WHAT'S NEW for 2021

NOTE: The following is a brief description of each Act and is not intended to replace a careful reading of the Act in it's entirety. The Arkansas Legislature enacted numerous changes to the Arkansas Tax Code in 2019. However, many of those changes are not effective until future tax years.

Federal Tax Changes adopted in the 2020 Cares Act can only be adopted for Arkansas if the Arkansas Legislature adopts them in the 2021 Legislative Session.

Act 822 of 2019 amends Arkansas Code Annotated 26-5-101, Article IV and 26-51-709 through 26-51-718 to provide for a single sales factor to apportion income from within and without Arkansas for tax years beginning on or after January 1, 2021. For tax years beginning on or after January 1, 2021, all taxpayers with income from sources within and without Arkansas must use a single sales factor to apportion income from Arkansas unless the taxpayer is subject to a special industry apportionment method authorized for;

1. Railroads by Regulation 1.26-51-204,
2. Private Railcar Operators by Regulation 2.26-51-204
3. Construction Contractors by Regulation 1.26-51-718(d)
4. Television and Radio Broadcasting by Regulation 2.26-51-718(d)
5. Publishing by Regulation 3.26-51-718(d), and
6. Pipelines by Regulation 6.26-51-718(d).

Airlines are required to use sales factor apportionment only under Regulation 4.26-51-718(d) and Bus Lines and Trucking Companies are required to apportion using a mileage factor only under Regulation 5.26-51-718(d) and the mileage should be reported in the sales factor area of Schedule A for Form AR1100CT.

Act 822 also amends Arkansas Code Annotated 26-51-205 to reduce the maximum corporation income tax rate to 6.2% for taxable income that exceeds $100,000 for tax years beginning on or after January 1, 2021. For tax years beginning on or after January 1, 2022 the maximum tax rate shall be 5.9% for all income exceeding $25,000. The maximum tax rate for tax years beginning before January 1, 2021 is 6.5% for income exceeding $100,000.

Act 822 amends Arkansas Code Annotated 26-51-427 to allow net operating losses occurring in tax years beginning on or after January 1, 2020 to carry forward for 8 tax years and losses occurring in tax years beginning on or after January 1, 2021 to carry forward 10 years. Net operating losses that occur in tax years beginning before January 1, 2020 carry forward 5 tax years.

Tax Exemptions for certain Economic and Covid-19 related U.S. Government payments

Act 95 of 2020 created Arkansas Code Annotated 26-51-316 and exempts from Arkansas income tax payments made to a taxpayer by the United States Department of Agriculture under the Market Facilitation Program authorized by 15 U.S.C. §714c as it existed on January 1, 2020. Expenses for losses related to the receipt of a payment to a taxpayer under the Market Facilitation Program are not deductible or otherwise permitted to offset any other income from the tax year in which the loss or expenses are incurred. Act 95 of 2020 is effective for tax years beginning on or after January 1, 2020.

Act 248 of 2021 amended Arkansas Code Annotated 26-51-404(b) to add the following exclusions from gross income;

1. Title 15 U.S.C. § 626A(i) as in effect on January 1, 2021 exempts sums received under the Paycheck Protection Program of loan forgiveness as included in § 304(b), 276(a) and 276(b) of the Consolidated Incentive Act of 2021, Public Law 116-260.
2. Section 277 of the Consolidated Appropriations Act concerning the tax treatment of certain emergency financial aid grants to students.
3. Section 278 of the Consolidated Appropriations Act concerning the clarification of the tax treatment of certain loan forgiveness and other business financial assistance. Section 278 includes exemptions for Paycheck

Protection Program loan forgiveness under section 1109(d)(2)(d) of the CARES Act, Economic Injury Disaster Loan grants also known as EIDL Grants from the Small Business Administration under section 1110(c) of the Cares Act and section 331 of the Hard-Hit Small Businesses, Nonprofits and Venues Act, Subsidies for certain SBA loan payments described in Section 1112(c) of the Cares Act and Grants for Shuttered Venue Operators under Section 324 of the Hard-Hit Small Businesses, Nonprofits and Venues Act.

4. Payments received under the Coronavirus Food Assistance Program described in 7 C.F.R. Part 9 as it existed on January 19, 2021.

Expenses related to the exclusion of income under Act 248 of 2021 are deductible. Income exempted under Act 248 of 2021 and Act 95 of 2020 must be added back in the calculation of net operating loss as required by Arkansas Code Annotated 26-51-427(2).

There are a number of federal and state financial assistance programs that are not exempt from Arkansas income taxes. Among the assistance programs that are not exempt are any government assistance programs included in the American Rescue Plan Act (ARPA) such as;

1.the Restaurant Revitalization Fund Grants,

2.Rural Health Care and Development Grants, USDA loan subsidies,

3.EIDL Grants under ARPA,

4.PPP loan forgiveness under ARPA,

5.Emergency Rental Assistance under ARPA and the Consolidated Appropriations Act,

6.Arkansas Ready for Business Grants and

7.any other federal, state or local financial assistance program not specifically exempted by Arkansas law.

Other tax law changes affecting Arkansas Corporation Income Tax

Act 143 of 2021 amends Arkansas Code Annotated 26-51-102 to include a definition for tax practitioner and Arkansas Code Annotated 26-51-806 to require a tax practitioner who files federal income tax returns electronically to also file Arkansas returns electronically and allows DFA to waive the requirement if the requirement would cause an undue hardship on the practitioner.

Act 145 of 2021 amends Arkansas Code Annotated 26-18-705(b) and allows DFA to waive certificate of indebtedness filing fees in addition to the existing authority to waive penalties and interest of a taxpayer under certain circumstances.

Act 362 of 2021 creates A new Chapter 65 to Arkansas Code Title 26 and creates the Elective Pass-Through Entity Tax for tax years beginning on or after January 1, 2022. Act 362 allows members holding 50% or more of a pass-through entity to elect to have the pass-through entity pay Arkansas income taxes itself instead of passing the income through to the members to pay income tax on their personal income tax returns or on a composite return. Act 362 also amends Arkansas Code Annotated 26-51-404 to exempt income subject to similar taxes in other states from Arkansas income tax for residents and part-year residents for tax years beginning in 2022 and after. The pass-through entity tax election must be made by the extended due date of the income tax return, but may be made at any time prior by registering for the tax on combined registration forms or by completing Form AR362. Form AR362 and vouchers for estimated payments for the Pass-through Entity Tax should be available in January, 2022. The election to be taxed at the entity level and the exemption from income tax of income subject to similar taxes in other states is not available for 2021.

Act 563 of 2021 amends Arkansas Code Annotated 26-51-1011(c)(1) to allow water conservation projects receiving certificates of tax credit approval on or after January 1, 2017 five years to complete a project instead of the previous three year requirement.

Act 586 of 2021 creates a new subchapter 11 to Arkansas Code Title 26, Chapter 18 and authorizes an independent Tax Appeals Commission to hear administrative appeals of tax assessments and refund denials made by the

Department of Finance and Administration. The Commission will begin accepting and trying tax disputes by January 1, 2023.

Act 593 of 2021 details the steps in transition to the independent Tax Appeals Commission.

Act 594 of 2021 creates a new subchapter to Arkansas Code Title 26, Chapter 51 and creates the Arkansas Wood Energy Products and Forest Maintenance Income Tax Credit. The credit is equal to 30% of the cost of qualifying equipment with a minimum investment of $50 million required in a project approved by the Arkansas Economic Development Commission with a signed economic incentive agreement. Each project must create at least 100 new full-time jobs with an average salary of $60,000 per year. Up to $5 million of the credit may be claimed each year and the State of Arkansas may purchase the tax credits at 80% of face value. Unused credits may be carried forward in perpetuity until fully claimed. Act 594 is effective for tax years beginning on or after January 1, 2021.

Act 628 of 2021 amends Arkansas Code Annotated 15-4-2306(b) by allowing the Arkansas Public Roads Improvements Credit to offset 100% of the tax liability instead of the current 50% for tax years beginning on or after January 1, 2020. The credit is equal to 33% of the taxpayer's contribution to an approved road improvement project.

Act 629 of 2021 amends Arkansas Code Annotated 26-51-807(a) to allow taxpayers an extension to file of one month after the extended due date for a federal income tax return for tax years beginning on or after January 1, 2021. The one month extended due date does not apply to returns for which a federal extension is not requested and does not extend the original due date. As a reminder all tax payments are due on the original return due date and interest at 10% per annum and failure to pay penalties at 5% per month will be assessed on all taxes unpaid after the original due date which is April 15 for calendar year filers and the 15th day of the fourth month after the end of a tax year that does not end in December.

Act 718 of 2021 amends Arkansas Code Annotated 26-18-507 to allow the Department of Finance to use a refund due to a taxpayer as payment of an outstanding state tax delinquency of the taxpayer after a final assessment has been issued for the delinquency.

Act 797 of 2021 amends Arkansas Code Title 15, Chapter 4, and subchapter 20 to allow a rebate or a tax credit for approved film projects. The income tax credit or rebate is equal to 20% of all qualified productions and post-productions costs for an approved project that spends at least $200,000 in a six month period. An additional 10% of payroll costs for full-time Arkansas residents or veterans or to veteran owned small businesses are allowed for the credit or rebate. The credit is limited to the first $500,000 of a highly compensated individual's salary. The Arkansas Economic Development Commission shall not approve more than $4 million in film tax credits in any fiscal year. Credits exceeding the $4 million annual cap may be approved if the Department of Commerce and the Department of Finance and Administration jointly approve supplemental credits. Unused credits may be carried forward for 5 tax years after the tax year issued and unused credits may be transferred.

Act 840 of 2021 amends Arkansas Code Annotated 26-51-2204 to increase the annual cap for the Arkansas Historical Rehabilitation Tax Credits approved each year from $4 million per fiscal year to $8 million per fiscal year beginning with fiscal year 2022.

Act 875 of 2021 amends Arkansas Codes Annotated 26-51-1005, 26-51-1007, 26-51-1009 and 26-51-1013 to increase the maximum credits allowed for each water conservation tax credit and increases the carry forward for all water conservation tax credits to 15 years. See the section of this instruction booklet on Business Incentive Credits for the specific changes to each water conservation credit type.

Act 895 of 2021 amends Arkansas Code Annotated 26-51-506 to create a new Steel Specialty Products Manufacturing Credit equal to 30% of the cost of equipment including installation costs for an approved Arkansas project that invests at least $200 million and employs at least 150 employees with an average salary of at least $75,000 per year. The maximum credit that may be claimed each year is $4 million if the total investment is $200 million to $275 million, $5 million if the investment is $275 million to $350 million and $6.5 million if the investment exceeds $350 million. The State of Arkansas has the option to purchase these credits each year for 80% of face value. If the State fails to purchase credits the taxpayer or a transferee may carry forward unused credits for 3 tax years.

Act 904 of 2021 creates a new subchapter 22 to Arkansas Code Title 26, Chapter 18 and creates the Philanthropic Investment in Arkansas Kids Scholarship Program. The income tax credit is equal to 100% of the contribution to an eligible scholarship granting organization. Total tax credits shall not exceed $2 million per calendar year and unused credits may be carried forward for 3 tax years. Tax credit applications must be submitted to and approved by the Tax Credits and Special Refunds Section of the Department of Finance & Administration.

Act 911 of 2021 amends Arkansas Codes Annotated 15-4-2703 and 15-4-2706 to allow project costs for job retention tax credits to be incurred within 6 years from the date the incentive agreement was approved instead of the current 4 years. Credits earned because of costs incurred more than 4 years after the incentive agreement is approved may not be claimed until on or after July 1, 2023 and the maximum credits for each qualified applicant may not exceed $750,000 per fiscal year.

Act 967 of 2021 creates a new subchapter to Arkansas Code Title 26 Chapter 51 and creates the Railroad Modernization Tax Credit for Class II and Class III railroad track maintenance. The credit is equal to 50% of railroad track maintenance expenditures up to $5,000 per track mile. The credit claimed each year may not exceed the tax liability and unused tax credits may be carried forward up to five tax years and may be transferred. Maintenance projects must be approved by the Department of Commerce before expenditures are incurred and the certification of the tax credits shall be issued by the Department of Finance and Administration. Act 967 is effective for tax years beginning on or after January 1, 2021.

Act 1041 of 2021 repeals the Small Business Entity Tax Pass-Through Act in Arkansas Code Title 4, Chapter 32 and creates the Uniform Limited Liability Company Act in a new Chapter 37 of Arkansas Code Title 4. The Act specifies that a Limited Liability is classified and taxed in the same manner for Arkansas purposes as it is for Federal income tax purposes unless it elects to be taxed under the Elective Pass-Through Entity Tax Act, Act 362 of 2021.