

TAX ADVISORY COUNCIL

2016 YEAR-ENDING REPORT

(Meetings Chaired by Stan Kozij, Arkansas Society of Certified Public 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, Matt Boch 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;
Paul Gehring, Chief Counsel, Revenue Legal Counsel;
Tom Atchley, Administrator, Excise Tax;
Deanna Munds-Smith, Administrator, Field Audit;
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;
Kathy Horner, Revenue Manager, Individual Income Tax;
Travis Venable, Tax Division Manager, Arkansas Integrated Revenue System (AIRS);
Rob Allen, Revenue Auditor, Individual Income Tax;
Andrew Smith, Revenue Manager, Sales and Use Tax;
Joel DiPippa, Senior Legal Counsel, Revenue Legal Counsel;

David Rector, Problems 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 9, 2016	13
May 10, 2016	8
August 9, 2016	10
November 8, 2016	12

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 2016 meetings.

Office of Revenue Legal Counsel:

Summary of litigation:

Status of Lawsuits Filed:

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.

Carrothers Construction Company, LLC v. Walther, Pulaski County Circuit Court, 9th Division, Case Number: 60CV-10-6101 - As discussed in the Tax Advisory Council meeting on February 9, 2016, Paul Gehring updated the Council that The case is coming before the Arkansas Supreme Court on the issue as to whether a water purification plant is manufacturing operation. The Pulaski County Circuit Court ruled last year that it was manufacturing. There is long standing case law that says if you begin with a product and end with the same product it is not manufacturing. The Department has filed opening briefs in this case and it is possible this case could be decided prior the courts recess in June. As discussed in the May 10, 2016 the case was presented to the Arkansas Supreme Court on the issue as to whether a water purification plant is manufacturing operation. The court accepted briefs in lieu of oral arguments. We expect a ruling by Thursday May 12 or no later than May 19, 2016. The case was decided in favor of the Department.

AT&T Mobility Wireless Operations Holding Inc. successor to Pine Bluff Cellular, Inc., Pulaski County Circuit Court, 5th Division, Case Number: 60CV-14-1722 – As discussed in the February 9, 2016 TAC meeting, **AT&T Mobility Wireless Operations Holding Inc. successor to Pine Bluff Cellular, Inc.** The settlement of this case has been approved by the Litigation Review Committee of the Legislative Council and the full Legislative Council. The settlement will now move forward. Payments are scheduled to start in April of this year.

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H & S Maintenance, Inc. v Weiss, Pulaski County Circuit Court, Case Number: 60CV-O 11-4268

- The H & S Maintenance case was presented to the Litigation Review Committee and was approved by that committee and the full Legislative Council.

General Tax Advisory Council Update:

The Governor's Plan for Highway Funding:

In the February 8, 2016 TAC meeting John Theis, Assistant Commissioner for Policy and Legal discussed the Governor's plan for highway funding. In 2015 the Governor established a working group to address highway funding. Tom Atchley and John Theis appeared before that group on several occasions to provide regulatory and revenue information. The working group issued its final report to the Governor on December 15th. The Governor reviewed that report and in January issued his highway funding plan that he intends to present to the General Assembly in Special Session. No date has been set for the Special Session. The talk is the session will be just before or after the Fiscal Session to begin in April. There is also some discussion of a Special Session for Healthcare funding. Additionally, there have been some additional plans for highway funding that have been brought forward from members of the legislature. The Governor's plan anticipates no new taxes. His plan involves using existing funds from various sources. The Governor is also looking to a surplus of tax revenues over the next five years to use with regard to highway funding. One controversial part of the Governor's plan is to look at inefficient or underperforming Economic Development programs. The one most talked about is the Invest ARK program. The governor will present his final highway funding plan in the May 19, 2016 Special Session. Currently, the Governor's plan is to fund the highway program with existing revenue by changing the distribution of that revenue. The plan is evolving as of today. There are other plans being discussed from various groups of the legislature some of which involve various tax increases and decreases.

Individual Income Tax Administration:

General Individual Income Tax Updates for 2016:

As discussed in the February 8, 2016 TAC Meeting, the rule's purpose is to have the State and Federal Rates for mileage to be the same. The State will adopt the Federal rates for business, medical and charitable mileage.

In the May 10, 2016 TAC meeting, Rob Allen discussed what the Department has identified as three (3) main types of fraud for which they monitor.

- (1) Identity Theft
- (2) Invalid Taxpayer
- (3) Fraud Adjustments.

Each of these areas use different techniques to identify and control the fraud attempt. Arkansas partners with other states as well as the federal government to exchange information regarding the various types of fraud attempts. Arkansas has utilized the various filters and tools available in GENTAX to detect these returns. The Department is continuing to refine its methods for determining fraudulent returns.

Rule 2016-1, Standard Mileage Rates for Income Tax Purposes:

- 54¢ per mile for transportation expenses deductible by employees or self-employed individuals for business purposes,
- 19¢ per mile for transportation expenses deductible as a medical or moving expense, and

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- 14¢ per mile for transportation expenses deductible for a charitable organization.

Update on Individual and Corporation Income Tax Filings:

In 2015 we processed the following returns for the 2014 tax year.

Individual Returns 1.3 million with 79% of the returns were e-filed
Corporate Returns 78,000 with 60% of the returns were e-filed
Fiduciary Returns 21,000 with 41% of the returns were e-filed
Partnership Returns 40,000 with 67% of the returns were e-filed

Through January 2016 we have processed 138,000 returns as compared with 154,000 returns processed in 2015.

Stan Kozij asked a question regarding the depreciation deduction in regard to section 179. Mr. Theis responded, that it would be a legislative proposal and that DFA had not asked for any action in regard to a change to the adoption of the federal limit for section 179.

During the May 10, 2017 meeting, Lynne presented a matrix which reflects the processing of income tax returns for the 2013 through 2016 filing seasons. The numbers reflect that as of the end of April 2016 we have processed fewer returns but a higher number were filed electronically. The average refund processed for 2016 was \$360 down from the previous year's average of \$495. This was most likely due to the change in the withholding tables which the Department initiated last year. The total number of returns processed may have been effected by this change as more people may have owed at April 18, 2016 and chose not to file. Stan Kozij asked if it was possible to determine how many returns were filed electronically by type of tax software. Rob Allen responded that it might be possible but it is not something we track.

Steve Wilkins opened the discussion with highlights from the November 8, 2016 Individual Income Tax TAC meeting. There are changes to the tax book regarding the new structure and updates to information in the book. Different logos are now placed on the short and long tax books for DFA employees to know which book the taxpayer is reading from, to better serve the taxpayer. Tax booklets were passed out to each member of the Council. We are requesting additional information for e-filed returns, in which you must include Driver's License Information. We are using that information as a screen for fraudulent returns. The changes in the Capital Gains note were addressed and noted the additional guidance in the instructions in the booklet. We are currently working on allowing the tax payers who owe money to direct pay with their debit. We are working to promote and allow taxpayers to electronically file their tax returns. Mike Parker questioned the access to the driver's license information, since it can be accessed by various agencies. Mr. Gehring and Mr. Anger responded that the access is limited and very secure.

Old Business:

In the February 9, 2016 TAC meeting, a recently adopted DFA rule was discussed, concerning Cigarette and OTP Wholesalers. The rule will require all tax returns and schedules to be filed electronically. This mandate was issued as required by the need to provide that information to the Attorney General's Office. The Master Settlement Agreement is administered by the Attorney General's Office.

In April 2015 Representative Justin Gonzales, a member of the House Revenue and Tax Committee sent a letter asking that DFA identify every credit, exemption and or deduction that exists for every tax that DFA administers. DFA was also asked to indicate the financial impact of the item. That report was delivered November 9, 2015. Commissioner Tim Leathers has asked that we consider that it be posted on the DFA website. We will consider doing that after Mr. Gonzales has had an opportunity to review the report.

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In the August 8, 2016 TAC meeting, Matt Boch opened the discussion regarding the over redaction regarding Legal Opinions and Administrative Hearing results. Paul will discuss the issue with regard to the Hearing Decisions with Walter Anger, Assistant Commissioner for Operations. Paul outlined the process that the Legal Section uses for redacting opinions.

In the November 8, 2016 TAC meeting, the discussion briefly regarded the redaction of Legal Opinions and Administrative Hearing results. It was announced that there have been improvements to the redaction of documents. Questions were asked and a discussion ensued about due dates for federal tax returns. It was mentioned that until the 'house-keeping' bills in the legislature are addressed, DFA is not able to introduce new legislation to the legislature.

New Business:

John Theis announces in the May 10, 2016 TAC meeting that he would be leaving the department prior to the next meeting. Tom Atchley announced that Roberta Overman, Manager of Sales and Excise Tax will be retiring as of June 30, 2016. Ms. Overman has been with the Department for forty-three (43) years and Manager of Sales Tax for sixteen (16) years. The next TAC meeting is tentatively scheduled for Tuesday, August 9, 2016 at 10:00 a.m.

In the August 8, 2016 TAC meeting, a question regarding possible legislation for upcoming session. Nothing is definite at this time. Matt Boch expressed possible issue regarding apportionment of income (instead of allocation) for Partnership Tax returns. Stan Kozij mentioned that other organizations typically target November to put forth possible legislative changes that they would like addressed.

Michael O. Parker expressed his concerns about Hearing and Appeals. Matt Boch's name was placed in nomination to be chair as representative for the American Bar Association.

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