Arkansas short period return shall be the same date as the due date for the remaining members of the consolidated group.

(2) No penalty for late filing will be due for any such return if it is filed on or before the due date (or extended due date) for the other members.

(3) However, interest will be charged on any unpaid tax liability beginning on the fifteenth day of the fifth month following the end of the short period.

(4) See 26 CAR § 130-113(d)(3) for an explanation of when short tax periods are deemed to have ended.

**Example 1:** D Corporation, a member of DEF group, files a separate Arkansas return and a federal consolidated return on a calendar year basis. D Corporation is sold on April 12, 1993. DEF group has a federal extension to file its 12/93 return on September 15, 1994. The separate

Arkansas return of D Corporation for the tax period beginning January 1, 1993, and ending April 12, 1993, will be due September 15, 1994. No penalty for late filing of D Corporation's Arkansas return will be assessed unless it is filed after September 15, 1994. However, interest on any unpaid tax liability will be charged from August 15, 1993, until the return is filed and the tax is paid.

**Example 2:** Same facts as above except no federal extension was made. The Arkansas return of D Corporation for the short tax year ending April 12, 1993, will be due May 15, 1994, for purposes of determining late filing penalty, and any applicable interest will be charged from August 15, 1993.

**(c) Forms — Arkansas Code § 26-51-806(b)(1).**

(1) Corporation income tax booklets, which include forms and instructions, will be mailed to those corporations on record as filing their return during the previous year.

(2) Those corporations that used a paid tax preparer will receive a postcard with a label to be given to their tax preparer.

(3) However, it is the responsibility of the taxpayer to obtain forms and file income tax returns.

(4) Subchapter C corporation income tax forms:

(A) Can be obtained by mail at the following address: Corporation Income Tax Section, Department of Finance and Administration, P.O. Box 919, Little Rock, AR 72203-0919; or

(B) May be obtained at the Corporation Income Tax Section during normal office hours.

(5) Most forms may be downloaded from the website found under the Arkansas homepage, <https://www.dfa.arkansas.gov/>.

**(d) Substitute forms — Arkansas Code § 26-51-806(b)(1).**

(1) To ensure accurate, uniform, and efficient processing of tax information, any substitute tax forms must be preapproved in writing, before use, by the manager of the Corporation Income Tax Section.

(2) A substitute tax form is any tax return, schedule, statement, or declaration (including any commercially or electronically reproduced versions) for which the Department of Finance and Administration has prescribed a certain format and which is not an exact reproduction or copy of such format.

(3) Any substitute tax forms filed with the department, for which prior written approval from the Corporation Income Tax Section was not obtained, may be categorized by the department as an incomplete filing.

(4) Approval requests should be submitted to the manager of the Corporation Income Tax Section at the address listed in subsection (c) of this section.

(5) Other references: Arkansas Code § 26-18-301(c) and § 26-51-904.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-149. Filing returns — Arkansas Code § 26-51-807.**

**(a) Federal extension of time — Arkansas Code § 26-51-807.**

(1)(A) It is important that a complete income tax return be filed on or before the return's due date.

(B) An incomplete income tax return will not be accepted.

(2)(A) If the taxpayer is unable to file a complete return on or before the return's due date, the Department of Finance and Administration is authorized to grant a reasonable extension of time for filing the income tax return.

(B) Form AR1055, Request For Extension Of Time For Filing Income Tax Returns, is available for use in requesting an extension.

(C) The request should state in detail the necessity for the extension and whether or not the federal government has granted such extension.

(3) If the request is approved, the department will mail a confirmation to the taxpayer.

(4) A copy of the confirmation must be attached to the income tax return when it is filed.

(5) A tax practitioner submitting a request for an extension of time must complete a separate request for each taxpayer.

(6) Refer to 26 CAR § 130-111(a) and (b) for important related information on state extensions of time.

(7)(A) Any federal extensions that have been taken should be applied first.

(B) Arkansas (that is, state) extensions should be applied subsequent to any federally granted extensions.

(8) Requests for extensions on Subchapter C corporation income tax returns should be addressed to:

Department of Finance and Administration  
Corporation Income Tax Section  
P.O. Box 919  
Little Rock, Arkansas 72203-0919

**(b) Federal extension of time — Arkansas Code § 26-51-807.**

(1)(A) The following procedures for reviewing and granting extensions for filing Arkansas corporation income tax returns have been established for the Corporation Income Tax Section of the Department of Finance and Administration.

(B) Refer to 26 CAR § 130-111(a) and (b) for important related information on state extensions of time.

(2)(A) Any federal extensions that have been taken should be applied first.

(B) Arkansas (that is, state) extensions should be applied subsequent to any federally granted extensions.

**(3) Due date for Arkansas corporation income tax returns.**

(A) All Arkansas income tax returns for corporations made on the basis of a calendar year shall be filed on or before the fifteenth day of May following the close of the calendar year.

(B) Such returns made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fifth month following the close of the fiscal year.

**(4) Extension of time for filing an Arkansas income tax return with a federal extension — Examples.**

(A) Any corporation that requests an automatic federal extension of time for filing a federal income tax return and attaches a copy of the request to the corporation's Arkansas income tax return shall automatically receive an extension of time until the due date of the federal income tax return to file the Arkansas return.

**Example:** Calendar year ending December 31, 1993, therefore federal return's original due date is March 15, 1994, and the Arkansas return's original due date is May 15, 1994. If a copy of the federal

six-month extension is attached to the Arkansas return, the Arkansas return must be filed on or before the federal extended due date of September 15, 1994 (original federal due date March 15, 1994, plus the six-month federal extension).

(B)(i) The department may allow further time for filing income tax returns under the provisions for extensions in Arkansas Code § 26-18-505.

(ii) A corporation that receives a federal extension shall automatically receive an extension of time until the due date of the federal return, plus an additional thirty-day, sixty-day, or ninety-day extension if requested (under Arkansas Code § 26-18-505) before the due date of the federal extension.

(iii) A copy of the federal extension must be attached to the first extension request under Arkansas Code § 26-18-505.

(iv) A second extension under Arkansas Code § 26-18-505 of thirty (30), sixty (60), or ninety (90) days may be granted if the corporation demonstrates the existence of extraordinary circumstances.

(v) The request for a second extension must be made before the due date allowed by the first extension.

**Example 1:** Calendar year ending December 31, 1993, therefore federal return's original due date is March 15, 1994, and the Arkansas return's original due date is May 15, 1994. The corporation has received a federal extension and requests additional time beyond the federal extension to file its Arkansas return. The first extension request under Arkansas Code § 26-18-505 must be filed on or before September 15, 1994 (original federal due date of March 15, 1994, plus a six-month federal extension). The request must be filed on Arkansas Form AR1055, stating the reason for the request and the requested time period (either thirty (30), sixty (60), or ninety (90) days). If a ninety-day extension is approved, the Arkansas return must be filed on or before December 15, 1994 (original federal due date of March 15, 1994, plus six-month federal extension, plus ninety-day Arkansas extension).

**Example 2:** Calendar year ending December 31, 1993, with a six-month federal extension and a ninety-day extension approved under Arkansas Code § 26-18-505. Corporation requests an additional extension under Arkansas Code § 26-18-505 due to extraordinary circumstances. The request for an additional extension must be filed on or before December 15, 1994 (original federal due date of March 15, 1994, plus the six-month federal extension, plus the first ninety-day extension under Arkansas Code § 26-18-505). The request must be filed on Arkansas Form AR1055, stating the reason for the request and the requested time period (either thirty (30), sixty (60), or ninety (90) days). If

the additional ninety-day extension is approved, the Arkansas return must be filed on or before March 15, 1995 (original federal due date of March 15, 1994, plus the six-month federal extension, plus the first ninety-day extension under Arkansas Code § 26-18-505, plus the second (or additional) ninety-day extension under Arkansas Code § 26-18-505).

(C) If an extension request is denied, the taxpayer shall file its Arkansas income tax return and pay any tax, penalty, and interest due thereon at the rate prescribed by Arkansas law, calculated from the return's original due date until the date the return is filed and any tax due thereon is paid.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-150. Minimum estimated tax — Generally — Arkansas Code § 26-51-912.**

(a) When a taxpayer files a declaration of estimated tax, it must be either one hundred percent (100%) of the prior year's tax liability or ninety percent (90%) of the tax liability for the current tax year.

(b) To avoid underestimate penalty, estimated tax payments shall be made by the quarterly installment due dates.

(c) If a taxpayer's income varied during the tax year, it may be able to reduce any underestimate penalties by computing the penalties using the annualized method, in which case both forms AR2220A and AR2220 should be completed.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-151. Payment of estimated tax — Arkansas Code § 26-51-913.**

(a) Claimed on income tax return — Arkansas Code § 26-51-913(a).

(b) Once a payment or refund has been declared as an estimated payment for the next succeeding tax year, it is considered to be a payment for the next tax year's debt and cannot be claimed until that tax year's return is filed.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-152. Water conservation incentives — Arkansas Code § 26-51-1001 et seq.**

**(a) Credit for water resource projects, water impoundments, and water control structures — Arkansas Code § 26-51-1006 [repealed].**

(1)(A) The income tax credit for water resource projects, water impoundments, and water control structures is issued and verified through the Arkansas Natural Resources Commission.

(B) The commission, upon acceptance and approval of the project, will issue a certificate and tax credit approval document to the taxpayer.

(C) In the year the project is completed, the commission will issue the taxpayer a certificate of completion for tax credit document.

(2)(A) In order to claim the income tax credit prior to the completion of the project, the taxpayer must attach the certificate of tax credit approval to its income tax return.

(B) If the project has been completed, the certificate of completion for tax credit must be attached to the taxpayer's income tax return.

(C) The income tax credit is limited to nine thousand dollars (\$9,000) or the amount of the taxpayer's computed tax liability for the tax year, whichever is the smaller amount.

(D) Any unused income tax credit may be carried forward for up to nine (9) consecutive tax years following the tax year in which the credit originated.

(3) If a certificate of completion is not issued by the commission within three (3) years of the certificate of tax credit approval date, the taxpayer will be subject to an

assessment by the Corporation Income Tax Section of the Department of Finance and Administration for the repayment of those credits previously taken, including interest.

(4)(A) Any water resource or surface water conservation project approved prior to December 31, 1995, must comply with the provisions established under the Water Resource Conservation and Development Incentives Act of 1985 [repealed].

(B) The 1985 act limited the credit to three thousand dollars (\$3,000) per year with a ten-year carryforward allowed.

**(b) Credit for abandoning or reducing the extraction of groundwater — Arkansas Code § 26-51-1007.**

(1)(A) The income tax credit for abandoning or reducing the extraction of groundwater and utilizing surface water in lieu of groundwater is issued and verified through the commission.

(B) The commission will issue a certificate of tax credit approval and certificate of completion for tax credit in the same manner as outlined in subsection (a) of this section.

(2)(A) In order for the taxpayer to claim this credit, the appropriate certificate must be attached to its income tax return.

(B) The income tax credit is limited to nine thousand dollars (\$9,000) or the amount of the taxpayer's computed tax liability for the tax year, whichever is the smaller amount.

(C) Any unused income tax credit may be carried forward for up to two (2) consecutive tax years following the tax year in which the credit originated.

(3)(A) If the corporation is claiming more than one (1) income tax credit, the corporation should specify in which order the credits should be claimed.

(B) If not specifically stated, the department will utilize the credits in the order which it perceives to be to the best advantage of the corporation.

**(c) Credit for surface water conversion within critical areas — Arkansas Code § 26-51-1008.**

(1)(A) With respect to agricultural or recreational water projects, the income tax credit is limited to nine thousand dollars (\$9,000) or the amount of the taxpayer's computed tax liability for the tax year, whichever is the smaller amount.

(B) Any unused credit may be carried forward for up to two (2) consecutive tax years following the tax year in which the credit originated.

(2)(A) For industrial or commercial water projects, the income tax credit is limited to thirty thousand dollars (\$30,000) or the amount of the taxpayer's computed tax liability for the tax year, whichever is the smaller amount.

(B) Any unused credit may be carried forward for up to four (4) consecutive tax years following the tax year in which the credit originated.

(3) The income tax credit set forth in Arkansas Code § 26-51-1008 shall be available for tax years beginning on or after August 1, 1997.

**(d) Application and approval procedure — Arkansas Code § 26-51-1010(c).**

(1)(A) The commission will issue a certificate of tax credit approval to applicants that propose water conservation projects that meet the requirements of the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq.

(B) Upon completion of the project, the commission will issue a certificate of completion for tax credit to the taxpayer.

(2)(A) The taxpayer must attach the certificate of tax credit approval to the income tax return on which it first claims the income tax credit.

(B) The certificate of completion for tax credit must be attached to the first tax return filed by the taxpayer after the certificate has been issued.

**(e) Multiple credits — Arkansas Code § 26-51-1010(d).**

(1) If a taxpayer is claiming more than one (1) water conservation income tax credit, the taxpayer should specify on its return the order in which the credits should be applied.

(2) If no such specification is made, the department will apply the credits in the order which would be of best advantage to the taxpayer.

**(f) Project completion and maintenance — Arkansas Code § 26-51-1011.**

(1)(A) All water conservation projects must be completed within three (3) years of the date that the certificate of tax credit approval was issued.

(B) If the project is not completed within this three-year period:

(i) All credits claimed must be repaid to the department; and

(ii) The project will be disallowed for any further water conservation income tax credits.

(2)(A) All water conservation projects must be maintained for a minimum life of ten (10) years after the certificate of completion for tax credit has been issued.

(B) If the taxpayer terminates the project at any time during the first ten (10) years, the taxpayer must notify the commission and the department in writing of the termination.

(C) In addition, the taxpayer must promptly file an amended income tax return after the termination and repay any tax credits claimed but not earned.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** Arkansas Code § 26-51-1006 was repealed by Acts 2011, No. 631, § 4.

The Water Resource Conservation and Development Incentives Act of 1985 was repealed by Acts 1995, No. 341.

**26 CAR § 130-153. Donations and sales to educational institutions —  
Limit on total credit for qualified research expenditures, donations, and sales  
— Arkansas Code § 26-51-1103.**

(a)(1) A taxpayer may receive an income tax credit for qualified research expenditures, donations, and sales to qualified educational institutions as set forth in Arkansas Code § 26-51-1102.

(2) The taxpayer, when claiming this income tax credit, must attach to its income tax return the documentation required by Arkansas Code § 26-51-1104.

(b) The income tax credit is limited to fifty percent (50%) of the taxpayer's tax liability, after all other credits and reductions have been calculated.

(c) The income tax credit must be claimed for the tax year in which the qualified research expenditure, donation, or sale occurred.

(d) Any unused income tax credit may be carried forward during the three (3) consecutive tax years immediately following the tax year for which the credit is first established.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 130-154. Steel mill tax incentives — Arkansas Code § 26-51-1213.**

(a) Credits and NOL – Arkansas Code § 26-51-1213(a).

(b) Taxpayers may be eligible to claim both enterprise zone credits and an NOL deduction for the same tax year.

(c) If the NOL or credit cannot be fully claimed for the tax year in which established or earned, the remainder may be carried forward during the nine (9) consecutive tax years immediately following the tax year for which the credit or NOL is first established.

**Authority.** Arkansas Code § 26-18-301.

**Codification Notes.** "NOL" means net operating loss.

**26 CAR § 130-155. Low-income housing — Housing tax credit — Arkansas Code § 26-51-1701 et seq.**

(a)(1) This tax credit applies to taxpayers that own an interest in a low-income housing project that has been qualified by the Arkansas Development Finance Authority.

(2) An eligibility statement, which must be attached to the taxpayer's income tax return in order to claim the credit, is issued by the authority stating the amount of credit allowable.

(b) The credit for Arkansas income tax purposes shall be twenty percent (20%) of the federal low-income housing credit.

(c) If the credit cannot be fully claimed for the tax year in which established, there is a carryforward period to the next five (5) consecutive tax years.

(d) This credit is subject to recapture if the taxpayer's housing project becomes disqualified.

(e) The low-income housing credit applies to time periods after August 1, 1997, and is available on a first-come, first-served basis until a two-hundred-fifty-thousand-dollar per year limit is reached.

**Authority.** Arkansas Code § 26-18-301.