State of Arkansas *As Engrossed: H3/28/23 H4/3/23*
94th General Assembly
A Bill
Regular Session, 2023 HOUSE BILL 1045

By: Representatives Beaty Jr., Ray, *Achor, Andrews, Barker, Beck, Bentley, M. Berry, Brooks, K. Brown, Burkes, Joey Carr, Cavenaugh, C. Cooper, Cozart, Crawford, Dalby, Duffield, Eaves, Eubanks, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gramlich, Haak, Hawk, G. Hodges, Holcomb, Hollowell, Jean, L. Johnson, Ladyman, Long, Lundstrum, Lynch, Maddox, McAlindon, McClure, McCollum, B. McKenzie, S. Meeks, Miller, Milligan, J. Moore, K. Moore, Painter, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, M. Shepherd, Steimel, Tosh, Underwood, Unger, Vaught, Walker, Wardlaw, Warren, Watson, Womack, Wooten*
By: Senators Gilmore, *Hester, Hill, B. Johnson*

For An Act To Be Entitled

AN ACT TO ENHANCE ECONOMIC COMPETITIVENESS BY *PHASING OUT* THE THROWBACK RULE; TO AMEND THE INCOME TAX PROVISIONS CONCERNING THE APPORTIONMENT OF BUSINESS INCOME; AND FOR OTHER PURPOSES.

Subtitle

TO ENHANCE ECONOMIC COMPETITIVENESS BY PHASING OUT THE THROWBACK RULE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. <u>Legislative findings and intent.</u>

<u>(a) The General Assembly finds that:</u>

<u>(1) The income tax apportionment throwback rule causes the Arkansas income tax to unduly burden job creation and investment in the state, thus harming economic competitiveness, especially in comparison to states that do not have a throwback rule or that do not impose an income tax; and</u>

<u>(2) The Arkansas Tax Reform and Relief Legislative Task Force recommended repeal of the throwback rule.</u>

(b) The General Assembly intends to repeal the throwback rule to encourage investment and job creation in Arkansas by multistate enterprises.

SECTION 2. Arkansas Code § 26-5-101, Article IV, paragraph 16, concerning the division of income under the Multistate Tax Compact, is amended to read as follows:

16. Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser~~, other than the United States Government,~~ within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and ~~(1) the purchaser is the United States Government or (2)~~ the taxpayer is not taxable in the state of the purchaser, in which case the sales shall be sourced as follows:

(1) For the tax year beginning on January 1, 2024, sales shall be sourced eighty-five and seventy-one hundredths percent (85.71%) within this state and fourteen and twenty-nine hundredths percent (14.29%) outside this state;

(2) For the tax year beginning on January 1, 2025, sales shall be sourced seventy-one and forty-two hundredths percent (71.42%) within this state and twenty-eight and fifty-eight hundredths percent (28.58%) outside this state;

(3) For the tax year beginning on January 1, 2026, sales shall be sourced fifty-seven and thirteen hundredths percent (57.13%) within this state and forty-two and eighty-seven hundredths percent (42.87%) outside this state;

(4) For the tax year beginning on January 1, 2027, sales shall be sourced forty-two and eighty-four hundredths percent (42.84%) within this state and fifty-seven and sixteen hundredths percent (57.16%) outside this state;

(5) For the tax year beginning on January 1, 2028, sales shall be sourced twenty-eight and fifty-five hundredths percent (28.55%) within this state and seventy-one and forty-five hundredths percent (71.45%) outside this state;

(6) For the tax year beginning on January 1, 2029, sales shall be sourced fourteen and twenty-six hundredths percent (14.26%) within this state and eighty-five and seventy-four hundredths percent (85.74%) outside this state; and

(7) For tax years beginning on or after January 1, 2030, sales shall be sourced one hundred percent (100%) outside this state.

SECTION 3. Arkansas Code § 26-51-716 is amended to read as follows:

26-51-716. Sales of tangible personal property.

Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser~~, other than the United States government,~~ within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and~~ (1) the purchaser is the United States government or (2)~~ the taxpayer is not taxable in the state of the purchaser, in which case the sales shall be sourced as follows:

(1) For the tax year beginning on January 1, 2024, sales shall be sourced eighty-five and seventy-one hundredths percent (85.71%) within this state and fourteen and twenty-nine hundredths percent (14.29%) outside this state;

(2) For the tax year beginning on January 1, 2025, sales shall be sourced seventy-one and forty-two hundredths percent (71.42%) within this state and twenty-eight and fifty-eight hundredths percent (28.58%) outside this state;

(3) For the tax year beginning on January 1, 2026, sales shall be sourced fifty-seven and thirteen hundredths percent (57.13%) within this state and forty-two and eighty-seven hundredths percent (42.87%) outside this state;

(4) For the tax year beginning on January 1, 2027, sales shall be sourced forty-two and eighty-four hundredths percent (42.84%) within this state and fifty-seven and sixteen hundredths percent (57.16%) outside this state;

(5) For the tax year beginning on January 1, 2028, sales shall be sourced twenty-eight and fifty-five hundredths percent (28.55%)

within this state and seventy-one and forty-five hundredths percent (71.45%) outside this state;

(6) For the tax year beginning on January 1, 2029, sales shall be sourced fourteen and twenty-six hundredths percent (14.26%) within this state and eighty-five and seventy-four hundredths percent (85.74%) outside this state; and

(7) For tax years beginning on or after January 1, 2030, sales shall be sourced one hundred percent (100%) outside this state.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this act are effective for tax years beginning on or after January 1, 2024.

/s/Beaty Jr.

APPROVED: 4/10/23