Legislative Update: State Tax Laws for 2017

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05/08/2017

The 91st Arkansas General Assembly recently wrapped up its general session, which generated a number of changes to the State's tax laws. This article provides a summary of each tax bill signed into law.

CORPORATE TAX LAW CHANGES

H.B. 1563 – H.B. 1563 amends Ark. Code Ann. §26-51-409(b). This amendment requires corporation filing a federal Subchapter S income tax return to file an Arkansas Subchapter S income tax return. The amendment provides that a corporation shall be treated as a Subchapter S corporation for Arkansas income tax purposes if the corporation has elected Subchapter S treatment for federal income tax purposes for the same tax year. Similarly, a corporation that has elected to be treated as a Subchapter S corporation for federal income tax purposes shall not elect to be treated as a Subchapter C corporation for Arkansas income tax purposes. The bill is effective on and after January 1, 2018.

H.B. 1644 – H.B. 1644 amends Ark. Code Ann. § 26-54-105(c)(1) to change the filing deadline for franchise tax reports. For tax years beginning on or after January 1, 2017, corporations shall file a franchise tax report showing the condition and status of the corporation as of the close of business on the last day of the corporation's preceding fiscal year.

INCOME TAX LAW CHANGES

H.B. 1162 – H.B. 1162 amends Ark. Code Ann. §§ 26-51-307, 26-51-404(a)(1) and 26-51-404(b)(6)(B). These amendments provide a personal income tax exemption for military retirement and survivor benefits. A taxpayer cannot claim a $6,000 exemption on retirement benefits received from non-military sources. The unemployment compensation benefits paid from federal unemployment funds and unemployment insurance benefits received from unemployment compensation paid under Title IV of the Social Security Act is included in Arkansas gross income. The bill is effective January 1, 2018.

H.B. 1390 – H.B. 1390 amends Ark. Code Ann. §§ 6-84-102, 6-84-103, 6-84-105(c)(1), 6-84-106, 6-84-108(b), 6-84-109(b), to adopt recent changes to the Internal Revenue Code and to clarify provisions concerning child support payments and gambling losses. The bill clarifies that child support payments are not included in the gross income of the recipient and that gambling losses are deductible up to the extent of gambling winnings and not subject to the 2% limitation on miscellaneous itemized deductions. The bill applies retroactively to tax years beginning on or after January 1, 2015.

H.B. 1473 – H.B. 1473 amends Ark. Code Ann. § 6-84-111(b)(2) to allow a tax deduction for contributions to a tuition savings account in the Arkansas Tax-Deferred Tuition Savings Program. If the aggregate amount of contributions by a taxpayer exceeds $5,000 per year, the unused aggregate amount may be carried forward to the next succeeding four tax years.

S.B. 253 – S.B. 253 amends Ark. Code Ann. § 26-51-2204(b) to amend the Historic Rehabilitation Income Tax credit. The amendment increases the maximum amount of qualified rehabilitation expenses to $1,600,000 for projects beginning on or after July 1, 2017. For a project that starts on or after January 1, 2009, the qualified rehabilitation expense is $500,000. These amendments are effective July 1, 2017.

S.B. 417 – S.B. 417 amends Ark. Code Ann. § 3-7-116 regarding the tax rebate for qualified manufacturers of beer and malt beverages. The amendment provides that if a qualified manufacturer expands production to produce a combined total of beer and malt in excess of 25,000 barrels during a 12-month period, the manufacturer should submit a letter acknowledging that the production has exceeded the classification production limits of 25,000 barrels. The amendment further states that the manufacturer would continue to be eligible for the tax rebate on the first 24,999 barrels of beer and malt produced in the 12-month period for which the rebate is being claimed.

H.B. 1014 –H.B. 1014 adds Ark. Code Ann. § 26-51-459, to create the teacher's classroom investment deduction. For tax years beginning on or after January 1, 2017, the amendment provides for an income tax deduction for certain items purchased by a teacher to be used in the teacher's classroom. The deduction allowed shall not exceed $250 per taxpayer, or $500 for taxpayers who are married filing jointly if each taxpayer is a teacher.

H.B. 1802 – H.B. 1802 amends Ark. Code Ann. § 6-84-111(b). This amendment allows contributions by an Arkansas taxpayer to a tax-deferred tuition savings program established by another state to be deducted from the taxpayer's adjusted gross income. This amendment also limits the deductions for contributions to such plans established in another state to $3,000 and roll-overs to $7,500 per taxpayer in any tax year. In addition, the amendment provides that a taxpayer cannot claim the deduction if it is already claimed on another state's income taxes.

H.B. 1031 – H.B. 1031 creates an income tax exemption for incentives received under the Community Match Rural Physician Recruitment Program. The bill adds Ark. Code Ann. § 26-51-315, which allows an exemption from the income tax imposed by the Income Tax Act of 1929 for a community match income incentive received by a taxpayer under the program. The bill is effective for tax years beginning on and after January 1, 2017.

S.B. 688 – S.B. 688 amends Ark. Code Ann. §§ 26-51-506 and 19-6-301, concerning the income tax credit for waste reduction, reuse, or recycling equipment. These amendments require a qualified expansion project to invest at least $1,000,000,000 and a qualified steel specialty products manufacturing facility to invest at least $200,000,000, and provide a positive cost-benefit analysis before an incentive agreement is executed. The amendments raise the job creation requirement from 350 to 500. The amendments limit the yearly use of income tax credits to $11,000,000 for qualified expansion projects not having a public retirement system of the State of Arkansas as a member.

H.B. 2250 – H.B. 2250 incorporates Ark. Code Ann. §§ 23-116-101 through 23-116-104, on paid fantasy sports games. The bill imposes an 8% privilege tax based on game operators' gross paid revenues collected from the state's previous fiscal year.

S.B. 505 – S.B. 505 amends Ark. Code Ann. § 26-51-509 and repeals Ark. Code Ann. §§ 26-51-1601 through 26-51-1606, concerning income tax credit for employing an apprentice in an apprenticeship program or work-based learning program. The bill consolidates and expands the Youth Apprenticeship Program Income Tax Credit with the Youth Apprenticeship/Work-Based Learning Program Tax Credit. The bill further limits the total amount of claimable credit per taxpayer per tax year to $10,000. The bill is effective January 1, 2018.

S.B. 729 – S.B. 729 amends Ark. Code Ann. § 26-51-1005(b)(3), concerning Water Resource Conservation and Development Incentives Act. For tax years beginning on and after January 1, 2017, the bill amends the carry forward provision for unused credits for the income tax credit allowed for water impoundment from nine to fifteen consecutive taxable years.

PARTNERSHIP & LLC TAX LAW CHANGES

H.B. 1562 – H.B. 1562 amends Ark. Code Ann. §26-51-802(c) to require partnership income to be determined for state income tax purposes by using an apportionment method. On or after January 1, 2018, a partnership that files an Arkansas partnership return and has income from both within and without Arkansas shall apportion income to Arkansas under the Uniform Division of Income for Tax Purposes Act.

H.B. 1559 – H.B. 1559 amends Ark. Code Ann. § 26-51-919 to modify the income tax withholding requirements for members or owners of pass-through entities. The amendment allows C corporations to participate in a composite return, and clarifies that a C corporation can be exempted from withholding if it signs an agreement to file corporation income tax returns, pay the tax timely, and be subject to collection actions in the court. The amendment further clarifies that a C corporation can file a corporation income tax return and claim any taxes withheld by a pass-through entity as a payment toward the corporation income tax. The amendment requires pass-through entities to withhold income tax at the maximum rate for member C corporations. The bill is effective for tax years beginning on and after January 1, 2018.

TAX PROCEDURAL LAW CHANGES

H.B. 1564 – H.B. 1564 amends Ark. Code Ann. § 26-51-909(b)(2)(A) to conform the Arkansas filing date for annual withholding statements to federal law. The amendment provides that the statement from the employer shall be filed with the director on or before January 31 following the close of the income year.

H.B. 1680 – H.B. 1680 adds Ark. Code Ann. § 26-18-601(a), concerning the cancellation or refusal of license or permit by the Director of the Department of Finance and Administration under the Arkansas Tax Procedure Act. The amendment clarifies that the Director may require reporting and payment of all taxes administered by him prior to issuing a sales tax permit, withdrawing an intent to revoke a sales tax permit, or reinstating a sales tax permit. The amendment will help clarify that DFA has the authority to enforce payment of all taxes it administers. The bill is effective January 1, 2018.

H.B. 1682 – H.B. 1682 amends Ark. Code Ann. §§ 26-18-1002 and 26-18-1003. The amendment provides that a business closure order is an injunction prohibiting further business operation. Taxpayers owning a business subject to a business closure order may seek a court order to continue operations during an appeal of a business closure order. The bill permits the Director of the Department of Finance and Administration to enforce the closure of a business while an appeal of a business closure order is pending.

H.B. 1681 – H.B. 1681 amends Ark. Code Ann. §§ 26-18-104, 26-18-306, and 26-18-403 to amend the Arkansas Tax Procedure Act to change definitions, provides that erroneously paid refunds are considered underpayments of tax and subject to assessment, create a statute of limitations specific to assessments for erroneously paid refunds, provide a formal mechanism to issue assessments for erroneously paid refunds, and provide that tax liens may be filed and executions issued to recover erroneously paid refunds.

SALES & USE TAX LAW CHANGES

H.B. 1162 – The Arkansas General Assembly enacted H.B. 1162 to amend Ark. Code Ann. 26-52-103(12)(B). These amendments increase the sales and use tax rate on candy and soft drinks, impose sales and use tax on specified digital products and digital codes, and reduce the soft drink tax rates on certain products. The bill is effective January 1, 2018.

S.B. 362 – S.B. 362 amends Ark. Code Ann. §§ 15-4-2706(c), 15-4-3501, 26-52-447(b), 26-52-447(f) and (g), 26-53-149(b), and 26-53-149(f) and (g), which provides an exemption from tax for purchases related to the repair and partial replacement of machinery and equipment used directly in manufacturing, which will become effective July 1, 2022. The amendments also gradually increase the refund available for taxes paid on such purchases over the next five years. The amendments clarify the existing procedure for claiming a refund of tax paid on such purchases for direct pay permit holders and provide a procedure for

non-direct pay permit holders to claim the increased refund beginning July 1, 2018. The bill also sunsets an AEDC 100% refund program for manufacturers and the InvestArk tax credit program.

H.B. 2278 – H.B. 2278 amends Ark. Code Ann. § 26-52-451(a). The amendment extends the exemption to sales of aircraft sold by sellers located in Arkansas, when the aircraft has a certified maximum take-off weight of more than 9,500 pounds and will be based outside Arkansas. The bill also makes certain technical changes and explains the term "maximum take-off weight."

H.B. 1649 – H.B. 1649 amends Ark. Code Ann. § 26-52-420 regarding the sales and use tax exemption for new motor vehicles purchased by nonprofit organizations or with Urban Mass Transit Administration funds. The amendment removes the ten-vehicle requirement and allows the exemption regardless of the number of vehicles purchased at one time.

H.B. 1503 –H.B. 1503 amends Ark. Code Ann. § 3-7-104, to equalize the excise tax rates of beer and hard cider. The amendment changes the method of taxation of hard cider to equal the tax rate on beer at $7.50 per barrel. The amendment also specifies that hard cider does not fall within any other definition of liquor.

H.B. 2126 –H.B. 2126 amends Ark. Code Ann. § 26-52-445, to exempt the lease or rental of beer kegs used to sell wholesale beer from gross receipts tax. The amendment provides that gross receipts or gross proceeds derived from the sale, lease, or rental of a keg used to sell beer wholesale by a wholesale manufacturer of beer are exempt from gross receipts tax and compensating use tax.

H.B. 1221 –H.B. 1221 amends Ark. Code Ann. § 26-52-430(b) regarding the exception to the sales tax exemption for charitable organizations if the charitable organization competes with sales by a for-profit business. The amendment discards the requirement that the "dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of the item being merely incidental and secondary to the dominant purpose of making a gift to the charitable organization."

S.B. 657 – S.B. 657 amends Ark. Code Ann. §26-52-503, to reduce the amount of discount allowed against taxpayers' city or county sales tax liability for filling and paying the sales and use tax early. The bill limits the discount to $5,000 for the tax year beginning January 1, 2018; $4,000 for the tax year beginning January 1, 2019; $3,000 for the tax year beginning January 1, 2020; $2,000 for the tax year beginning January 1, 2021; and $1,000 for tax years beginning on and after January 1, 2022. The bill requires taxpayers to file and pay all sales and use tax due on or before the 20th day of each month for taxes collected in the preceding month.