

# **TAX ADVISORY COUNCIL**

## **2014 YEAR-ENDING REPORT**

(Meetings Chaired by A.W. Bailey, Arkansas Society of Accountants)

### **Definition**

**Purpose:** The Tax Advisory Council (TAC) was created by Act 998 of 1991. It consists of tax professionals and representatives of interested public and professional groups, including the Arkansas Bar Association Tax Section, the Arkansas Society of Accountants, the Arkansas Society of Certified Public Accountants, and employees of the Department of Finance and Administration's Revenue Division. The Council provides input to the General Assembly during the legislative process by studying and recommending changes to tax laws. It also promotes a better understanding of those tax laws and changes. At the end of every calendar year, a report summarizing discussions and decisions made by the TAC is prepared to inform the chairmen of the Revenue and Taxation Committees and members of the State's House of Representatives and Senate.

### **Membership** **(Arranged by Organization)**

Arkansas Bar Association:

TJ Lawhon, Michael Parker, and Jane Strike

Arkansas Society of Accountants:

A.W. Bailey

Arkansas Society of Certified Public Accountants:

Bruce Alt and Stan Kozij

Arkansas Department of Finance and Administration (DFA), Revenue Division:

Walter Anger, Assistant Commissioner of Operations and Administration;

John H. Theis, Assistant Commissioner of Revenue for Policy and Legal;

Martha Hunt, Chief Counsel (retired as of September 30, 2014), Revenue Legal Counsel;

Paul Gehring, Chief Counsel (effective October 1, 2014), Revenue Legal Counsel;

Tom Atchley, Administrator, Excise Tax;

Deanna Munds-Smith, Administrator, Field Audit;

Clarence Collins, Interim Administrator (effective April 8, 2014 to July 7<sup>th</sup>, 2014), Income Tax;

Lynne Reynolds, Administrator (effective July 8, 2014), Income Tax;

Roberta Overman, Manager, Sales and Use Tax;

Scott Fryer, Manager, Corporation Income Tax;

Andy Morgan, Manager, Central Audit District;

Matthew Turner, Division Manager I, Individual Income Tax;

Travis Venable, Tax Division Manager, Arkansas Integrated Revenue System (AIRS);

David Rector, Problem Resolution Officer; and

Monica Carmichael, Public Information Specialist.

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## Meetings

Members of the TAC met four times during 2014 on the following dates:

<u>Meeting dates</u>	<u>Total Present</u>
February 11, 2014	14
May 13, 2014	16
August 12, 2014	13
November 4, 2014	13

These meetings were held in Conference Room 2330 of the Joel Ledbetter Building. Meetings averaged one (1) to one and one-half (1 ½) hours in length and were open to the public and to all representatives of the State Senate and House of Representative Revenue and Taxation Committees.

## Summary

**Tax Advisory Council Activities:** The following is a brief summary of what transpired during the TAC's 2014 meetings.

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## Office of Revenue Legal Counsel:

### Summary of litigation:

### Status of Lawsuits Filed:

***Theresa Holbrook v. Healthport, Inc.,*** Pope County Circuit Court, Case Number CV2010-588—As discussed in the May 13, 2014 TAC Meeting, the original complaint in this lawsuit was filed by Holbrook against Healthport requesting a refund of sales tax collected by Healthport in connection with providing medical records to Holbrook for a fee. The lawsuit also requested certification of a class of persons or entities who had paid tax to medical records providers. The lawsuit eventually proceeded procedurally on only the legal issue of whether the sale of the medical records are subject to tax. The circuit court held that the sale is taxable when the records are provided in tangible form (paper copies). The plaintiff appealed the case to the Arkansas Supreme Court. The Arkansas Supreme Court held that the order did not comply with the procedural requirements of Rule 54(b) of the Arkansas Rules of Civil Procedure and dismissed the appeal without prejudice on February 28, 2013 (2013 Ark. 87). An amended order was entered, and a notice of appeal was filed on August 1, 2013. The case was orally argued in the Arkansas Supreme Court in March 2014. On April 3, 2014, the Arkansas Supreme Court issued a decision upholding the circuit court's finding that sales of paper copies of medical records by a medical records providers to patients are taxable as sales of tangible personal property (2014 Ark. 146).

***Gary Sanford et al. v. Weiss,*** Pulaski County Circuit Court, 5<sup>th</sup> Division, Case Number: 60CV-10-3462—As discussed in the November 4, 2014 TAC Meeting, this case is a challenge to the interest that is assessed on tax delinquencies after a Certificate of Indebtedness (COI) has been filed. The case was filed as an "illegal exaction" challenge and civil rights claim. The plaintiff alleges the collection of interest violates Article 19, § 13, which is the constitutional usury provision as made applicable by Ark. Code Ann. § 16-65-114 (the statute that governs the interest rates on judgments). The court dismissed the civil rights claim. The plaintiff subsequently amended the complaint, adding back the civil rights claim and continuing the illegal exaction claim. DFA filed a motion to dismiss the amended complaint. The trial on this case was held on June 6, 2014. The court dismissed both claims in the case, holding that the plaintiff did not plead sufficient facts to support either the illegal exaction claim or the claim that plaintiff's civil rights were violated. The plaintiff filed another motion for a new trial

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that was subsequently denied on October 2, 2014. Three notices of appeals were filed by the plaintiff, and the last notice of appeal was filed on October 7, 2014. The parties have provided the Arkansas Supreme Courts with briefs and oral argument, and a decision by the Court is forthcoming.

***Weatherford Artificial Lift Systems, Inc. v. Weiss***, Pulaski County Circuit Court, 6<sup>th</sup> Division, Case Number: 60CV-11-3290—As discussed in the November 4, 2014 TAC Meeting, the plaintiff in this case alleges three alternative causes of action, all relating to the purchase of various tangible personal property (including silicon dioxide, silicon dioxide coated with resins, and aluminum silicate and aluminum oxide based ceramics) that were used by the plaintiff in the services it provides to the natural gas extraction industry in areas where the gas is extracted from areas of shale. The issue in the case concerns the taxability of various materials used as proppants in natural gas extraction. The case was tried on February 5, 2013. The circuit court judge ruled from the bench, finding that the proppants are exempt as equipment used in manufacturing. The briefing process concluded on October 16, 2014 in the appellate court. An oral argument was held on May 21, 2015, and a decision is forthcoming.

***H & S Maintenance, Inc. v Weiss***, Pulaski County Circuit Court, Case Number: 60CV-011-4268—As discussed in the November 4, 2014 TAC Meeting, the issue in this case concerns the taxability of initial installation of lawn sprinkler systems. The taxpayer filed the original lawsuit as an illegal exaction. The complaint has been amended several times by the plaintiff in response to motions to dismiss the illegal exaction claim. A hearing was held on May 7, 2014 on DFA's motion to dismiss. Judge Mary McGowan took it under advisement. On February 17, 2015, Judge McGowan issued an Order (filed February 18, 2015) fully dismissing the case without prejudice. This Order was not appealed by the plaintiff.

***L.A. Darling Company v. Weiss***, Greene County Circuit Court, Case Number: CV-2012-173—As discussed in the November 4, 2014 TAC Meeting, the plaintiff is a direct pay taxpayer, and one of the issues in the taxpayer's complaint concerns transactions in which the taxpayer paid tax to the vendor by way of a credit card (also called a P-Card) and also accrued and paid tax to the Department as required under its direct pay permit. The Department denied plaintiff's refund request as to these transactions and informed plaintiff that the proper way to have obtained a refund would have been to either request the refund from the vendor or obtain a vendor assignment that would have allowed plaintiff to request the refund directly from the Department. The plaintiff filed suit, and the court held a hearing on the parties' cross motions for summary judgment on August 8, 2014. On April 13, 2015, Judge Pamela Honeycutt issued an order (filed April 27, 2015) granting DFA's motion for summary judgment on the direct pay (P-Card issue). The second issue in the case, which dealt with claims for refund based upon the manufacturing exemption, was resolved by the parties after plaintiff provided DFA with information sufficient to allow the exemption. Plaintiff did not appeal Judge Honeycutt's Order.

***Alert Alarm Systems, Inc. v Weiss***, Sebastian County Circuit Court, Case Number: CV-13-0323—As discussed in the November 4, 2014 TAC Meeting, the issue in this case concerns the taxability of materials that the plaintiff purchased and installed in connection with its alarm installation and monitoring business. The complaint has been amended three times in response to DFA motions to dismiss. The most recent motion to dismiss was denied, and DFA answered. There have been a number of procedural issues with this case, and no merits have been reached on this case. As of the date of this meeting, the case is still in discovery. Mr. Parker asked if DFA's position on this case will be consistent with DFA's position on another case involving a security system company. Mr. Theis asked Mr. Parker to remind him of the case, and after he consults with Michelle Baker, attorney on the case, he will follow-up with him at that time.

### **New Cases**

***CSCMS v. DFA***, Boone County Circuit Court, Case Number: CV2013-218-1—As discussed in the February 11, 2014 TAC Meeting, this is a challenge to an administrative hearing

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decision that upholds the closure of the business under the business closure law. This case was dismissed after plaintiff paid the tax liability in question and withdrew its complaint.

***American Society of Civil Engineers v. Weiss***, Pulaski County Circuit Court, Case Number: 60CV-13-4554—As discussed in the February 11, 2014 TAC Meeting, this case is a challenge to an administrative hearing decision revoking a bingo permit issued to the plaintiff organization. This case is in the discovery phase, and a trial has been scheduled for October 15, 2015.

***Flis Enterprises, Inc. dba Burger King v. Richard Weiss***, Pulaski County Circuit No. 60CV-14-1628—As discussed in the May 13, 2014 TAC Meeting, Burger King was audited, and the audit revealed Burger King was not remitting any tax on the meals they provided free of charge to their managers. The auditors assessed tax on the retail price of the meals which is the same price Burger King would have charged for a meal they would have sold to a customer. Burger King's argument is that they do admit they did not remit any taxes, but Burger King believes they should only remit taxes on the cost of the ingredients. Both parties have submitted motions for summary judgment, and a decision in the circuit court is forthcoming.

***AT&T Mobility Wireless Operations Holding Inc. successor to Pine Bluff Cellular, Inc.***, Pulaski County Circuit Court, 6<sup>th</sup> Division, Case Number: 60CV-14-1722—As discussed in the November 4, 2014 TAC Meeting, this case involves a claim by AT&T for refund of taxes that AT&T collected from its customers on internet access charges billed to its customers. AT&T filed the refund claim more than six months ago. DFA has not denied or paid the claim. At any time after the passage of six months if DFA does not respond to the claim, the taxpayer or whoever filed the refund claim can sue. AT&T has sued DFA. This case began in federal court where AT&T was sued by plaintiffs stating AT&T should not have collected sales tax on charges for internet access. DFA was not a party to that federal court case, and was not notified, or otherwise served in the federal lawsuit. A form of service which is a notice regarding a class action lawsuit was given to the Arkansas Attorney General, but the form of service did not give the attorney general any notice that this was a tax case. Since no state agency was a party in the lawsuit, DFA assumed the attorney general thought he was given notice of a class action lawsuit, and the federal court would decide if it was a tax case. If there is a remedy in state court, the Tax Injunction Act states a tax action against a state cannot be brought in federal court. Similar cases such as this in other states were handled in this manner throughout the country and were consolidated in federal court in a multidistrict litigation and transferred to the Northern District of Illinois. The primary question to be litigated is if the refund claim handled in this manner complies with the Arkansas Tax Procedure Act. In a previous meeting on August 12, 2014 TAC Meeting, the complaint had been amended, and DFA filed another motion to dismiss. A hearing on DFA's motion to dismiss was held on December 3, 2014, and the court denied DFA's motion. Discovery is ongoing, and no further hearings have been scheduled.

***Robert Nunn v. Richard Weiss***, Director, Pulaski County Circuit Court, Case Number: 60CV-14-2403—As discussed in the November 4, 2014 TAC Meeting, this is a challenge to the constitutionality Act 300 of the 2014 Fiscal Session. Act 300, DFA's appropriation bill, contains a provision providing a statutory sales tax exemption for the sale of proppants. The plaintiffs in this case alleged the proponents of the bill failed to obtain the required two thirds vote on a non-appropriation measure to be voted on in a fiscal session. Plaintiffs also alleged that Act 300 violates Article 5 § 21 of the Arkansas Constitution, which requires that any amendment to a bill apply to the original purpose of the act. The plaintiffs also alleged an illegal exaction. DFA filed an answer denying the claim of an illegal exaction since the complaint neither states that the tax itself is illegal nor states that the funds resulting from the collection of the tax have been misused. Since DFA took a position consistent with the plaintiff's legal position on the constitutionality of Act 300 in testimony before the General Assembly during the Fiscal Session and at the time of the Governor's veto speech on Act 300, DFA's answer also conceded that Act 300 was unconstitutional. Therefore, DFA alerted the leadership in the Arkansas House of Representatives and Senate, along with the Attorney General, that DFA could not defend the lawsuit. Thereafter, the Attorney General intervened in the case to defend the constitutionality of the Act. The

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circuit court issued an order on September 19, 2014 allowing the Attorney General to intervene. The Attorney General filed a motion to dismiss based upon plaintiff's lack of standing to file the lawsuit. The circuit court has given plaintiff 30 days from the date the Arkansas Supreme Court issues its decision in the Weatherford v. Weiss case to file a response to the Attorney General's motion to dismiss.

***Welspun Tubular, LLC v. Weiss***, Pulaski County Circuit Court, Case Number: 60CV-14-2712—As discussed in the November 4, 2014 TAC Meeting, this is a manufacturing machinery and equipment exemption case. Welspun claims the steel grit it uses in their process to grade the pipes is exempt as equipment because it has complexity and continuing utility. DFA filed an answer on September 4, 2014 denying that plaintiff is entitled to the relief claimed.

***Keith Ingram v. Richard Weiss***, Crittenden County Circuit Court, Case Number: CV-2014-296—As discussed in the November 4, 2014 TAC Meeting, Crittenden County held a special election to increase the sales tax rate to fund a county hospital. The hospital had financial difficulties, and the association that took control of the hospital decided to cease operations. Mr. Ingram filed a lawsuit after the tax had been approved by voters. The tax was intended to fund the ongoing operations of the hospital. Mr. Ingram's lawsuit included a request for a temporary injunction to prohibit the collection of the sales tax. Mr. Ingram's argument was that the sales tax was passed with the intention it would still be a functioning hospital in the county. Crittenden County stated there is still a hospital in the county, and they need the tax monies in order to keep the building certified for compliance. The Crittenden County Circuit Court granted a temporary injunction in September 2014 to enjoin or prohibit the collection of tax. DFA notified the permit holders in Crittenden County that they would be collecting the increased sales tax amount. A special election was held in December of 2014 on the issue of whether this increased sales tax amount should be abolished, and the voters approved abolishing the tax. The circuit court has yet to issue a decision closing this case.

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### **Office of Excise Tax Administration:**

**Sales Tax Changes Effective January 1, 2014 (Passed During 2013 Regular Session)**—As discussed in the February 11, 2014 TAC Meeting, the following acts became effective January 1, 2014:

- **Act 623 of the 2013 Regular Session**—As discussed in the February 11, 2014 TAC Meeting effective January 1, 2014, all retailers who sell prepaid wireless devices or prepaid wireless calling cards are required to collect a sixty-five cents (\$.65) per transaction fee from the consumer and remit to DFA. The transaction fee was previously paid by the service providers. TAC members were reminded to inform their clients who are retailers who sell prepaid wireless devices or prepaid wireless calling cards that they must collect the \$.65 fee. In order for the \$.65 transaction fee not to be subject to sales tax, it must be stated separately on the invoice.
- **Act 1441 of 2013 Regular Session**—As discussed in the February 11, 2014 TAC Meeting, Act 1441 went into effect January 1, 2014. The Sales Tax Section has issued over 1800 farmer certificates. This act exempts utilities used for qualifying agricultural structures and qualifying aquaculture and horticulture equipment. It is a 100% exemption from state and local sales tax for electricity, natural gas, and liquefied petroleum (lp) gas when it is used for the authorized purposes set out in the law. Most certificates have been issued to poultry farmers, but some have been blueberry and pecan growers. Some equipment such as irrigation equipment is eligible for an exemption if they are growing fruits and vegetables. TAC members who have clients who are in commercial production and meet the eligibility exemption requirements were urged to tell their clients to contact the Sales Tax Section and apply for the exemption certificates. Even if farmers applied at

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the time of this meeting, the exemption is retroactive to January 1<sup>st</sup>. The Sales Tax Section is working with the utility providers to make sure the farmers are providing the certificates to the utility provider.

As discussed in the November 4, 2014 TAC Meeting, Mr. Alt questioned the activity level in the law change allowing a reduced sales tax rate for energy costs and some agriculture operations. Mr. Atchley answered by stating many taxpayers have registered with the Sales Tax Section and received information concerning reduced rates. The application forms can be found at the following link: <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Pages/Forms.aspx>. Mr. Theis added that the Arkansas Farm Bureau requested a presentation on Act 1441, and Mr. Atchley stated Sales Tax Section representatives attended the presentation and handed out forms to people in order for them to apply for the exemption. Mr. Alt asked if this exemption requires a separate meter, and Mr. Atchley answered by stating yes.

**Sales Tax Changes Effective July 1, 2014 (Passed During 2013 Regular Session)**—As discussed in the February 11, 2014 TAC Meeting, the following acts became effective July 1, 2014:

- **Act 1404**—This act establishes a partial refund of 1% of the state sales and use tax paid on the purchase of manufacturing repair or replacement parts which will be claimed directly on the reporting form. The eligible manufacturers must register and obtain a direct pay permit from the Sales Tax Section in order to claim the refund on the monthly tax return. The manufacturers will only receive the refund if they have a direct pay permit. The Sales Tax Section is developing a short one page application form for existing manufacturers who may need a direct pay permit in order to qualify for the refund. The new form should be on the DFA website in approximately 30 days. If the manufacturers are already existing account holders, they should not have to complete the long application form to receive a direct pay permit. If manufacturers apply for a direct pay permit, they will receive a new sales tax permit number for the direct pay permit in order to have a clear understanding of when the direct pay permit goes into effect. The Sales Tax Section had issues in the past when not issuing a new sales tax permit number. It created issues in an audit situation of discerning when the direct pay permit took effect.

As discussed in the May 13, 2014 TAC Meeting, the Sales Tax Section had not received many requests for direct pay permits. The Sales Tax Section has received approximately a dozen requests for direct pay permits. The Sales Tax Section was concerned that taxpayers do not realize that in order to qualify for the exemption they must obtain a direct pay permit to buy the repair or replacement parts tax free; then remit the tax directly to DFA on their tax return. If taxpayers attempt to claim eligibility for the partial refund of one percent (1%) and have not obtained a direct pay permit, the Sales Tax Section will send them a billing notice for the partial refund of one percent (1%) because it will not process in the system. It is extremely important for taxpayers to obtain the direct pay permit before they submit the refund exemption application.

- **Act 1411**—As discussed in the February 11, 2014 TAC Meeting, a new state sales tax rate change will go into effect for manufacturing utilities. This rate change concerns the state rate for manufacturers under NAICS code section 31 through 33 and cotton gins under NAICS code 115111. The state rate will reduce to 1.625% for the period July 1, 2014 through June 30, 2015.

As discussed in the May 13, 2014 TAC Meeting, cotton gins are a new industry that may be eligible to receive this rate reduction. In order to receive this rate reduction, taxpayers must apply for an exemption certificate. Utility companies are not going to authorize the rate reduction without an exemption certificate.

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- **Act 1414**—As discussed in the February 11, 2014 TAC Meeting, this act exempts the sale of dental appliances to or by a dentist, orthodontist, oral surgeon, maxillofacial surgeon, or endodontist from state and local sales and use tax beginning July 1, 2014.

As discussed in the May 13, 2014 TAC Meeting, the dentist must submit the refund claim to the seller of the dental appliances with an exemption certificate. Exemption certificates for the dental exemption may be found on the DFA website in both the streamlined and DFA versions. A direct pay permit is not needed in order to claim the dental appliance exemption.

**Arkansas Sales Tax Holiday (August 2 & 3 2014)**—As discussed in the February 11, 2014 TAC Meeting, the Arkansas Sales Tax Holiday will be held August 2<sup>nd</sup> through August 3<sup>rd</sup>, 2014. Retailers will receive the notice of the Arkansas Sales Tax Holiday in the April tax rate change notice. The Sales Tax Section has to give a 60 day notice to the retailers before the beginning of Arkansas Sales Tax Holiday. TAC members were reminded to tell their clients who are retailers that sell eligible tax exempt items that they must sell those items tax free during the Arkansas Sales Tax Holiday. During previous Arkansas Sales Tax Holidays, the Sales Tax Section received most of their complaints from customers who bought a tax exempt item from a retailer who did not sell the item as tax exempt. Retailers cannot choose to not participate in the Arkansas Sales Tax Holiday. If the retailer doesn't sell the item as tax exempt, the Sales Tax Section will instruct the customer to go back to the retailer for a refund of the tax paid. Mr. Alt asked if the list of eligible tax exempt items were listed on the DFA webpage. Ms. Overman answered by stating the list was available on the Sales Tax Section webpage located at the following link: <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Pages/taxHoliday.aspx>. Mr. Alt also asked if the list of eligible tax exempt items has recently changed. Mr. Atchley added the list of eligible tax exempt items has not changed since the Arkansas Sales Tax Holiday was first implemented in August 2012.

**Status of "Marketplace Fairness Act"**—As discussed in the February 11, 2014 TAC Meeting, there were not any new developments on United States Senate Bill 743 aka "Marketplace Fairness Act". It was now in the U.S. House of Representatives Judiciary Committee introduced as U.S. House of Representatives Bill 684. There hasn't been a lot of discussion as to when a formal hearing will be held on both versions of the bill. In September 2013, the House of Representatives Judiciary Committee Chairman, Bob Goodlatte of Virginia, issued on behalf of the committee seven basic principles that he would like to see in a remote sales tax collection authority bill. The seven basic principles are included in the following:

- Online retailers should not face new or discriminatory taxes that brick and mortar retailers are not faced with.
- The burden of sales tax compliance should be equal-not easier nor more difficult-for online retailers versus brick or mortar retailers.
- Out of state retailers should have equal access to protest unfair or discriminatory regulations.
- State governments should simplify tax laws so as not to shift an onerous burden onto businesses and make compliance inexpensive and reliable, even for small businesses.
- States should keep sales taxes low and compete with one another so as not to disadvantage American retailers to foreign competition.
- States should be sovereign and not be subject to federal compliance burdens.
- Customer data must be private and protected.

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Mr. Goodlatte has stated publicly that he anticipated holding a hearing on his principles sometime in the first six months of 2014. The Streamlined Sales Tax Governing Board has been reviewing the interpretation of the seven principles.

**U. S. Supreme Court Case**—As discussed in the February 11, 2014 TAC Meeting, the United States (U.S.) Court has declined to consider the constitutionality of New York’s “Amazon” click-through sales tax nexus law. The court cases out of New York center around New York (N.Y.) Tax Law §1101(b)(8)(vi) commonly referred to as the “Amazon Law” focuses on Overstock.com and Amazon.com. The “click through nexus” law was challenged in New York by Overstock.com and Amazon.com in the court case, *Overstock.com, Inc. v. New York State Department of Taxation and Finance* and *Amazon.com LLC v. New York State Department of Taxation and Finance*. The New York courts had rejected a challenge to the New York state law that requires collection of the sales tax.

**Streamlined Sales Tax Updates**—As discussed in the November 4, 2014 TAC Meeting, the Streamlined Sales Tax Governing Board met in South Dakota and discussed updates concerning the “Marketplace Fairness Act” (MFA) progress in Washington, D.C. There has been some discussion in Washington with joining the MFA with the “1998 Internet Tax Freedom Act” (ITFA). Some United States (U.S.) senators and representatives want the MFA to be joined with the ITFA. As of the date of this meeting, the ITFA is set to expire on November 1<sup>st</sup> with some expectation that it may be extended in the upcoming November 2014 federal election.

There are approximately 2,300 businesses who voluntarily file streamlined sales tax in Arkansas. Because Arkansas has adopted the streamlined sales tax guidelines, these businesses have volunteered to collect and remit Arkansas tax. Streamlined sales tax collections have been flat for the last two years. In the first eight months of 2014, there has been an increase in streamlined sales tax collections with approximately 6.1 million dollars in state tax and 3.5 million dollars in local tax. The increase may be due to larger retailers participating in Arkansas streamlined sales tax collections or an increase in volume. Analysis has not been done to identify the reason for the current increase in streamlined sales tax collections. Mr. Parker asked if there was an increase in streamlined sales tax registrants. Mr. This answered and stated the amount of registrants has gone up slightly. Mr. Atchley added nationally there are 2,300 streamlined sales tax registrants and when you become a streamline sales tax registrant, you register with all the other states that are registered in the nation, and he added the number of registrants and certified service providers are steadily growing. Mr. Parker asked for the amount of streamlined sales tax direct registrants with the state of Arkansas. Because the registrants volunteer to register with the state of Arkansas, Mr. Atchley stated they do not provide the reason they are voluntarily registering with the state of Arkansas.

**Update on July 1, 2014 Sales Tax Changes**—As discussed in the May 13, 2014 TAC Meeting, TAC members were given a handout which included the upcoming sales tax changes for July 1, 2014. Registered taxpayers would be mailed copies of the upcoming sales tax changes later in the week after the May 13, 2014 TAC Meeting. The following are updates to acts discussed in previous TAC Meetings:

- **Act 1401**—This act exempts utilities such as electricity, liquefied petroleum (lp) gas, and natural gas for commercial grain drying and storage. It affects both businesses, and farmers who may be eligible for this exemption. The Sales Tax Section has developed a new application form for this exemption which can be found on the DFA website at [www.dfa.arkansas.gov](http://www.dfa.arkansas.gov). An exemption certificate must be completed for each meter that would be eligible for a 100% use for the designated purpose.
- **Act 1402**—This act is an exemption on timber harvesting equipment. The previous exemption on timber harvesting equipment was only for the first \$50,000 of the purchase price. Mr. Atchley added the revenue impact on the volume of the purchases has been consistent with the industry over the last years. Because of the law change, dealers are

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not required to report exempt sales by category or any other nature to DFA which is common for most states because it would place a considerable burden on the sellers.

As discussed in November 4, 2014 TAC Meeting, Mr. Alt had a question about the activity level on the timber harvesting equipment exemption. Mr. Atchley stated it is a complete exemption granted for that machinery and equipment, and the sellers of that machinery and equipment were notified of the law change in Act 1402 that was effective July 1, 2014, and the exemption is obtained directly through the dealer. Mr. Theis added the purchaser can now handle the exemption at the point of sale, and the seller exempts the transaction. Mr. Atchley added the number of sellers of that type of machinery and equipment is not a great number. Mr. Alt asked if they are sending their reports directly. Mr. Atchley stated the sellers file their normal sales tax reports but not for the purpose for this exemption. Mr. Alt asked if a process could be established to discover the volume of purchases that were exempt statewide. Mr. Theis answered by stating it would require DFA to conduct an audit, and it would require going to the industry and asking for the information.

**Rule 2014-2: Alternative Fuels Tax/Liquefied Natural Gas (LNG) Rule**—As discussed in the May 13, 2014 TAC Meeting, Blu LNG approached DFA seeking adoption of a rule to establish a gallon equivalent rate. Blu LNG was in the process of opening a liquefied natural gas (LNG) fueling station in West Memphis, and they are considering construction of another station. LNG is used as an alternative fuel primarily for diesel fuel. LNG is used to fuel diesel trucks. When an alternative fuel is being used, Arkansas state law provides that DFA is to determine a gallon equivalent rate, and then the tax is calculated based on that gallon equivalent dependent on the number of vehicles registered with DFA to use that type of fuel. The following examples were used to explain how the tax is calculated:

- If there are fewer than 1,000 vehicles registered to use LNG, the tax rate is 5¢ per gallon equivalent of LNG.
- If the number of vehicles registered to use LNG increases above a 1,000 but not more than 1,500, the tax rate increases to 8.5¢ per gallon equivalent of LNG.
- The number of vehicles registered to use LNG in this tax rate structure can increase to as much as 3,000. When the number of vehicles registered reaches to 3,000, he stated the tax rate increases to a maximum of 16.5¢ per gallon equivalent of LNG.

The main fuel DFA has seen being used in passenger cars is compressed natural gas (CNG). State law already has a vehicle conversion, but it is not consistent with any other state. The law states 100 cubic feet of CNG are equal to one gallon of gasoline. The federal law states 126 cubic feet of CNG are equal to one gallon of gasoline. During the Arkansas 2015 Regular Legislative Session, discussion is expected concerning changing the CNG vehicle conversion rates. DFA is seeing the number of CNG registered vehicles increase in Arkansas. Last year, there were 300 CNG registered vehicles. This year, there are an estimated 470 to 480 CNG registered vehicles. DFA makes sure all the converters in Arkansas are registered with the Motor Vehicle Section. DFA receives monthly reports from converters as they convert vehicles. If a person has a CNG powered vehicle, he or she pays a tax rate of five cents (5¢) per gasoline gallon equivalent.

**Update on 64<sup>th</sup> Annual Southeastern Association of Tax Administrators (SEATA) Conference held during July 13th through 16th, 2014**—As discussed in the August 12, 2014 TAC Meeting, several topics were discussed at the SEATA Conference. There was a real focus on hiring and retaining employees. In one of the general sessions, Mr. Randall S. Lohman, Manager of the United States (U.S.) Office of Personnel Management's (OPM) Workforce and Succession Planning Branch, discussed succession tools and developing assessment tools in order to reduce turnover by better analyzing employee hirers to hopefully reduce turnover. Another general

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session focused on leveraging technology such as social media that focused on websites and Twitter in order to reach out to your taxpayer base.

Since there were not any delegates from the Income Tax Section due to staffing changes and Mr. Fryer attending the MTC Conference, there was not any information from sessions focused on income tax. Most of the income tax general sessions focused on corporation tax. The TAC members were directed to the SEATA 2014 Website to view the presentations for more information on the income tax general sessions. The SEATA 2014 Website can be found at the following link: <http://www.seata2014.org/>.

Mr. Charles Collins, Vice President of Government Affairs for Taxware, presided over a general session titled, *Streamlined Sales Tax and Marketplace Fairness Topics*, which involved an in-depth general session discussion about the history of the Streamlined Sales Tax Project, updates on federal legislation, how certified service providers are approved and what their role is. A general session titled, *The Taxation of Digital Goods and Services*, presented by Mr. Brian Kirkell, Principal of Washington National Tax at McGladrey, LLC. and Mr. Dave Elder, Director of McGladrey, LLC was briefly discussed during this TAC Meeting. Mr. Kirkell's and Mr. Elder's session focused on the streamlined definitions for digital goods. Currently, Arkansas does not tax digital goods. There was another session that focused on outsourcing data entry needs which Arkansas currently does. Mr. Bailey said his practice uses social media for tax updates and have found it to be very beneficial.

**Collection of 1% Crittenden County Sales and Use Tax Enjoined**—As discussed in the November 4, 2014 TAC Meeting, Mr. Atchley stated the Sales Tax Section only had two days before the tax went into effect to send out notices to the sellers. Notices were mailed to in-state and out-of-state sellers who are responsible to collect Arkansas sales tax in Crittenden County. Currently, there are over 73,000 registered sellers. The Sales Tax Section representatives spoke with Certified Service Providers (CSP) on a national level to see if they could upgrade their system for the new tax. The Sales Tax Section representatives contacted sellers in Crittenden County to notify them of the new tax. If TAC members have clients who are responsible to collect this tax and did not receive notice of the tax change and collected the increased tax rate and then subsequently had to lower it, the TAC members were instructed to tell their clients to contact the Sales Tax Section for guidance to resolve the issue. Currently, in the Sales and Use Tax Section, approximately fifty-four percent (54%) of all sales tax reports are filed and paid electronically. When taxpayers file and pay electronically, they receive a notice stating the report has been filed and paid. If taxpayers had email addresses on the system because they filed and paid their reports electronically, the Sales Tax Section representatives sent email notices on the Crittenden County tax rate change. Sending the notices by email worked well for the Sales Tax Section, and it saved money in postage.

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### **Office of Income Tax Administration:**

**General Corporate Income Tax Updates for 2015**—As discussed in the November 4, 2014 TAC Meeting, a change on the Subchapter S Corporation Income Tax Form will now include a line for financial institutions to include intangible property in the property factor because many local banks have reorganized and converted to Subchapter S Corporations.

**Multistate Tax Compact Proposed Changes— Multistate Tax Compact Proposed Changes**—As discussed in the February 11, 2014 TAC Meeting, the Multistate Tax Commission (MTC) began in 2008 to rewrite key elements of the Multistate Tax Compact (Compact) and surveys were sent out to states over proposed changes. The Uniformity Committee of MTC worked from 2009 to 2012 and came up with five major modification recommendations to the Compact. The five recommendations are included in the following:

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- Changes to the definition of “business income” to a new term called “apportionable income” which is defined as all income that is apportionable under the United States (U.S.) Constitution.
- Modify the apportionment method from an equally weighted three factor formula to a three factor formula with a double weighted sales factor. The three factor formula with a double weighted sales factor is currently in effect for 17 states including Arkansas. Thirteen states currently only use a sales factor. Ten states have an equally weighted three factor apportionment method, and five states have an apportionment method that is greater than a double weighted sales factor but less than 100% sales factor.
- Change the definition of “sales” to “receipts” and exclude hedging, cash and securities transactions from the sales factor except for hedge fund and securities dealers.
- Change the rule for sourcing sales for intangibles from “cost of performance” to “market based”. The market based sourcing typically sources the sale to the state of delivery.
- Authorizes states to promulgate rules for certain industries that are required to use specific alternative apportionment methods.

A public hearing was held last year and was officiated by hearing officer, Richard Pomp. Mr. Pomp came up with several recommendations for changes to the Uniformity Committee draft which are included in the following:

- Amend the alternative apportionment section to establish that the party seeking deviation from the standard formula has the burden of proof in any appeals made by the taxpayer.
- Amend the alternative apportionment section to state that no penalty will be charged if the taxpayer used the statutory method, and the revenue department determines an alternative should be used.
- Recommended alternative language for the definition of “apportionable income”.
- Amend the definition of “receipts” to not include a section about excluding hedging and treasury transactions.
- Recommends two different alternative languages for the definition of “receipts”, one of which would exclude large transactions from mostly capital gains from large sales from the sales factor or receipts factor.
- Makes a non-specific recommendation to modify “cost of performance” rather than to source sales on a “market basis”.

There are teleconferences every Tuesday afternoon in February until all issues have been discussed. The Uniformity Committee will issue a report of those recommendations at the Winter MTC meeting in Denver, March 11-14, 2014. For more information on the MTC project to update the Multistate Tax Compact, go to the following link: <http://www.mtc.gov/Uniformity.aspx?id=4562>.

As discussed in the August 12, 2014 TAC Meeting, Mr. Fryer attended the Multistate Tax Commission (MTC) Meeting. The MTC has been attempting to revise their compact. The compact was created in 1967. Some parts of the compact have become outdated. One of the updates the MTC is attempting to include is changes to the definition of business and non-business income. Another change the MTC is attempting to make that may be of most interest to the TAC is the focus on services in the corporate income tax area. The MTC provisions dealing with sourcing of services and apportionment of income from services use a concept called greater cost of performance which means which state was the

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greater cost to providing the service to the customer. In most cases, this concept ignores the market state. Many states have wanted to move away from utilizing the concept of greater cost of performance. Alabama uses a market based sourcing concept. The MTC wants to move toward a more market based sourcing concept.

The previously listed MTC changes are in the final stages of being approved because they have gone through a public hearing and have been commented on by various parties.

Amendments to Section 18 of the Multistate Tax Compact are not complete. Section 18 is a provision that allows a state to make unique decisions for taxpayers that do not fit into the mold of regular taxpayers. Arkansas has used Section 18 to devise specific rules for businesses that are a little out of the ordinary such as airlines, railroads, and radio and television. The discussion on how to amend Section 18 is still ongoing at this time.

As discussed in the November 4, 2014 TAC Meeting, the process to amend the Multistate Tax Compact started in 2009, and a final draft was made available at the end of 2012. A public hearing was held in March 2013. There were some minor modifications and additions made over the next year, and it was completed in the summer of 2014 at the annual Multistate Tax Commission (MTC) Meeting. The original five named parts were passed through MTC, and three additional parts that dealt with alternative apportionment have also been added and approved by the MTC.

The main changes to the compact included changing the definition of business income to apportionable income which expanded the definition to any income that is apportionable under the U.S. Constitution. This clarified that either a transactional or functional test should be used to see if the income is apportionable. It also clarified that business income was meant to include capital gains from the sale of business segments.

There was a change in the apportionment formula from an equally weighted three factor to a double weighted sales factor. There are 17 states that use the double weighted sales factor, and approximately 12 states that use the equally weighted three factor and single weighted sales factor respectively. There are four to five states that use between a double weighted sales factor and a 100 percent sales factor.

The definition of sales was changed to the word "receipts". This definition clarifies it as business/apportionable income receipts. It excludes hedging and investment transactions unless you are a securities dealer.

The biggest impact for most taxpayers is Article IV.17 which will change the sourcing provisions for sales of intangibles and services from a cost of performance method to a market based method. Services will be sourced on the state of delivery. Many member states and other tax practitioners felt as though the cost of performance is already reflected in the property and payroll factors, and it should not be repeated in the sales factor. Also, the cost of performance method ignores the taxpayer's interaction with its customers.

There were two amendments that were a part of the original project in the alternative apportionment method for Article IV.18. One specifically empowers a state to create special industry regulations, and the other states that if a company is covered by one of these special industry apportionment methods they can petition to go back to the statutory method or some other alternative.

Three additional recommendation modifications for the alternative apportionment method that were added later and adopted are included in the following:

- The burden of proof in an alternative apportionment case is on the party seeking a change in the statutory apportionment method.

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- When the taxpayer has used the statutory apportionment method and, upon audit, the tax administrator requires an alternative apportionment, penalties shall not be imposed.
- The state cannot retroactively revoke permission to use the alternative method unless there has been a misstatement of facts and circumstances relied upon that has changed since permission was given.

There are two drafting committees that were recently appointed by the Uniformity Committee. One drafting committee will deal with the new rules on market-based sourcing, and they will look at various categories within the general term of intangible income and how to source them. The other committee will clarify language throughout the compact which will include the sections of the new terms of apportionable income instead of business income and receipts instead of sales. These two drafting committees will hold their first meetings on November 5<sup>th</sup> & 6<sup>th</sup> at 2:30 p.m. Central Time. The final draft of the compact has not been adopted at this time. Any changes that are formally adopted by the MTC will be adopted individually by each state.

**Rule 2014-1, Standard Mileage Rates for Income Tax Purposes**—As discussed in the February 11, 2014 TAC Meeting, the public hearing on Rule 2014-1 was held on January 23, 2014. There were no objections to adopting the 2014 standard mileage rates. The rates were as follows:

- 56¢ per mile for transportation expenses deductible by employees or self-employed individuals for business purposes,
- 23.5¢ per mile for transportation expenses deductible as a medical or moving expense, and
- 14¢ per mile for transportation expenses deductible for a charitable organization.

**Update on Individual and Corporation Income Tax Filings**—As discussed in the February 11, 2014 TAC Meeting, preliminary e-filing started on January 24, 2014, and all e-filing was allowed on January 31, 2014. The Income Tax Section has received approximately 448,000 tax returns.

As discussed in the May 13, 2014 TAC Meeting, an estimated 1 million individual income tax returns had been filed which was a two percent increase over last year. Eighty-five percent (85%) of those returns were e-filed which is a seven percent increase over 2012 tax returns. As of the date of this meeting, there is a 16% decrease in paper filed returns.

As of April 15, 2014, 79,310 calls concerning 2013 individual income tax returns had been received through the Income Tax Section Hotline Number(s) which are 501-682-1100 or 1-800-882-9275. The Income Tax Section saw 125,000 walk-ins as of April 15, 2014.

Statement of account letters will be sent to taxpayers later this summer. The account letters will contain a bill notifying the taxpayers they still owe income tax.

There were not any major issues with income tax return processing this year. There are 15,000 work items to be processed which is an improvement over last year. Work items are anticipated to decrease significantly over the next couple of weeks after the date of this meeting.

Also discussed in the May 13, 2014 TAC Meeting, 64% of corporate filings processed through April 15, 2014 were done by e-file. Around the same time last year, 46% of corporate filings were done by e-file. Last year as a whole, only 43% of corporate filings were done by e-file. The corporate filings tend to decrease during the fall season.

**2014 AR, Schedule K-1 (Form 1120S)**—As discussed in the May 13, 2014 TAC Meeting, Mr. Turner completed most of the design work on the AR, Schedule K-1 (Form 1120S). The

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2014 AR, Schedule K-1 (Form 1120S) was modeled after the Internal Revenue Service (IRS) K-1 Form. Instead of having three different K-1 Forms for different tax types compared to the IRS, the AR, Schedule K-1 Form can work for several tax types such as Sub-S, partnership, and fiduciary. The K-1 Form must be filed with a taxpayer's Sub-S, partnership, fiduciary, and individual income tax returns of shareholders, partners, and beneficiaries on their individual income tax returns. The AR, Schedule K-1 Form will help taxpayers file their individual income tax returns, and the AR, Schedule K-1 Form will also assist corporate income tax filers who are in partnerships to determine their Arkansas income. The AR, Schedule K-1 Form will assist DFA in identifying all the partners and making sure they are reporting their income. The AR, Schedule K-1 Form draft has been submitted to the E-File Section and the AIRS Section. The testing on AR, Schedule K-1 Form is anticipated to begin in a couple of months from the date of this meeting. Mr. Kozij asked if the instructions for the form were ready yet. Mr. Fryer stated the Corporation Income Tax Section is not ready to release the instructions to the AR, Schedule K-1 Form at this time. He added that he anticipated the instructions for the form will be ready by the next TAC Meeting on August 12, 2014. If any TAC members wanted an item added from the IRS Schedule K-1 Form to the AR, Schedule K-1 Form draft, Mr. Fryer stated it would be possible to add it even though the draft is in its final stages.

**Tax Relief for Disaster Victims Press Release**—As discussed in the May 13, 2014 TAC meeting, copies of the Tax Relief for Disaster Victims Press Release were provided to TAC members. As of the date of this meeting, four counties (Faulkner, Pulaski, Randolph, and White) had been declared a federal disaster area. Governor Mike Beebe had recently added an estimated seven or eight additional state disaster counties which will require DFA to amend the press release.

As in prior years, DFA will notify taxpayers in federal disaster areas of the ability to amend their current year tax returns and claim their casualty losses on the current year.

Because the disaster happened after the Arkansas income tax return filing deadline of April 15, 2014, DFA did not provide an absolute extension on filing tax returns to taxpayers in those federal disaster areas. The press release included a contact number of (501) 682-7924 where taxpayers can contact the office on an as needed basis. DFA will look into extending time periods, providing installment agreements, or other arrangements with taxpayers. Tom Atchley, Office of Excise Tax Administrator, wanted to tailor the relief to the taxpayer calling.

**2012 Non-filer Notices and CP2000 Notices**—As discussed in the August 12, 2014 TAC Meeting, non-filer notices will be mailed in September 2014 for tax year 2012. The Income Tax Section will mail out approximately 20,000 letters. The letters will be tested in Arkansas Integrated Revenue System (AIRS) to make sure functionality works correctly before any notices are mailed out. Taxpayers will receive a notice of non-filer return letter, and this allows the taxpayer 30 days to respond to the letter by either filing the tax return or providing documentation that they are not required to file a return. If the taxpayer needs more time, the taxpayer can contact the Income Tax Section, and they will place a hold on the taxpayer's account in order for the Income Tax Section to assist with resolving the taxpayer's issues. When the assessment process begins, the taxpayer will receive a bill. Shortly after the taxpayer receives a bill, the proposed assessment will be mailed. The final assessment will be mailed 60 days after the proposed assessment.

The Income Tax Section is still working with AIRS and will send out the CP2000 notices by the end of the year. The CP2000 notice is a standard letter that encourages the taxpayer to file an amended return if they have not already done so. Also, CP2000 notices are a matching program with the IRS where they place unreported income on the tax return. The IRS then gives the information to the state. The state must meet security safeguards before the IRS gives the information to the state. There is information the Income Tax Section may have received from the IRS that may be beneficial to the taxpayer. CP2000 notices are for amended income. The most common reasons taxpayers receive CP2000 notices are when taxpayers leave W-2s off of their income tax return and when the 1099-R for retirement income is left off of the return.

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Mr. Bailey asked if they are correlating the w-2 information with the CP2000 notices. Mr. Turner answered by stating the w-2 information is being correlated with the non-filer notices. Mr. Bailey also asked if there is a non-filer that receives a notice from the IRS, is it going to reflect the state withholdings that have been filed with the state. Mr. Turner answered Mr. Bailey by stating yes.

**General Individual Income Tax Updates for 2015**—As discussed in the November 4, 2014 TAC Meeting, approximately 15,000 Treasury Offset Program (TOP) notices were mailed. TOP notices are given to taxpayers before DFA takes their IRS refund and applies it to the debt with the State of Arkansas.

TAC members were provided with two handouts. One handout was the Arkansas Schedule K-1 Form which is a new form for the 2014 tax year. The Arkansas Schedule K-1 Form is a combination of three different versions of the Internal Revenue Service's (IRS) K-1 Form. A shareholder, partner, or beneficiary can file the Arkansas Schedule K-1 Form with the state of Arkansas or file a separate one for each entity type. All of the boxes from the IRS K-1 Form were not included on the Arkansas Schedule K-1 Form because not all of the boxes on the IRS K-1 Form pertained to Arkansas. The Arkansas Schedule K-1 Form does not translate exactly to the IRS K-1 Form. There are boxes for other information and other deductions, and taxpayers can attach separate schedules if they need to explain anything else. The instructions on the Arkansas Schedule K-1 Form are very limited. The Income Tax Section will take notes as they receive questions from taxpayers on the form for the next year and make updates if necessary to the form. The Income Tax Section is not requiring every Arkansas Schedule K-1 Form to be attached to every tax return, but they can request it. As long as the taxpayer submits the IRS K-1 Form, the Income Tax Section will accept it.

The other handout given to TAC members was the 2014 State of Arkansas Individual Income Tax Highlights Packet (packet). The packet is given out to tax schools in the fall. The following new items are listed in the packet:

### **Military Pay Exemption (Act 1408 of 2013)**

Based on the 2013 Regular Legislative Session, the Military Pay Exemption (Act 1408 of 2013) states military pay is fully exempted. If any military member receives any type of compensation in the state of Arkansas, the income is fully exempt. The military member is still required to file a tax return. Mr. Bailey asked if the military exemption is only for active duty military members. Mr. Turner answered by stating yes. Mr. Theis added the Military Pay Exemption does include the National Guard and the Reserve units, and the exemption includes all their service pay and active duty allowance. This information was listed on page two (2) of the packet.

### **Volunteer Firefighters Deduction (Act 1452 of 2013)**

In the Special Information Section for 2014, the Volunteer Firefighters Deduction (Act 1452 of 2013) is listed, and it creates a deduction for non-reimbursed expenses by the volunteer firefighters. The maximum deduction the firefighter can take is a \$1,000 per firefighter. This information was listed on page two (2) of the packet.

### **Capital Gains Exemption (Act 1488 of 2013)**

The Capital Gains Exemption (Act 1488 of 2013) is also located on page two (2) of the packet, and it creates a 100% exemption for net capital gains in excess of \$10,000,000 for tax year 2014 and forward.

### **Tax Bracket Reduced (Act 1459 of 2013)**

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For tax year 2014, the one percent (1%) tax bracket has been reduced to nine tenths of one percent (.9%). For tax year 2015, the remaining tax brackets will be reduced by (.1%) one tenth of one percent. This information was listed on page two (2) of the packet.

### **New Form Created (Form AR-OI “Other Income/Loss and Depreciation Differences”)**

The Income Tax Section created a new form, Form AR-OI “Other Income/Loss and Depreciation Differences”, which is located on page 14 of the packet.

Taxpayers can report gambling winnings, net-operating loss, lottery, and any type of income that does not fit on any other line on the tax return. It is mainly used for e-file purposes.

### **Identity Theft Page**

On page 3 of the packet, an identity theft page has been added for taxpayers as a reference. If the taxpayer feels like their identity has been stolen and used on a tax return that is not their own, he or she can read the instructions on page 3 and complete the IRS Form 14039, an identity theft affidavit, and have it stamped by the IRS. The Income Tax Section Fraud Section will assist the taxpayer after being provided with a copy of Form 14039.

### **2014 AR1000F (Full Year Resident) & AR1000NR (Nonresident and Part Year Resident) Tax Returns**

On page 4 and 5 of the packet, the 2014 AR1000F Full Year Resident Tax Return is listed. One major change to the form is Line 9A and Line 9B which is the military compensation exemption. The taxpayer is required to enter the information on Line 9A and 9B, but it does not carry over to column 8A. The information is still captured for revenue loss impact purposes. The same information is required on the 2014 AR1000NR (Nonresident and Part Year Resident) Tax Return which is listed on page 6 of the packet.

### **ARDD, Direct Deposit Form (ARDD)**

The ARDD is located on page 8 of the packet. The ARDD allows taxpayers who file their tax returns by paper to receive their refunds by direct deposit. The ARDD must be attached to the paper form (AR1000F/AR1000NR).

### **AR3, Itemized Deduction Schedule (AR3) & Volunteer Firefighter Expenses**

AR3 is on page 9 of the packet. There are two changes on the AR3. Due to the premium mortgage insurance (PMI) no longer being deductible, it has been removed from the AR3.

Also, on Line 26, the volunteer firefighter expense deduction is now listed.

### **AR1000D, Capital Gains Schedule (AR1000D)**

On page 12, Act 1488 of 2013 states the amount of net capital gain in excess of ten million dollars (\$10,000,000) from a gain realized on or after January 1, 2014 is exempt from state tax. In order to reflect this capital gain amount change, Line 7b was added to the AR1000D.

**New 2015 Withholding Tax Tables**—As discussed in the November 4, 2014 TAC Meeting, the new 2015 withholding tax tables. The new withholding tables are now available for employers to view and use on the following webpage: <http://www.dfa.arkansas.gov/WithholdingTaxTablesandInstructions>. The Withholding Tax Section has received many questions concerning the new 2015 withholding tax tables, and they are making a list of certain questions they are receiving on a consistent basis. The main question asked is whether there will be any updates to the low income tax withholding tables. At the current time, the answer is no.

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## **New Business:**

**2015 Arkansas Regular Legislative Session/Income Tax Technical Correction Act**—As discussed in the May 13, 2014 TAC Meeting, TAC members were reminded that they have always assigned one representative from the Arkansas Bar Association (ABA), Arkansas Society of Accountants (ASA), and the Arkansas Society of Certified Public Accountants (ASCPA), to work with DFA to look for necessary tax changes during any Arkansas Regular Legislative Session in the past. As of the date of this meeting, there were not any federal income tax issues that needed to be considered in the Income Tax Technical Correction Act. TAC members who are affiliated with the ABA, ASA, and the ASCPA were urged to appoint one representative from their respective organizations by the next meeting on August 12, 2014 to research income tax law changes that need to come from DFA. Mr. Theis stated TAC members from these respective groups can contact DFA if they are aware of any income tax law that needs to be considered.

Although Mr. Kozij thought the federal limit of \$500,000 in Section 179 may be permanent, he discussed the idea of changing the amount. In the past, Mr. Theis stated DFA has objected to changing the amount in Section 179 within the TAC because of the revenue impact. Mr. Theis stated DFA always believed Section 179 should be considered separately. Mr. Theis added any changes to the Section 179 limit amount has a large revenue cost to the Arkansas State Treasury.

**Streamlined Sales Tax Collections**—As discussed in the May 13, 2014 TAC Meeting, in January and February of 2014, streamlined sales collections have increased significantly. There is not a certain reason for the increase because there has not been an increase in registered businesses. In past years, DFA has collected \$10 million in streamlined sales tax collections, and if this trend towards increase continues, the amount of streamlined sales tax collections will surpass the \$10 million amount.

**Announcement of Personnel Changes**—As discussed in the August 12, 2014 TAC Meeting, Ms. Lynne Reynolds was announced as the Office of Income Tax Administrator. Ms. Reynolds became the Office of Income Tax Administrator effective July 8, 2014. Ms. Reynolds is the former Problem Resolution Officer in the Problem Resolution and Tax Information Office. She has been a CPA for several years both in private practice firms and corporate accounting. Ms. Reynolds was also a small business owner for several years. Former Office of Income Tax Administrator, Warren Fagan, retired a few months earlier. Ms. Hunt is retiring as of September 30, 2014.

**Introduction of New Chief Counsel of Legal Section**—As discussed in the November 4, 2014 TAC Meeting, Mr. Paul Gehring was announced as the new Chief Counsel in the Legal Section. Mr. Gehring replaced Ms. Hunt who retired on September 30, 2014. Mr. Gehring has an extensive background working on legal cases in the Driver Services Section. He has also worked in the area of natural gas severance tax. He was instrumental in drafting the 2008-4, Natural Gas Severance Tax Rules.

**Upcoming Regular Legislative Session**—As discussed in the November 4, 2014 TAC Meeting, MTC changes were not included in the legislative package for the 2015 Arkansas Regular Session due to timing constraints. The MTC changes will most likely be ready for the 2017 Arkansas Regular Session with hopes that most states will have made decisions concerning the proposed changes in the compact.

DFA does not have any federal technical correction provisions to incorporate in the Income Tax Technical Correction Act. A special meeting may be called for TAC members who have been selected to assist in the drafting of the Income Tax Technical Correction Act. After the November 4, 2014 election, Mr. Theis will work with Mr. Richard Weiss and Mr. Timothy Leathers on the Income Tax Technical Correction Act in order to submit it to the incoming Governor for approval. As of this meeting, only one legislator has submitted a pre-filed bill with Mr. Theis.

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### **Old Business:**

**2015 Arkansas Regular Legislative Session/ Status of Income Tax Technical Correction Act**—As discussed in the August 12, 2014 TAC Meeting, there were not any updates to the Income Tax Technical Correction Act Draft due to the fact that Congress has not done anything that warranted any modifications to the DFA's existing laws.

**Rule 2014-2, Alternative Fuels Tax Liquefied Natural Gas (LNG)**—As discussed in the August 12, 2014 TAC Meeting, as an update from the previous TAC Meeting held on May 13, 2014, Rule 2014-2 has been approved and will become effective on September 1, 2014. Rule 2014-2 establishes a gallon equivalent for liquefied natural gas (LNG) of the gasoline gallon equivalent and a diesel gallon equivalent. A LNG station has opened in West Memphis primarily for eighteen-wheelers. The trucking industry has really taken an interest in LNG as a fuel source. The fuel industry has informed DFA that they will be drafting a law change request to the Arkansas General Assembly, and DFA is working with the fuel industry concerning the request. The fuel industry does not like the tax rate changes based on the number of registered vehicles. The fuel industry would like the tax rate to be based on something other than the number of registered vehicles.

**Taxation of Compressed Natural Gas**—As discussed in the August 12, 2014 TAC Meeting, the sales of compressed natural gas (CNG) has been growing. The gallons equivalent of CNG has grown from an estimated 30,000 gallons equivalent four years ago to an estimated 80,000 gallons equivalent the following year, to about an estimated 250,000 gallons equivalent. Currently, it is estimated at 600,000 to 700,000 gallons equivalent. The amount of CNG used to fuel motor vehicles is growing very rapidly.

In addition, the number of CNG vehicles has grown to an estimated 600. CNG conversion businesses are required to report to DFA every time they make a conversion. DFA is having difficulties in getting information on CNG vehicles that have been converted in other states.

Mr. Bailey related that some of his clients are purchasing Tesla vehicles, and he asked if there will be any DFA legislation concerning electric vehicles. Mr. Theis answered by stating that no state including Arkansas has successfully dealt with tax legislation concerning electric vehicles. He added the law states DFA must figure a gallon equivalent for electricity as they would need for any other vehicle fuel source, and currently, DFA has not found a suitable gallon equivalent for electricity.

**“Marketplace Fairness Act”**—As discussed in the August 12, 2014 TAC Meeting, Mr. Atchley stated the “Marketplace Fairness Act” is stuck in the United States (U.S.) House of Representatives Judiciary Committee.