

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1845

5 By: Representative Nickels
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE INCOME TAX LAWS APPLICABLE TO
9 CORPORATIONS AND OTHER BUSINESSES; TO CREATE THE
10 SMALL BUSINESS TAX FAIRNESS ACT; TO REQUIRE COMBINED
11 REPORTING FOR INCOME TAX PURPOSES; TO LEVY A FLAT
12 INCOME TAX ON CORPORATIONS; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO CREATE THE SMALL BUSINESS TAX FAIRNESS
16 ACT; TO REQUIRE COMBINED REPORTING FOR
17 INCOME TAX PURPOSES; AND TO LEVY A FLAT
18 INCOME TAX ON CORPORATIONS.
19
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 25 – Arkansas Small Business Tax Fairness Act
27

28 26-51-2501. Title.

29 This subchapter shall be known as the “Arkansas Small Business Tax
30 Fairness Act”.
31

32 26-51-2502. Definitions.

33 As used in this subchapter:

34 (1) “Combined group” means the group of persons whose income and
35 apportionment factors are required to be taken into account under § 26-51-
36 2503 in determining the taxpayer member’s share of the net business income or



1 loss to be apportioned to the state;

2 (2)(A) "Corporation" means an organization of any kind treated
 3 as a corporation for tax purposes under this chapter, wherever located, that
 4 if it were doing business in this state, would be a taxpayer.

5 (B) "Corporation" includes the business conducted by a
 6 partnership that is directly or indirectly held by a corporation to the
 7 extent of the corporation's distributive share of the partnership income,
 8 inclusive of guaranteed payments to the extent prescribed by law;

9 (3) "Doing business in a tax haven" means being engaged in
 10 activity sufficient for the tax haven jurisdiction to impose a tax under
 11 United States constitutional standards;

12 (4) "Partnership" means a general partnership, a limited
 13 partnership, or an organization of any kind that is treated as a partnership
 14 for tax purposes under this chapter;

15 (5) "Person" means:

16 (A) An individual;

17 (B) A firm;

18 (C) A partnership or a general partner of a partnership;

19 (D) A limited liability company;

20 (E) A registered limited liability partnership;

21 (F) A foreign limited liability partnership;

22 (G) An association;

23 (H) A corporation, regardless of whether the corporation
 24 is or would be, if doing business in this state, subject to the Income Tax
 25 Act of 1929, § 26-51-101 et seq.;

26 (I) A company;

27 (J) A syndicate;

28 (K) An estate;

29 (L) A trust or trustee;

30 (M) A trustee in bankruptcy;

31 (N) A receiver;

32 (O) An executor or administrator; and

33 (P) An organization of any kind;

34 (6) "Tax haven" means a jurisdiction that during the tax year
 35 exhibits the following characteristics:

36 (A) Has no tax or a nominal effective tax on the relevant

1 income;

2 (B) Has laws or practices that prevent effective exchange
 3 of information for tax purposes with other governments on taxpayers
 4 benefiting from the tax regime;

5 (C)(i) Has a tax regime that lacks transparency.

6 (ii) A tax regime lacks transparency if:

7 (a) The details of legislative, legal, or
 8 administrative provisions are not open and apparent or are not consistently
 9 applied among similarly situated taxpayers; or

10 (b) The information needed by tax authorities
 11 to determine a taxpayer's correct tax liability, such as accounting records
 12 and underlying documentation, is not adequately available;

13 (D) Facilitates the establishment of foreign-owned
 14 entities without the need for a local and substantive presence or prohibits
 15 foreign-owned entities from having a commercial impact on the local economy;

16 (E) Explicitly or implicitly excludes the jurisdiction's
 17 resident taxpayers from taking advantage of the tax regime's benefits or
 18 prohibits enterprises that benefit from the regime from operating in the
 19 jurisdiction's domestic market; or

20 (F) Has a tax regime that is favorable for tax avoidance
 21 based upon an overall assessment of relevant factors, including without
 22 limitation whether the jurisdiction has a significant untaxed offshore
 23 financial sector or other services sector relative to its overall economy;

24 (7) "Unitary business" means a single economic enterprise that
 25 is made up of either separate parts of a single business entity or a commonly
 26 controlled group of business entities that are sufficiently interdependent,
 27 integrated, and interrelated through their activities so as to provide a
 28 synergy and mutual benefit that produce a sharing or exchange of value among
 29 them and a significant flow of value to the separate parts; and

30 (8) "United States" means the fifty (50) states of the United
 31 States, the District of Columbia, and the territories and possessions of the
 32 United States.

33
 34 26-51-2503. Combined reporting required – Discretion of director.

35 (a)(1) A combined report shall be filed by one (1) of the following
 36 taxpayers engaged in a unitary business with one (1) or more other

1 corporations:

2 (A) The federal consolidated parent corporation; or

3 (B) A subsidiary with a nexus to Arkansas, if the federal
4 consolidated parent is not a member of the combined group.

5 (2) The combined report required under subdivision (a)(1) of
6 this section shall include the following information for all corporations
7 that are members of the unitary business:

8 (A) The income determined under § 26-51-2506;

9 (B) The apportionment factors determined under:

10 (i) The Uniform Division of Income for Tax Purposes
11 Act, § 26-51-701 et seq.;

12 (ii) The apportionment and allocation requirements
13 under §§ 26-51-1401 – 26-51-1405; and

14 (iii) The combined reporting requirements under §
15 26-51-2505; and

16 (3) Any other information required by the Director of the
17 Department of Finance and Administration.

18 (b)(1) To reflect proper apportionment of income of entire unitary
19 businesses, the combined report shall include the income and apportionment
20 factors of any person not included under subsection (a) of this section who
21 is a member of a unitary business.

22 (2) The director may require the filing of a combined report by
23 persons that are not or would not be, if doing business in this state,
24 subject to the Income Tax Act of 1929, § 26-51-101 et seq.

25 (3) If the director determines that the reported income or loss
26 of a taxpayer engaged in a unitary business with any person not included
27 under subsection (a) of this section represents an avoidance or evasion of
28 tax by the taxpayer, all or part of the income and apportionment factors of
29 the person shall be included in the taxpayer's combined report.

30 (4) With respect to inclusion of apportionment factors under
31 this subsection, the director may require:

32 (A) The exclusion of any one (1) or more of the factors;

33 (B) The inclusion of one (1) or more additional factors
34 that will fairly represent the taxpayer's business activity in the state; or

35 (C) The employment of any other method to properly
36 reflect:

1 (i) The total amount of income subject to
 2 apportionment; and

3 (ii) An equitable allocation and apportionment of
 4 the taxpayer's income.

5
 6 26-51-2504. Determination of taxable income using combined report.

7 (a) The use of a combined report does not affect the separate
 8 identities of the taxpayer members of the combined group.

9 (b)(1) Each taxpayer member is responsible for tax based on the
 10 taxpayer member's taxable income or loss apportioned or allocated to
 11 Arkansas, including without limitation the taxpayer member's apportioned
 12 share of business income of the combined group.

13 (2) Business income of the combined group is calculated as a
 14 summation of the individual net business incomes of all members of the
 15 combined group.

16 (3) A member's net business income is determined by removing all
 17 but business income, expense, and loss from that member's total income under
 18 this subchapter and multiplying the remainder by the combined apportionment
 19 factors of all members of the combined group.

20
 21 26-51-2505. Income subject to tax – Application of tax credits –
 22 Deductions after apportionment.

23 (a) Each taxpayer member is responsible for tax based on the taxpayer
 24 member's taxable income or loss apportioned or allocated to Arkansas,
 25 including without limitation the taxpayer member's:

26 (1) Share of business income that is apportioned to Arkansas of
 27 each of the combined groups of which it is a member, as determined under §
 28 26-51-2506;

29 (2) Share of business income that is apportioned to Arkansas of
 30 a distinct business activity conducted within and without Arkansas wholly by
 31 the taxpayer member, as determined under the Uniform Division of Income for
 32 Tax Purposes Act, § 26-51-701 et seq., and the apportionment and allocation
 33 requirements under §§ 26-51-1401 – 26-51-1405;

34 (3) Income from a business conducted wholly by the taxpayer
 35 member entirely within Arkansas;

36 (4) Income sourced to Arkansas from the sale or exchange of

1 capital or assets;

2 (5) Nonbusiness income or loss allocable to Arkansas, as
3 determined under the Uniform Division of Income for Tax Purposes Act, § 26-
4 51-701 et seq., and the apportionment and allocation requirements under §§
5 26-51-1401 – 26-51-1405; and

6 (6)(A) Net operating loss carryover.

7 (B)(i) If the taxable income computed under this
8 subchapter results in a loss for a combined group, the combined group has an
9 Arkansas net operating loss reduced by any nontaxable income under § 26-51-
10 427(2)(A).

11 (ii) A net operating loss of the combined group is
12 applied as a deduction in a subsequent year only to the extent that the
13 combined group has Arkansas source positive net income.

14 (C)(i) Only a taxpayer member that joins a combined group
15 and has a net operating loss from a tax year before the taxpayer member
16 joined the combined group is subject to the carryover provisions of § 26-51-
17 427, the net operating loss limitations, and the separate return limitation
18 year restriction.

19 (ii) Separate return limitation year restrictions
20 allow the net operating loss of a member that joins a combined return to
21 offset the combined income of all corporations that were members of the same
22 federal consolidated group when the net operating loss was created or that
23 were members of the same Arkansas combined group when the net operating loss
24 was created.

25 (b)(1) A tax credit earned by a member may be applied against the
26 total tax liability of the combined group.

27 (2)(A) A charitable contribution made by a taxpayer member of
28 the combined group is available as a deduction of the combined group subject
29 to the limitations of 26 U.S.C. § 170, as it existed on January 1, 2011.

30 (B) A charitable contribution under subdivision (b)(2)(A)
31 of this section is subtracted from the business income of the combined group
32 before apportionment, and the remaining balance is treated as a nonbusiness
33 expense allocable to the nonbusiness income of the combined group subject to
34 the income limitations of 26 U.S.C. § 170, as it existed on January 1, 2011.

35 (C) A charitable contribution under subdivision (b)(2)(A)
36 of this section that is disallowed under the income limitations of this

1 subsection is allowed as a carryover deduction for up to five (5) years in
2 accordance with 26 U.S.C. § 170, as it existed on January 1, 2011.

3
4 26-51-2506. Determination of share of business income of a combined
5 group.

6 The taxpayer's share of the business income to be apportioned to
7 Arkansas of each combined group of which it is a member is the product of:

8 (1) The business income of the combined group, as determined
9 under § 26-51-2507; and

10 (2)(A) The taxpayer member's apportionment percentage, as
11 determined under the Uniform Division of Income for Tax Purposes Act, § 26-
12 51-701 et seq., and the apportionment and allocation requirements under §§
13 26-51-1401 – 26-51-1405, including:

14 (i) In each numerator, the taxpayer's property,
15 payroll, or sales factor associated with the combined group's unitary
16 business in this state; and

17 (ii) In the denominator, the property, payroll, or
18 sales factor of all members of the combined group, including the taxpayer,
19 that are associated with the combined group's unitary business wherever
20 located.

21 (B) The property, payroll, and sales factors of a
22 partnership are included in the determination of the partner's apportionment
23 percentage in proportion to a ratio the numerator of which is the amount of
24 the partner's distributive share of partnership's unitary income included in
25 the income of the combined group under § 26-51-2507 and the denominator of
26 which is the amount of the partnership's total unitary income.

27
28 26-51-2507. Determination of business income of the combined group.

29 (a) The business income of a combined group is determined under this
30 section.

31 (b) To determine the business income of the combined group, subtract
32 any income and add any expense or loss other than the business income,
33 expense, or loss of the combined group from the total income of the combined
34 group, as determined under subsection (c) of this section.

35 (c)(1) Except as otherwise provided in this section, the total income
36 of the combined group is the sum of the income of each member of the combined

1 group, as determined under the Internal Revenue Code of 1986, 26 U.S.C. § 1
2 et seq., as it existed on January 1, 2011, as if the member were not
3 consolidated for federal purposes.

4 (2) The income of each member of the combined group is
5 determined as follows:

6 (A) For a member incorporated in the United States or
7 included in a consolidated federal corporate income tax return, the income to
8 be included in the total income of the combined group is the taxable income
9 for the corporation after making appropriate adjustments under the Income Tax
10 Act of 1929, § 26-51-101 et seq.; and

11 (B)(i) For a member not included in subdivision (c)(2)(A)
12 of this section, the income to be included in the total income of the
13 combined group is determined as follows:

14 (a) A profit and loss statement shall be
15 prepared for each foreign branch or corporation in the currency in which the
16 books of account of the branch or corporation are regularly maintained;

17 (b) Adjustments shall be made to the profit
18 and loss statement to conform it to the accounting principles generally
19 accepted in the United States for the preparation of profit and loss
20 statements except as modified by this subchapter;

21 (c) Except as otherwise provided in this
22 subchapter, the profit and loss statement of each member of the combined
23 group and the related apportionment factors shall be expressed in United
24 States currency; and

25 (d) Income apportioned to Arkansas shall be
26 expressed in United States dollars.

27 (ii)(a) In lieu of the procedures in subdivision
28 (c)(2)(B)(i) of this section and subject to the determination of the Director
29 of the Department of Finance and Administration that it reasonably
30 approximates income as determined under the Income Tax Act of 1929, § 26-51-
31 101 et seq., a member not included in subdivision (c)(2)(A) of this section
32 may determine its income on the basis of the consolidated profit and loss
33 statement that includes the member and that is prepared for filing with the
34 United States Securities and Exchange Commission by related corporations.

35 (b) If the member is not required to file with
36 the commission, the director may allow the use of a consolidated profit and

1 loss statement prepared for reporting to shareholders and subject to review
2 by an independent auditor.

3 (c) If the profit and loss statements in this
4 subdivision (c)(2)(B)(ii) of this section do not reasonably approximate
5 income as determined under this chapter, the director may accept profit and
6 loss statements with appropriate adjustments to approximate the income as
7 determined under this chapter.

8 (d) If a unitary business includes income from a partnership, the
9 income included in the total income of the combined group is the member of
10 the combined group's direct and indirect distributive share of the
11 partnership's unitary business income.

12 (e)(1) Dividends paid by a member of the combined group to another
13 member of the combined group shall be eliminated from the income of the
14 recipient to the extent that the dividends are paid out of the earnings and
15 profits of the unitary business included in the combined report, in the
16 current or a prior year.

17 (2) Subdivision (e)(1) of this section does not apply to
18 dividends received from members of the unitary business that are not a part
19 of the combined group.

20 (f)(1) Except as otherwise provided in this subchapter, business
21 income from an intercompany transaction between members of the same combined
22 group is deferred in the same manner as in 26 CFR § 1.1502-13, as it existed
23 on January 1, 2011.

24 (2) Deferred business income resulting from an intercompany
25 transaction between members of a combined group is restored to the income of
26 the seller and is apportioned as business income earned immediately before
27 the event if any of the following events occur:

28 (A) The object of a deferred intercompany transaction is:

29 (i) Resold by the buyer to an entity that is not a
30 member of the combined group;

31 (ii) Resold by the buyer to an entity that is a
32 member of the combined group for use outside the unitary business in which
33 the buyer and seller are engaged; or

34 (iii) Converted by the buyer to a use outside the
35 unitary business in which the buyer and seller are engaged; or

36 (B) The buyer and seller are no longer members of the same

1 combined group regardless of whether the members remain unitary.

2 (g) An expense of a member of the unitary group that is directly or
3 indirectly attributable to the nonbusiness or exempt income of another member
4 of the unitary group is allocated to the other member as corresponding
5 nonbusiness or exempt expense as appropriate.

6
7 26-51-2508. Designation of surety.

8 (a)(1)(A)(i) Members of a combined reporting group shall annually
9 designate one (1) taxpayer member of the combined group to file a single
10 return in the form and manner prescribed by the Director of the Department of
11 Finance and Administration in lieu of each member's filing its own respective
12 return.

13 (ii) The surety designated under this section shall
14 be either:

15 (a) The federal consolidated parent
16 corporation; or

17 (b) A subsidiary with a nexus to Arkansas if
18 the federal consolidated parent is not a member of the combined group.

19 (B) The taxpayer designated to file the single return
20 under subdivision (a)(1)(A) of this section:

21 (i) Consents to act as surety with respect to the
22 tax liability of all other taxpayers properly included in the combined
23 report; and

24 (ii) Agrees to act as agent on behalf of those
25 taxpayers for the year of the election for tax matters relating to the
26 combined report for that year.

27 (2) The designation of a surety under subdivision (a)(1) of this
28 section does not change the respective liability of the group members.

29 (b) If for any reason the taxpayer designated as a surety under
30 subsection (a) of this section is unwilling or unable to perform the surety's
31 responsibilities, tax liability shall be assessed against all of the taxpayer
32 members.

33
34 26-51-2509. Water's-edge election.

35 (a) Taxpayer members of a unitary group that meet the requirements of
36 § 26-51-2510 may elect to determine each member's apportioned share of the

1 net business income or loss of the combined group under a water's-edge
2 election.

3 (b) Under the water's-edge election, taxpayer members shall take into
4 account the income and apportionment factors of only the following members of
5 the combined group:

6 (1) The entire income and apportionment factors of any member
7 incorporated in the United States or formed under the laws of the United
8 States;

9 (2) The entire income and apportionment factors of any member,
10 regardless of the place incorporated or formed, if the average of its
11 property, payroll, and sales factors within the United States is twenty
12 percent (20%) or more;

13 (3) The entire income and apportionment factors of any member
14 that is a domestic international sales corporation as described in 26 U.S.C.
15 §§ 991–994, as they existed on January 1, 2011;

16 (4) The portion of the income of a member not described in
17 subdivisions (b)(1)–(3) of this section that is derived from or attributable
18 to sources within the United States, as determined under the Internal Revenue
19 Code of 1986, 26 U.S.C. § 1 et seq., as it existed on January 1, 2011, and
20 the related apportionment factors;

21 (5)(A) The income of a member that is a controlled foreign
22 corporation, as defined under 26 U.S.C. § 957, as it existed on January 1,
23 2011, to the extent the income is described under 26 U.S.C. § 952, as it
24 existed on January 1, 2011, not excluding lower-tier subsidiaries'
25 distributions of income that were previously taxed and the apportionment
26 factors related to the income.

27 (B) An item of income received by a controlled foreign
28 corporation is excluded if the income was subject to an effective rate of
29 income tax imposed by a foreign country greater than ninety percent (90%) of
30 the maximum rate of tax specified in 26 U.S.C. § 11, as it existed on January
31 1, 2011;

32 (6) The income and apportionment factors of a member that earns
33 income, directly or indirectly, from intangible property or service-related
34 activities that are deductible against the business income of other members
35 of the combined group; and

36 (7)(A) The entire income and apportionment factors of any member

1 that is doing business in a tax haven.

2 (B) If the member's business activity within a tax haven
3 is entirely outside the scope of the laws, provisions, and practices that
4 cause the jurisdiction to be a tax haven under § 26-51-2502, the activity of
5 the member shall be treated as not having been conducted in a tax haven.

6
7 26-51-2510. Initiation and withdrawal of water's-edge election.

8 (a)(1) A water's-edge election is effective only if made on a timely
9 filed original return for the tax year by each member of the unitary business
10 subject to tax under the Income Tax Act of 1929, § 26-51-101 et seq.

11 (2) The Director of the Department of Finance and Administration
12 shall develop rules governing the impact, if any, on the scope or application
13 of a water's-edge election, including without limitation termination or
14 deemed election resulting from a change in the composition of the unitary
15 group, the combined group, or the taxpayer members and any other similar
16 change.

17 (b) In the discretion of the director, a water's-edge election may be
18 disregarded in whole or in part, and the income and apportionment factors of
19 any member of the taxpayer's unitary group may be included in the combined
20 report without regard to the provisions of this section if:

21 (1) A member of the unitary group fails to comply with this
22 subchapter; or

23 (2) A person otherwise not included in the water's-edge combined
24 group was designated with the substantial objective of avoiding state income
25 tax.

26 (c)(1) A water's-edge election is binding for and applicable to the
27 tax year in which it is made and all tax years thereafter for a period of ten
28 (10) years.

29 (2)(A) A water's-edge election may be withdrawn or reinstated
30 after withdrawal before the expiration of the ten-year period only upon
31 written request for reasonable cause based on extraordinary hardship due to
32 unforeseen changes in state tax statutes, law, or policy, and only with the
33 written permission of the director.

34 (B) If the director grants a withdrawal of election, the
35 director shall impose reasonable conditions to prevent the evasion of tax or
36 to clearly reflect income for the election period before or after the

1 withdrawal.

2 (3)(A) Upon the expiration of the ten-year period, a taxpayer
3 may withdraw from the water's edge election.

4 (B) Withdrawal under this section shall be made in writing
5 within one (1) year of the expiration of the election.

6 (C) Withdrawal under this section is binding for a period
7 of ten (10) years subject to the conditions that applied to the original
8 election under this section.

9 (D) If a withdrawal is not properly made, the water's edge
10 election shall be in place for an additional ten-year period subject to the
11 conditions that applied to the original election under this section.

12

13 26-51-2511. Rules.

14 The Director of the Department of Finance and Administration shall
15 promulgate rules to implement this subchapter.

16

17 SECTION 2. Arkansas Code § 26-51-205 is amended to read as follows:

18 26-51-205. Corporations – Work Force 2000 Development Fund.

19 (a) ~~Every~~ Each corporation organized under the laws of this state and
20 each foreign corporation doing business within the jurisdiction of this state
21 shall pay annually an income tax with respect to carrying on or doing
22 business on the entire net income of the corporation, as now defined by the
23 laws of the State of Arkansas, received by such corporation during the income
24 year, ~~on the following basis:~~ at a flat rate of six percent (6%).

25 ~~(1) On the first \$3,000 of net income or any part thereof~~
26 ~~. 1 %~~

27 ~~On the second \$3,000 of net income or any part thereof 2 %~~

28 ~~On the next \$5,000 of net income or any part thereof 3 %~~

29 ~~On the next \$14,000 of net income or any part thereof 5 %~~

30 ~~On the next \$75,000 of net income or any part thereof, but not exceeding~~
31 ~~\$100,000 6 %~~

32 ~~(2) On net income exceeding one hundred thousand dollars~~
33 ~~(\$100,000), a flat rate of six and one-half percent (6 ½ %) shall be applied~~
34 ~~to the entire net income.~~

35 ~~(b) Every foreign corporation doing business within the jurisdiction~~
36 ~~of this state shall pay annually an income tax on the proportion of its~~

1 ~~entire net income as now determined by the income tax laws of Arkansas, on~~
2 ~~the following basis:~~

- 3 ~~(1) On the first \$3,000 of net income or any part thereof~~
- 4 ~~. 1 %~~
- 5 ~~On the second \$3,000 of net income or any part thereof 2 %~~
- 6 ~~On the next \$5,000 of net income or any part thereof 3 %~~
- 7 ~~On the next \$14,000 of net income or any part thereof 5 %~~
- 8 ~~On the next \$75,000 of net income or any part thereof, but not exceeding~~
- 9 ~~\$100,000 6 %~~

10 ~~(2) On net income exceeding one hundred thousand dollars~~
11 ~~(\$100,000), a flat rate of six and one half percent (6 1/2 %) shall be applied~~
12 ~~to the entire net income.~~

13
14 SECTION 3. Arkansas Code § 26-51-419(b), concerning deductions for
15 charitable contributions, is amended to read as follows:

16 (b) ~~The provisions of subsection~~ Subsection (a) of this section ~~shall~~
17 ~~apply~~ applies to a corporation that files an Arkansas ~~consolidated~~
18 ~~corporation~~ combined income tax return pursuant to § 26-51-805, provided that
19 each member of the affiliated group shall follow the provisions of § 26-51-
20 805(f) and calculate its contribution limits separately under the Arkansas
21 Small Business Tax Fairness Act, § 26-51-2501 et seq., in accordance with §
22 26-51-2505.

23
24 SECTION 4. Arkansas Code § 26-51-804(a), concerning income tax returns
25 for corporations, is amended to read as follows:

26 (a)(1) Every corporation subject to taxation under the Income Tax Act
27 of 1929 shall make a return stating specifically the items of its gross
28 income and the deductions and credits allowed by the Income Tax Act of 1929.

29 (2) Corporations that are members of a unitary business under
30 the Arkansas Small Business Tax Fairness Act, § 26-51-2501 et seq., shall
31 file a combined return.

32 (3) Corporations that are not members of a unitary business
33 under the Arkansas Small Business Tax Fairness Act, § 26-51-2501 et seq.,
34 shall file returns on either a consolidated basis or a separate entity basis.

35
36 SECTION 5. Arkansas Code § 26-51-805(a), concerning consolidated

1 income tax returns for corporations, is amended to read as follows:

2 (a)(1)(A) All corporations ~~which that~~ are eligible members of an
3 affiliated group, as ~~that term is~~ defined in 26 U.S.C. § 1504(a) and (b), as
4 ~~of it existed on~~ January 1, 1989, ~~which affiliated group files a federal~~
5 ~~consolidated corporate income tax return pursuant to 26 U.S.C. §§ 1501-1505~~
6 ~~as of January 1, 1989, may elect to~~ shall file a consolidated combined
7 Arkansas corporate income tax return under the Arkansas Small Business Tax
8 Fairness Act, § 26-51-2501 et seq., if the affiliated group files a federal
9 consolidated corporate income tax return under 26 U.S.C. §§ 1501-1505, as
10 they existed on January 1, 1989.

11 (B) Corporations that are not members of a unitary
12 business under the Arkansas Small Business Tax Fairness Act, § 26-51-2501 et
13 seq., shall file returns on either a consolidated basis or a separate entity
14 basis.

15 (2) However, only corporations in the affiliated group that have
16 gross income from sources within ~~the State of~~ Arkansas that is subject to
17 taxation under ~~the provisions of~~ the Income Tax Act of 1929, § 26-51-101 et
18 seq., shall be eligible to file consolidated corporate income tax returns in
19 Arkansas.

20
21 SECTION 6. EFFECTIVE DATE. This act is effective for tax years
22 beginning on or after January 1, 2014.
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