TAX ADVISORY COUNCIL

2019 ANNUAL REPORT

(Meetings Chaired by Mike Touhey, Arkansas Society of Certified Public Accountants)

Definition

Purpose: The Tax Advisory Council (TAC) was created by Act 998 of 1991 (codified at Ark. Code Ann. § 26-18-902). TAC 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. TAC provides input to the General Assembly during the legislative process by studying and recommending changes to tax laws. TAC 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 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:
Matt Boch and Nicole Gore

Arkansas Society of Accountants:
A.W. Bailey

Arkansas Society of Certified Public Accountants:
Mike Touhey

Arkansas Department of Finance and Administration (DFA), Revenue Division: Paul Gehring, Assistant Commissioner of Revenue for Policy and Legal; Joel DiPippa, Senior Legal Counsel, Revenue Legal Counsel;
Deanna Munds-Smith, Administrator, Field Audit;
Lynne Reynolds, Administrator, Income Tax;
Andrew Smith, Assistant Administrator, Sales and Use Tax;
Scott Fryer, Assistant Administrator, Corporation Income Tax;
Andy Morgan, Manager, Central Audit District;
Dale Breshears, Assistant Administrator, Individual Income Tax;
Todd Cockrill, Assistant Administrator, Miscellaneous Tax;
Joel DiPippa, Senior Legal Counsel, Revenue Legal Counsel;
and Brandon Smith, Public Information Specialist.

Meetings

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

Meeting dates	Total Present
May 14, 2019	10
November 12, 2019	12

These meetings were held in Conference Room 2330 of the Joel Y. Ledbetter Building. Meetings averaged thirty-five (35) minutes to one (1) hour 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 TAC's 2019 meetings.

Office of Revenue Legal Council

Summary of Updates and Tax Legislation Changes from the 2019 General Session:

Updates:

May 14, 2019

Government Transformation: The Department of Finance and Administration has reduced in size with the transferal of agencies. The Office of Personnel Management (OPM), Office of State Procurement (OSP), Division of Building Authority (DBA), and Employee Benefits Division (EBD) have been transferred to the Department of Transformation and Shared Services as of July 1, 2019. The Department added two new agencies, the Assessment Coordination Division (ACD) and Arkansas Tobacco Control Board (ATCB). As of July 1, 2021, Franchise Tax will be returning to the Department under the Office of Corporate Income Tax. Matt Boch asked, "do you know where or how the new tax agencies are going to fit in the overall structure of DFA?" Joel responded "as far as we know, Franchise Tax will be located in the Office of Corporate Income Tax where it was originally located prior to its placement with the Secretary of State's Office. The Department has not discussed ACD's location and it will most likely be its own office in the Department under the Division of Revenue. Arkansas Tobacco Control currently functions similar to Arkansas Beverage Control and will occupy a similar status organizationally.

November 12, 2019

Government Transformation: The Department of Finance and Administration has reduced in size with the transferal of agencies. The Office of Personnel Management (OPM), Office of State Procurement (OSP), Division of Building Authority (DBA), Division of Information Systems (DIS) and the Employee Benefits Division (EBD) have been transferred to the Department of Transformation and Shared Services as of July 1, 2019. The Department added two new agencies, the Assessment Coordination Division (ACD) and Arkansas Tobacco Control Board (ATCB). Matt Boch asked does moving DIS change any of DFA's IT internal offices. Joel said that DFA has its own internal IT office, it is the Office of Information Services. Everything the Department handled internally is still internal.

May 14, 2019

Biennial Exemptions and Credits "Review": There is now a provision for Biennial Exemptions and Credits review that is not effective until 2021, so the Department will not be issuing and of these reports. It is not clear how these reports are going to be prepared until the additional million dollars' worth of funding the Department requested to support that is provided and that some of the data sources that would be used rollover on an annual or biannual basis. The data source calculation will occur on the administrative side from the Economic Analysis Section.

Highway Funding: Wholesale Tax on Motor Fuel and Diesel Fuel that is expecting to bring in $84M in revenue. $60M will go to Arkansas Department of Transportation; there is a hybrid vehicle registration fee that will be implemented this year that is expected to generate a revenue of an additional $2 million dollars; Casino gaming revenues will be transferred to ADOT's use and there is an expected reduction in general revenue because of a loss of electronic gaming and skill.

Administrative rule changes that passed in the General Assembly require rules being promulgated by January 1st following a Session. This means the Department will have to have rules drafted prior to the legislative session. While the Department will do its best to meet those requirements, the Department does not expect it to be practicable to meet those requirements and to submit the rules before the Arkansas Legislative Council (ALC) in that time. Additionally, there is the Code of Arkansas Regulations that is to be codified by the Bureau of Legislative Research (BLR). To the extent that the first goal of the Department is to get the Sales Tax Rules updated to 11/19, it is about 230 pages. The sales tax rules are almost complete but are still in the process of needing more departmental approval. Then individual Gross Receipts (GR) sections can be updated by rule which will be codified by BLR in their appropriate section. The remote seller requirements and clarifications will be promulgated after that 11/19 rule update; this rule update will be its own GR that should fold into that part of the code that fits that component. The Department's goal for year 2020 includes updating the Income Tax rules to reflect the Department's practice due to significant changes in the law. Matt Boch asks if the sales tax rules will be published in the summer. Joel responded that 11/19 sales tax updates should make it through review and be published this summer. Individual GR updates to those rules will follow them. The Department would prefer those rules be approved before it starts changing them, however, the caveat is that the sales tax rules this summer may have changes to them rather than restarting the process.

Tax Legislation Changes:

May 14, 2019

Individual Income Tax - Top Marginal Rate Reduction to 5.9% Stepped in – (Act 182/SB211). Total cost by Fiscal Year 2021 will be seventy million.

Corporate Income Tax - Top Marginal Rate Reduction to 5.9% (Act 822/SB576) with a forty-million-dollar income loss per year by FY 2023. Sales Only Factor Apportionment was passed (Act 822/SB576) and Net Operating Loss Carryforward doubled to 10 years phased in. (Act 822/SB576). This will cost the State $70M/year in income tax loss by FY2032

Sales Tax - Remote Seller/Wayfair Legislation (Act 822/SB576)

Over 100K in sales or over 200 transactions – Opinions & Rulemaking forthcoming as of July 1, 2019. Business should be registered and remitting the sales tax as required.
Matt Boch asked, "if I have a company and it is their first year where they exceed the threshold once they hit the threshold on May 13th, do they have to go back and still have a liability for the prior month?" Joel responded that it is not effective until July 1, 2019. There has not been any formal statement from the Department regarding whether or not the July 1st date is the date of registration and collection or whether the calendar year or fiscal year will be the applicable look back if they know it is coming. Rule promulgation will address the questions of liability and registration.

November 12, 2019

Income Tax Acts:

Act 822: A tax reform act that amends several portions of the tax code. First, it modifies the corporation income tax apportionment formula to a consideration of sales only (in effect beginning January 1, 2021). This removes the previous consideration of the location of property and payroll factors in Arkansas. Second, the bill reduces the maximum income tax rate for income over $100,000.00 from 6.2% to 5.9% (in effect beginning January 1, 2021). Third, the bill lengthens the amount of time that a net operating loss deduction can be claimed from five years to ten years using a graduated phase-in (in effect January 1, 2020). Fourth, the Act requires remote sellers and marketplace facilitators to collect sales and use tax on purchases into Arkansas if they meet the threshold of 200 transactions or $100,000.00 in sales per year (in effect currently due to an emergency clause). Fifth, the act amends the levy of tax on the furnishing of rooms to specifically include accommodations intermediaries as providers who must collect tax on their services (in effect beginning on October 1, 2019). Finally, the bill modifies the taxation scheme on car washes (in effect October 1, 2019). The act provides an equation based on water usage per gallon for automatic car washes and car wash tunnels to remit a fee in lieu of collecting sales tax. Additionally, the act provides an exemption for tangible personal property, services, specified digital products, and digital codes purchased by self-service bays, automatic car washes, and car wash tunnels.

Act 855: Creates the Arkansas Major Historic Rehabilitation Income Tax Credit Act (the "Act"), which provides an income tax credit under § 26-51-2601 et seq. for qualified rehabilitation expenses on historic structures. Owners of eligible properties with a required minimum investment in qualified rehabilitation expenses may apply for a certification of completion from the Department of Arkansas Heritage. Act 855 also creates the Arkansas Major Historic Rehabilitation Trust Fund.

Act 470: Amends § 26-51-2204, the Arkansas Historic Rehabilitation Income Tax Credit Act to expand eligibility to non-income producing properties that have qualified rehabilitation expenses of at least $5,000.00. The maximum amount of tax credits authorized to be issued by the Arkansas Department of Heritage is $4,000,000 per year. The effective date is for tax years beginning on or after January 1, 2019.

Joel said changes were made to the Arkansas Major Historic Rehabilitation Income Tax Credit and that it does not have specified funding. Matt Boch asked when you say it does not have specified funding, does that mean the General Assembly would have to allocate a budget in the fiscal session. Joel replied that the General Assembly can choose to allocate or appropriate money to the tax credit using money from any source where the money can be received in interim. There are sources of money in which the tax credit can receive funding, such as the Governor's Quick Action Closing Fund and certain appropriations in the Department of Heritage. But there is no specified amount of money to be allocated under this act.

Administrative Acts and Tax Updates:

Act 870: This adopts several provisions of the Internal Revenue Code as a technical corrections bill for Arkansas Income Tax purposes including – entertainment expense changes, luxury automobile depreciation limits, depreciation methods generally, research and development laws, and other changes based on the Tax Cuts and Jobs Act.

Act 315: Updates the Arkansas Code to replace outdated references to "regulations" with the correct reference to "rules."

Act 319: Amends the Administrative Procedure Act to allow for the grouping of rules for the promulgation process. This will allow agencies to group rules for the purpose of legislative review, notice to the public, and setting of a public hearing. This act could simplify the rule promulgation process for the Department.

Act 368: Increases the age requirement of a historic or special interest vehicle that qualifies for exemption from registration fees, taxes, or licensure, from twenty-five (25) to forty-five (45) years of age or older and requires yearly proof of current insurance coverage to maintain the exemption.

Matt Boch asked if the years have changed from 25 years of age to 45 years of age or older for a car to qualify as an antique. Joel said that with this act an antique car cannot be just 25 years old. Basically, if you have a car that is 25 years of age and it is currently registered as an antique with an antique license plate, then you can still keep that license plate and antique car registration, but, with this act, your car can only qualify for the antique exemption if it is 45 years of age or older.

Act 760: Tolls Arkansas's ten-year limitations periods for state tax collections until one hundred eighty (180) days after the termination of the taxpayer's bankruptcy case. Also provides that a certificate of indebtedness filed by the DFA Director relates back to the date of assessment in the same manner as federal tax liens. Also authorizes the DFA Director to file a tax lien at the end of a bankruptcy case in order to secure a tax delinquency that was not discharged by the bankruptcy. Effective for tax years beginning on and after January 1, 2020.

Act 819: Act 819 is a tax reform act that: (1) transfers administration of the franchise tax to the Department, (2) requires a biennial report by the Department to the General Assembly and the Governor a report on all exemptions, discounts, credits, and deductions authorized by state law, (3) exempts advertising space on a public transit bus, and (4) requires sellers to collect additional information for farming exemption certificates collected all-terrain vehicles. The provisions regarding the transfer of franchise tax section and biennial report to the General Assembly are effective May 1, 2021. The provisions regarding bus advertising and ATVs are effective October 1, 2019.

The transfer of the franchise tax is still unfolding as the Department works with the Secretary of State's office for the transfer. Matt Boch asked on the Biennial Report if DFA is going to be staffing in advance before 2021 in anticipation of the transfer or not until the effective date of May 1, 2021. Paul Gehring said that this is likely an issue for a different division of DFA rather than the Revenue Division. That process would primarily be under Paul Louthian in Economic Analysis and Tax Research. In the Financial Impact Statement, the Revenue Division identified that additional staffing would be needed to meet the requirements of the Act and provide for the most up to date information and revenue impacts for those individual deductions and credits that are yet to be identified. The Revenue Division and the Economic Analysis and Tax Research group work together quite regularly and that is something to discuss.

Act 850: Amends the Arkansas Tax Procedure Act to allow the Department the discretion to hold administrative hearings electronically when it is in the best interest of both the Taxpayer and the Department; meets due process requirements; is not unduly expensive for the Taxpayer or the Department; and protects the Taxpayer's confidential information. Effective on and after January 1, 2020.

Act 864: Provides that a copy of a certificate of indebtedness filed by DFA to secure payment of a state tax debt may be published on DFA's website.

There are no current plans on how or with what variables the Department is going to use to implement this act but the Department is looking in to a process to do that. Paul Gehring said the Department's Office of Information Services (OIS) is working on that plan for the implementation of this act. A.W. Bailey asked what the purpose of this act is. Paul Gehring said that under the Administrative Office of Courts (AOC) website, which gives people the ability to search for state tax liens, are open to the public, but not all counties are on the AOC's website. The main reason for this act is for the Department to be able to put all tax lien information from all 75 counties in one location on the Department's website. Then if a taxpayer is interested in knowing whether or not he or she has a tax lien can go to one location to find it. A.W. Bailey disagreed with this act because he said the reason for this information was for tax professionals and businesses to use this information, not for "individuals" that includes taxpayers. He thinks that this act seems to be an invasion of privacy and an overreach of government into private lives. His concern is that access to this information could be abused. Paul Gehring reiterated that this information is public record on the AOC's website. The AOC's website however, is not the most user friendly to find this information. The Department is placing this information on the DFA website to simplify the process of finding this information. The tax lien information on the website is prospective only, the Department will not go back and add old information to it. Joel said that the Department is not adding any more information that is currently provided through the AOC's website. Dale Breshears said that when he was in Collections that there were taxpayers who did not know that they have tax liens. Especially taxpayers who are juniors or seniors and there is a mix up concerning to whom the lien belongs. This process of placing this information on the DFA website could make it easier for the taxpayer to see if he or she has a tax lien and possibly make it easier for the Department to address a tax lien that may need to come off if a lien release is to be issued. A.W. Bailey said that this can be justified on both sides, but I just do not agree with it. Joel said your concern is duly noted.

Act 808: Increases the Homestead Property Tax Credit from $350 to $375 for tax years beginning on or after January 1, 2019. The Act also provides for a one-time distribution of $8,246,573 from the Property Tax Relief Trust Fund to the County Voting System Grant Fund and an annual distribution of excess revenues to the Long Term Reserve Fund. The Department will be required to determine the timing and amount of the required transfers from the Property Tax Relief Trust Fund.

Act 416: Provides additional revenue to fund highway maintenance and repairs. The additional revenues are derived from the levy of a new wholesale sales tax on gasoline and diesel fuel. The tax is levied at the rate of 1.6% of the wholesale price of gasoline and 2.9% of the wholesale price of diesel. The tax rate is reviewed and adjusted annually by DFA based on increases in the wholesale price of fuel. This new tax is in addition to the current fuel taxes on gasoline and diesel and the proceeds are split 70%-15%-15% to Arkansas Department of Transportation (ArDOT), cities, and counties. Additional revenues are generated by a $200 annual registration fee on electric vehicles and $100 for hybrid vehicles. These registration fees are in addition to the existing registration fees under state law and 100% of the new revenues are distributed to ArDOT. Finally, the act provides a minimum of $35M per year to ArDOT to be received from that portion of annual tax receipts from casino gaming in excess of $31.2M and, if that amount is less than $35M, the shortfall to be made up from funds available in the Restricted Reserve Fund. The new fuel taxes and the new vehicle registration fees are administered by DFA and are effective October 1, 2019. Also, DFA will be responsible for making some of the fund transfers related to revenues from casino gaming and the Restricted Reserve Fund. Those transfers are effective 90 days after adjournment.

Act 681: Allows for microbrewery-restaurant private clubs to be licensed. This permitting system will allow for a microbrewery to operate a microbrewery-restaurant in a dry county.

Act 691: Hard Cider given a specific Alcoholic designation for licensure and tax purposes.

Individual Income Tax Administration:

Individual Income Tax Updates for 2019:

May 14, 2019

Dale Breshears, Assistant Administrator of Individual Income Tax – Individual Income Processing.

Processing Update: Individual Income Tax processed 112,000 paper returns as of May 1, 2019, compared to 107,675 in 2018. 1,090,004 e-file returns were processed this year, compared to 1,024,580 in 2018. One concern that directly affects refunds is when the Department receives W-2's. Dale said that on February 1, which is a day after the W-2s are due, Individual Income Tax placed 56% in the warehouse. On February 15, 70% were placed in the warehouse. As of March 1, 95% were placed the warehouse. The process in handling W-2's will improve. ADP submitted over 300,000 W-2s around February 1st, however, due to problems with downloading the files into the data warehouse the files did not get into the system until around February 15th. We should not have the download problem in future years. Baptist Health was a concern because although it submitted their W-2s to the Federal government, they thought the IRS would send the State their W-2s. Individual Income Tax contacted Baptist Health and the problem has been solved.

The average days for processing returns and refunds was 17 days for e-file and 25 days for paper return. In 2018, the average processing time was 20 days for e-file and 35 days for paper returns and refunds. It was stated that at least there is improvement for processing paper returns as well as e-file partly because the W-2's are easier to get. Phone calls have been reduced this year compared to last year, which allows for more returns and refunds to be processed. The number of phone calls from January – April 15, 2018 was 102,469. This year, the number of phone calls from January – April 15, 2019 was 84,125. Matt Boch asks, "what do you think drove the reduction in phone calls?" Dale responded, "I think the fact that the Department got them processed quicker; Taxpayers were made aware in advance that refunds would take longer to receive; Taxpayers were able to check 'Where is My Refund?' on the DFA website for the status of their refund better than before; and there were other factors that contributed to that." The number work items as of May 6, 2019 is 20, 218; last year as of May 7, 2018 it was 20, 768. Not much difference in work items worked, but there is improvement. It may take a few months to get the number of work items to zero. As of May 14, 2019, the Department has issued refunds totaling $383 million. Last year May 14, 2018 it was $351 million. Matt Boch asked "did you run into many issues with Federal 'Tax Cuts and Jobs Act' (TCJA) in reference to conformity?"

"Was it more or less, same as any year or is too soon to tell?" Dale responded that the Department received a lot of calls early on, especially with how the Department did apportionments, since the Department changed them. But as far as the Tax Cuts and Jobs Act, not many. Most questions were on how apportionment worked and on which line. Sometimes people would call in about instructions concerning certain parts of the TCJA that the State did not adopt and/or will not adopts. So now the Department is going to do a better job with instructions, because it is going to be different.

November 14, 2019

Dale Breshears, Assistant Administrator of Individual Income Tax – 2019 Tax Highlights

Processing Update: Individual Income Tax received 179,000 calls, 2500 walk-ins for taxpayer assistance and processed 1.17 million returns in 2018. Eighty-three percent (83%) were e-File. There is a small increase e-File returns from the last tax year.

Tax Act and Tax Form Update:

a) **Multiple Direct Deposit (Act 774 of 2019)**
   Up to (2) bank accounts for direct deposit of taxpayer's refund.
b) **Achieving a Better Life Experience Program (Act 825 of 2019)**
   Contributions to an ABLE account established under §20-3-101 et seq. is deductible by up to $5,000 per taxpayer in a tax year.
c) **Limitation for Charitable Contributions increased (Act 870 of 2019)**
   AGI limitation for cash contributions increased to 60% beginning in 2019.
d) **Tax Reform and Relief (Act 78 of 2017)**, the low-income tax table was lowered.
e) **Changes to AR 1000F (A copy of the AR 1000F form was handed out)**
   - All income, deductions and tax computation will be included on page 2.
   - Military pay and retirement are combined on one line for primary and spouse.
   - Spouse IRA/Pension required to be reported on applicable line regardless of filing status.

Noteworthy Reminders:

a) If a taxpayer claimed ANY exemption for military retirement, he or she may not claim the $6,000 exemption for employer pension/IRA. Dale said the Department knew there were some inherent problems in the bill, especially for reservists and National Guard. The reason for this is that reservists and National Guard could have employee sponsored IRA or pension and get military retirement. Most active duty people who retire like he did after 24 years of active duty service did not have a pension because he was not out of the service for that long. The reservists however, have regular jobs and it is easy for them to get a pension and their retirement. If a reservist were to retire in October, November or December, they could have less than $6000 of retirement and have another employee sponsored pension. So this law did affect those individuals, but the tax code states that the taxpayer can not take both exemptions. Matt Boch asked would the policy solution be to combine the cap at $6000. Dale said some taxpayers do combine the retirement with their sponsored IRA and take the $6000 exemption. Otherwise if their military retirement is $2000, then they lose $4000 they could have taken the previous year. Dale emphasized that the Department must follow the tax code with taxpayers who choose to combine them. Matt Boch asked that if there is a special session, would there be any hope of slipping this policy change in or wait until the General Session of 2021. Paul Gehring said the Department would like to see the code change and it makes sense to make the change; the timing of the change however is January 2021 at the earliest. If there is a special session, that is something the Department would consider on the list.

b) **Arkansas Casino Gaming Amendment of 2018**

Electronic games of skill no longer applicable in tax year 2019.

c) **Railroad retirement benefits**

Tier 1 and Tier 2 benefits exempt on form(s) RRB 1099 or RRB 1099-R.

d) **AR 1050 Partnership**

- Private pension from railroad company taxable.
- Apportionment required for multistate partnerships.
- Income from other partnerships to be allocated (A.C.A. 26-51-802(c)(2)). Prior approval required for deviation from apportionment.

e) **Information Exchange Programs With The IRS**

- CP2000: If the IRS discovers unreported income, the IRS assesses additional federal tax on the omitted income and then notifies the State of Arkansas. The taxpayer's state tax return is then reviewed for unreported income.

- Revenue Agent Reports (RARs): When the IRS adjusts a taxpayer's federal income tax return as the result of an audit, details are provided to the State of Arkansas. The taxpayer's state tax return is then reviewed and adjusted if appropriate.

f) **Arkansas Non-Filer Identification Program**

- The IRS provides the Arkansas Department of Finance and Administration with a list of taxpayers who filed federal returns using Arkansas addresses, but did not file an Arkansas state tax return.
- Letters are sent inquiring whether the taxpayer is required to file.
- If the taxpayer was a resident of another state please send a copy

of another state tax return along with a W-2.
- If taxpayer was a resident of a state without state income tax, please send a Driver's License with proof of lease or home ownership in addition to W-2.

g) **Non – Filer Letter**
- Adjustment letter and proposed assessment letter will now be sent at the same time
- The adjustment letter will explain the non-filer adjustment.
- The proposed assessment letter will give the taxpayer an updated balance including penalties and interest.

Concerning non-filer letters, Matt Boch asked were the taxpayers who receive non-filer letters typically residents or nonresidents. Dale said they are typically residents who don't file with the state or federal. If they filed the federal, the state would have a copy of that information, unless it is under a certain threshold, which based on different things such as the taxpayer not filing because he or she does earn of enough money then adjustments are made.

In reference to a statement Dale made about the state having federal tax information if the taxpayer filed a federal return, A.W. Bailey asked when did the Department start logging W-2's. He asked the follow-up question, when did the Department start keeping track of the withholding in W-2's. Dale responded in 2009 or 2010. A.W. Bailey made the statement if we (his tax company) receives a CP-2000 from the Internal Revenue Service and it gets kicked back as unreported income, and it is based on W-2 income and the taxpayer receives and adjustment letter, that indicates the Department has not gone out to check the withholding so see the additional withholding on the W-2's. Lynne Reynolds said the Department has been checking W-2's for several years now. A.W. Bailey disagreed because he has a client who has a corrected W-2C from the IRS that was from 2006. The taxpayer's withholding changed from the federal and not for the state. So, his client did not receive credit for the correction. A.W. went on to say that because the state did not receive a notice from the IRS in the system (AIRS), the state did not check the withholding for the correction or did not have the ability to check. Dale and Joel stated that amended returns are different from non-filer letters. Lynne said she does not think the Department is checking withholding for W-2C's. Dale said that the Department probably does not receive W-2C's. A.W. agreed that he did not think the Department was receiving them. Dale said that there are companies who do not file regular W-2's and certainly don't send corrected W-2's also. A.W. Bailey said that he would send a hard copy of his client's return to Individual Income Tax.

Corporation Income Tax:

November 12, 2019

I. Scott Fryer, Assistant Administrator of Corporate Income Tax – 2019 Legislative highlights affecting Arkansas Corporation Income Tax.

Federal Conformity: Acts 870 and 201 of 2019

a) **Act 201** adopts IRC 1400Z-2 in effect 1/1/2018 for tax years beginning 1/1/2018 and after concerning opportunity zones. Capital gains can be deferred if exchanged for opportunity zone property until the date the opportunity zone property is sold or 12/31/2026 for Arkansas property only.

b) **Act 870 adopted or readopted:**

- IRC 162 Business expenses, Large compensation deduction rules clarified, lobbying expenses, FDIC premiums for large financial institutions, government fines and penalty deduction sexual misconduct settlements deductions disallowed.

- IRC 274 Meals travel & entertainment, club dues disallowed, meals deduction reduced from 80% to 50% and disallowed after 2025, property awards to employees limited to $400, no deduction for transportation benefits.
- IRC 167 168a-j Depreciation Farmers may used accelerated methods for 5 & 7 year property, reduced recovery period for real property improvements from 40 to 30 years and 15 years for restaurant and other qualified property.

- IRC 280F Luxury car depreciation limits approximately tripled from 2016 levels.

Federal reform items not adopted:

a) IRC 163 Interest expense. New limits on corporate interest expense to 30% of taxable income not adopted, PMI, second home and home equity interest expense still deductible for individuals.
b) IRC 1031 Like-kind exchange rules limited to farmers and real estate, Arkansas never adopted but has provision stating that no gain recognized when property exchanged for similar property.
c) IRC 63, 199A Qualified business income deduction for non-corporate income not adopted in Arkansas.
d) IRC 951A Global intangible low-taxed income (GILTI) rules not adopted in Arkansas.
e) IRC 250 Deduction for portion of foreign-derived intangible income (FDII) and GILTI income not allowed.

Scott Fryer mentioned that although Internal Revenue Code (IRC) 951A was not adopted, some of that income may be taxable under Regulation 1996-3. Matt Boch asked that under GILTI of 1996-3 that the general point of the regulation is that if there is intangible income, royalty income, floating out there that 1996-3 would probably pick it up or is there anything beyond that. Scott replied that regulation 1996-3 is just for royalty income and any other income under GILTI will not be taxable income in Arkansas under 951A.

New and Modified Business Incentive Credits

a) **Act 203 of 2019** creates an income tax credit equal to 33% of a cash donation that is used by a qualified educational institution in Arkansas to purchase new machinery and equipment. The Arkansas Economic Development Commission must approve the credit and the credit may offset 100% of the tax and unused credits may be carried forward for nine tax years. Act 203 of 2019 is in effect on July 24, 2019 and after.

b) **Act 327 of 2019** amends the Advantage Arkansas and ArkPlus tax credits by modifying the average hourly wage requirements necessary to qualify for the basic tax credits and adds new criteria for enhanced credits under each program.

c) **Act 470 of 2019** lowers the minimum qualified rehabilitation expenses for non-income producing property from $25,000 to $5,000 to qualify for the Historic Rehabilitation Income Tax Credit.

d) **Act 1066 of 2019** creates the Arkansas Delta Music tax credit equal to the cost of an art project that promotes tourism related to music in the Arkansas Delta up to $25,000 per project. Unused credits may be carried forward up to 5 years.

e) **Act 1073 of 2019** allows water conservation income tax credits to be transferred for tax years beginning on or after January 1, 2020.

f) **Act 819 of 2019** transfers administration of the Franchise Tax from the Secretary of State to the Department of Finance and Administration effective May 1, 2021. The franchise tax will remain under the authority of the Secretary of State until DFA assumes administration of the franchise tax.

g) **Act 822 of 2019**

- Increase to NOL carryforward for losses in 2020 to 8 years and to 10 years for losses in 2021 and after.
- Single sales factor apportionment will replace the current three factor apportionment for tax years beginning in 2021 and after.
- Maximum corporation income tax rates will be reduced to 6.2% for taxable income exceeding $100,000 for tax years beginning in 2021 and to 5.9% for income exceeding $25,000 for tax years beginning in 2022 and after.

Excise Tax:

May 14, 2019

Andrew Smith, Assistant Administrator of Excise Tax – Sales Tax Update regarding Acts passed through the Arkansas Legislative Session of 2019 - Emphasis on Act 822 – Remote Sellers and Marketplace Facilitators

Four months ago, Sales and Use Tax started the consolidated remote seller and market place facilitator ATAP application. The Department has had a lot of success with that. There have been approximately 1,500 applicants, and from that the Department has been removing applicants who don't meet the criteria for remote sellers. In the end, the Department ended up having 900-1,000 of actual remote sellers who have applied with the Department to date. The DFA website has been updated to include Act 822, along with different links and hyperlinks to information on remote sellers and marketplace facilitators. Matt Boch suggested that maybe Sales and Use Tax could update the website by integrating last fall's announcement on the website to the new announcement on the website. He said the last time he checked, he saw the Wayfair announcement. Andrew responded that the Department is working on that and will be updating the website concerning that.

Todd Cockrell – Assistant Administrator of Miscellaneous Tax – Update on Tax Acts concerning Misc. Tax

a. Act 580 of 2019 levies an additional 50 cents per pack at the wholesale level on cigarette papers. This act will be effective September 1, 2019.

b. Act 822 of 2019 levies a water usage fee on automatic and tunnel car washes. This act is effective October 1, 2019.

New Business:

August 14, 2019

Matt Boch stated that since the general bill most likely won't go into effect until July 24th, that implicate, the IRS twenty factors for worker classification. Matt asked if the Department will have more scrutiny or does it affect the Department in reference to worker classification. Joel responded that the bill was not driven by DFA but rather by the Department of Workforce Services in dealing with issues of unemployment. To the extent that there have been times where DFA has looked at whether or not someone is properly classified, the Department still does this for Income Tax. The purpose of the bill was not for DFA to increase activity.

November 12, 2019

Matt Boch asked about any new updates on the Commissioner of Revenue. Paul Gehring said no there are not future updates. Paul will continue to be the 'acting commissioner' until a new person assumes that role. Paul also noted that Deputy Director Carla Haugen is on extended leave; Alan McVey who is the administrator of Office of Child Support Enforcement has assumed that role for Carla. He will be Chief of Staff and Chief Fiscal Officer. Matt Boch asked in the interim has the normal actions and decisions of the Commissioner been postponed in terms of a pile of things waiting on the desk of the duly appointed Commissioner or have things continued coming through. Paul said that things have been pretty much coming through and getting the appropriate approval so that business did not have to slow down at any point because of Mr. Anger's retirement. There are some issues and questions that come up that might be something for the new commissioner. Especially if it is a policy issue or a deviation from what was always done. Paul said he certainly anticipates the role of commissioner will be filled sometime in the near future. (Note: Charlie Collins was appointed Commissioner of Revenue on November 19, 2019)

Matt Boch asked about rulemaking. Joel responded that some of the rules are on the acting commissioner's desk pending review as the Department moves forward. Primarily the omnibus sales tax rules are being brought up to January 1, 2019 date. The market place facilitator and remote seller rulemaking is still in drafting and being completed separately. Soon there will be individual Gross Receipts (GR) updates after the omnibus rules are finished. The Bureau of Legislative Research will be codifying all rules moving forward, there will also be an appeal process so DFA can suggest to BLR to place commas back in if they take them out, that DFA may need there. Matt Boch asked if carwashes were going to get a rule as well and Joel and said yes.

Matt Boch made a statement that the State of Arkansas is out of line with other states in reference to the 6-year statute of limitation for taxpayers who file their returns. He thinks it is unfair to the taxpayer that the Department uses the 6-year statute of limitation as applying to non-filers and whether there has been a thought to extend the statute of limitation to 10 years. He stated that it is unfair that there is a non-filer who will pretty much wind up in the same boat as a person who filed with a 25% understatement with that 6-year statute of limitation. Paul Gehring said understandably so, and from time to time those individuals that are non-filers for a very long period of time, are usually not filing with the IRS either. So, it becomes very difficult for the Department. If the Department is going to only look six years back, then that may be a good legislative suggestion. Matt said if that turns out to be material revenue, maybe it could reduce the interest rate. Paul Gehring said the Department always provides a revenue impact statement. There has been a lot of support in the General Assembly for reducing the interest rate. Even though the Department pays interest out to taxpayers at the exact same statutory rate overall, it is a net revenue gain. Joel stated that the Department's main concern, as has been raised in the past, is that the Department wants a static rate rather than a floating rate.

The reason the Department's position has never been whether the interest rate should stay or change, the Department requests a static rate because a floating rate would change from month to month and year to year. The computer system needs to be able to adjust for that in reference to how the Department would be able to administer the rate. Paul Gehring mentioned that the last time a floating rate was discussed was in a bill from the 2015 General Session. The Department provided a fiscal impact statement that it would cost \$6-7 million a year in fiscal impact to reduce the rate to 7%. Mike Tuohey asked is there any talk about putting the rate at a floating rate above prime. Joel said that there has been talk on that and that there have been versions of bills on that, and that has been a concern for the Department. The reason for the concern is that if there is a floating rate, then from year to year there will be a recalculation and not every taxpayer will be treated the same. If the taxpayer has multiple year assessments, then there are going to be multiple year assessments next year versus other years. Then the floating rate becomes a challenge for the computer program that changes within the system and potentially within that same taxpayer's identification. Mike Tuohey asked would that be more in line with what the IRS is doing. A.W. Bailey said yes it would, which is fair. Joel reiterated the Department's position has not been whether the interest rate should stay or change but that it be a static rate, which is more manageable from an administrative position. Paul said the issue is the Legislature finding the money in the budget to account for the change.

A.W. Bailey said that a part of the law he really does not agree with, is that a taxpayer has only three years if he or she does not file to pick up a refund. If a taxpayer got 10 years and theoretically could go back and get a refund, that taxpayer can still only get a refund for three. Whereas if you owe for those other years, they (the state and federal) are going to 'ding' you for it. He thinks that it seems one sided and it is not in the taxpayer's favor. Matt Boch said we may get 'dinged' on the cost on the administrative score card for having the six year statute of limitations with understatements, versus the three years refund. In reference to the current statutory system, A.W. Bailey said that it is a revenue gain for the state in two ways: The state is looking at the interest, he is looking at the additional tax that is coming in; and the

Department has to look at the additional refunds that the Department has not paid out. If the Department were to look into the system, it would find that the refunds that the Department is not paying out is more than interest. He said he has multiple clients he has seen who have $10-$15,000 in refunds that they did not get because they did not want to pay and file their returns. Some of his clients find out over time that they lost a thousand dollars here and there in different tax years, until they get a letter from the state. Matt Boch said you can run but not for long. Matt Tuohey asked if any other new business needed to be discussed and no one had anything to discuss, so he adjourned the meeting.

Next TAC meeting is February 11, 2020