

# 2023 Arkansas Tax Legislation Summary

MAY 26, 2023

By **Michael M. Pollock**

The Regular Session of the 94th General Assembly of Arkansas convened on Monday, January 9, 2023, and adjourned sine die on Monday, May 1, 2023. The 2023 regular session saw the enactment of over one hundred tax-related bills, summarized below. Highlights from the session include:

- **Act 96** repeals Ark. Code Ann. § 14-43-607, which previously allowed cities with a population of 2,500 or more to enact an income tax on residents, and prohibits all local governments from enacting an income tax. In addition, the Act requires any ordinances levying a tax to be adopted at a special or general election by qualified city or county electors where the tax is to be imposed.
- **Act 532** amends the Arkansas Individual and Corporate Income Tax rules by reducing the income tax rates applicable to individuals, trusts, estates, and corporations.

*Arkansas income tax rate reductions; individuals, trusts, and estates.* Under the Act, for tax years beginning on or after January 1, 2023, concerning the income tax on individuals, trusts, and estates having net income less than or equal to \$87,000, income tax is due in accordance with the following table:

From	Less Than or Equal To	Rate
\$0	\$5,099	0%
\$5,100	\$10,299	2%
\$10,300	\$14,699	3%
\$14,700	\$24,299	3.4%
\$24,300	\$87,000	4.7%

Under the Act, for tax years beginning on or after January 1, 2023, concerning the income tax on individuals, trusts, and estates having net income greater than \$87,000, income tax is due in accordance with the following table:

From	Less Than or Equal To	Rate
\$0	\$4,400	2%
\$4,401	\$8,800	4%
\$8,801 and above		4.7%

Under the Act, individuals, trusts, and estates with net income greater than or equal to \$87,000 but not greater than \$91,300 are allowed to reduce the amount of income tax due by "deducting a bracket adjustment" according to a table prescribed annually by the Secretary of the Department of Finance and Administration (including the tables included above).

*Arkansas income tax rate reductions; corporations.* Under the Act, for tax years beginning on or after January 1, 2023, concerning the income tax imposed on domestic corporations with net income in excess of \$25,000.00, a rate of **5.1%** (and the same rate applies to *foreign* corporations with the same amount of net income).

Ark. Code Ann. §§ 26-51-201(a)(2); 26-51-205(a)(4).

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# I. Income (Including Individual and Corporate Income) Taxes & Franchise Taxes

- **Act 485** phases out Arkansas's tangible personal property sales Throwback Rule for Arkansas Corporate Income Tax apportionment purposes. Each state with a corporate income tax must determine, for each corporation doing business within its borders, how much of the company's profit can be taxed by that state. This determination has added complexity when multi-state companies are involved, and when sales income of such corporations is attributable to states which lack jurisdiction to tax the corporation (referred to as "nowhere income"). Twenty-two states and the District of Columbia have adopted throwback (or "throw-out" rules) (as of July 2019), under which sales of tangible property which are untaxable in the destination state are "thrown back" into the numerator of the origin state's "sales factor." The Act amends the language of Ark. Code Ann. §§ 26-5-101 and 26-51-716 by revising the income tax provisions to gradually apportion the tax of such sales of tangible personal property to outside states alone.
- **Act 459** modifies the Arkansas Corporate Franchise Tax Act of 1979 by further defining who is substantially connected to a corporation or limited liability company that owes past-due franchise taxes and is thus prohibited from doing business in the state. It additionally creates the Secretary of State Business and Commercial Services Electronic Filing System Special Fund.
- **Act 624** amends the definition of "qualified steel specialty products manufacturing facility" for the purpose of the income tax credit for waste reduction, reuse, or recycling equipment.
- **Act 96** repeals Ark. Code Ann. § 14-43-607, which previously allowed cities with a population of 2,500 or more to enact an income tax on residents, and prohibits all local governments from enacting an income tax. In addition, the Act requires ordinances levying a tax to be adopted through a special or general election by qualified electors of the city or the area of the county where the tax is to be imposed.
- **Act 532** amends income tax laws and reduces the income tax rates applicable to individuals, trusts, estates, and corporations. The individual top marginal rate is lowered from 4.9% to 4.7%, and the corporate top marginal rate is lowered from 5.3% to 5.1%, effective January 1, 2023. (*Additional detail on the reduced income tax rates is provided on the first page of this summary*).

## II. Sales, Use, and Other Transactional Taxes

- **Act 351** amends the Arkansas Compensating Tax Act of 1949 by altering the definitions of "manufacturing" and "processing" for the purpose of the use-tax exemption for machinery and equipment used to retread tires to match their definitions for the purposes of the sales-tax exemption.
- **Act 193** amends the prepayment calculation for sales tax from the preceding calendar year to the preceding fiscal year.
- **Act 192** requires taxpayers with an average monthly gross receipts tax liability of \$5,000 or more to file all gross receipts tax returns and remittances electronically unless waived by the secretary for undue hardship. This requirement will apply to tax years beginning on or after January 1, 2024.
- **Act 130** amends the law to recognize the continuation of the transportation sales tax under Amendment 101 of the Arkansas Constitution and allows for the revenues from the sales and use tax levied under that amendment to be used for bonds for surface transportation projects. Additionally, the Act amends the law regarding the deduction, transfer, distribution, and refund of revenues from the sales and use tax levied under Amendment 101.

- **Act 169** amends Ark. Code Ann. § 3-5-1202, dealing with regulation of microbrewery-restaurants, authorizing those restaurants to manufacture and sell “ready-to-drink products.” The Act defines “ready-to-drink-product” as “a product containing spirituous liquor with a final finished product of no greater than fifteen percent (15%) alcohol by weight.” The Act requires these microbrewery-restaurants to obtain an Arkansas Sales and Use Tax Permit to sell these “ready-to-drink-products.”
- **Act 446** amends a nonprofit youth athletic organization sales and use tax exemption for certain types of sales by removing “athletic” from the nonprofit youth organization title.
- **Act 518** creates a sales tax exemption for the Disabled American Veterans Organizations.
- **Act 521** clarifies that membership dues paid or hunting of fishing clubs are exempt from sales tax.
- **Act 534** creates and sales a use tax exemption for mortality composting devices sold to commercial livestock or poultry producers.
- **Act 594** repeals Ark. Code Ann. § 14-386-114, which required railroads to pay taxes on any real property situated in a fencing district. The Act repeals the entirety of Chapter 386, which created and regulated fencing districts.
- **Act 629** amends the law concerning certain Delta Tetrahydrocannabinol substances and prohibits the growth, processing, sale, transfer, or possession of industrial hemp that contains certain Delta Tetrahydrocannabinol substances.
- **Act 646** amends the sales and use tax laws exemptions related to certain machinery and equipment by adding that such machinery and equipment placed in inventory for later use qualifies under the exemption. Additionally, the Act amends the sales and use tax exemptions for the partial repair and replacement of certain machinery and equipment.
- **Act 657** amends the distributions from the General Revenue Fund Account and transfers revenues to the Restricted Reserve Fund to be used to address food insecurity and other health needs.
- **Act 658** amends the Income Tax Act of 1929 by providing an apportionment formula for the income of railroads and amends the Multistate Tax Compact and the Uniform Division of Income for Tax Purposes Act by adding railroads to the list of exclusions to the Act concerning the division of income.
- **Act 769** amends the Regional Airport Act and creates a procedure for annexation and detachment. The Act states that a municipality may not take any action to increase the taxes assessed or levied once an authority-seeking detachment has been filed. The Act amends the language of Ark. Code Ann. § 14-362-132 (b) and (c) regarding a municipality’s sales tax enactment and collection within an authority.
- **Act 796** amends Ark. Code Ann. § 24-11-203, prohibits the use of the funds distributed to underfunded local pension programs through appropriation by the General Assembly for the purpose of payment of Firemen’s and Police Officers’ pension and Relief Fund taxes to enhance benefits of the recipients.
- **Act 819** provides sales and use tax exemptions for data centers and an exemption for data center equipment, costs, electricity used, and certain services provided to a data center.
- **Act 827** provides a sales and use tax exemption for products and services related to electronic prescribing and exempts electronic prescription systems and services from sales and use taxes.
- **Act 841** abolishes the state fire prevention commission, amends the duties and membership of the Arkansas Fire Protection Services Board, creates the position of State Fire Marshall, and creates the Arkansas Fire Protection Services Grant Program. The Act amends Ark. Code Title 19, Chapter 5, Subchapter 12 and creates a Fire Services Fund. The Fund will consist, in part, of special revenues collected from the Fire Protection Premium Tax Fund.

- **Act 886** amends provisions of Arkansas law concerning the Uniform Classification and Compensation Act by increasing the pool of 700 positions used to reclassify agencies in state agencies to 1500 and providing procedures for merit payments of employees whose salaries exceed the maximum pay level for the grade assigned to them.

### III. Property Taxes

- **Act 58** appropriates \$1,750,000,000 to the Office of the Treasurer of Arkansas to redistribute property tax funds to counties. The Act declares an emergency and states that the Act shall be in full force and effect beginning July 1, 2023.
- **Act 315** increases the amount of the Homestead Property Tax Credit from \$375 to \$425.
- **Act 332** amends the property tax exemption for intangible personal property of self-storage facilities by identifying what property is included. Additionally, it requires a county assessor to provide a written explanation of the value of the taxpayer's intangible personal property and how the value of the taxpayer's intangible personal property was excluded from the levy of ad valorem taxes upon the request of a taxpayer.
- **Act 395** defines "homestead" for the purpose of the property tax exemption for disabled veterans, surviving spouses of disabled veterans, and minor dependent children of disabled veterans. The Act defines "homestead" as a "dwelling that a disabled veteran, surviving spouse of a disabled veteran, or minor dependent child of a disabled veteran occupies as his or her principal place of resident; and [u]p to forty (40) acres of real property contiguous to the dwelling."
- **Act 449** modifies the amounts distributed from the revenues derived from the real property transfer tax to county continuing education funds for continuing education of county officials.
- **Act 472** amends the law relating to the distribution of delinquent property tax payments and other funds by a county treasurer.
- **Act 541** amends the definition of a homestead for property taxation purposes to provide that certain dwellings owned by a limited liability company may qualify as a homestead.
- **Act 610** amends the laws governing real property taxation, thereby repealing Ark. Code Ann. § 26-26-310(b)(2)(D), an obsolete provision requiring the reporting of revenue to the Property Tax Trust Fund for the year 2019.
- **Act 62** appropriates state turnback funds to municipalities and counties to be used for anticipated and unanticipated general and special revenues and property tax relief.

### IV. Miscellaneous Taxes

- **Act 644** amends the Arkansas Income Tax Withholding Act of 1965 to reduce the number of employees required to mandate the electronic filing of annual withholding statements and to reduce the methods by which an employer can file annual withholding statements. The Act requires employers with one hundred twenty-five or more employees to file their annual income tax withholding statement electronically.
- **Act 12** separates the offices of Sheriff and Tax Collector in Hempstead County.
- **Act 39** eliminates mapping requirements deemed obsolete, so there may be distribution of premium tax revenues to a city, town, or fire protection district purposed to fund local police and fire relief pensions. Additionally, the Act requires that the actuary who evaluates the information submitted under this Act in determining the revenue amounts be a member of the American Academy of Actuaries.
- **Act 65** appropriates \$900,000,000.00 to refund local sales and use taxes by the Office of the Treasurer of Arkansas. Additionally, the Act is effective July 1, 2023.
- **Act 181** makes technical (not substantive) corrections to particular provisions of the Arkansas tax rules regarding: (i) depreciation and expensing of property (adopted for

the purpose of computing Arkansas income tax liability for property purchased on or after January 1, 2014; as in effect “only if the contingency in Acts 2007, No. 613 [which increases amount allowed for exempting property under the Internal Revenue Code], § 2, is met, is repealed as obsolete;” (ii) disposition of insurance premium taxes; (iii) the Arkansas Tobacco Products Tax Act of 1977, (clarifying the definition of a “retailer”); and (iv) “qualified growth projects’ for purposes of the tax credit for waste reduction, reuse, or recycling equipment (specifically, the tax credit’s requirement for “a common controlling ownership interest with a qualified manufacturer of steel . . .”). Ark. Code Ann. §§ 26-51-428; 26-57-610; 26-57-203(27); 26-51-506(b)(17)(A).

- **Act 291** updates Arkansas law governing spendthrift trusts and allows for the creation of a “domestic asset protection trust,” a vehicle for shielding assets from creditors. A “spendthrift trust,” as defined by the Act, is “a trust that, by its terms, imposes a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary” (in to protect the estate assets from an incompetent beneficiary). The creation of a “domestic asset protection trust” allowed under the Act is defined as a “self-settled, first-party spendthrift trust” that can effectively shield the estate assets from creditors by, for example, taking advantage of its short time limits for bringing actions against “advisers, settlors, and trustees”—which, with respect to a transfer of trust assets—is “[t]wo (2) years after the transfer is made[.]” Ark. Code Ann. § 28-72-712 (to be codified).
- **Act 293** amends and adds definitions such as “pooled trust,” “second trust,” “third-party trust,” and “unitrust” under the Arkansas Trust Code. Additionally, the Act amends the Code to allow for the “decanting” of a trust: the transfer of a portion of an irrevocable trust to another irrevocable trust, resulting in a change of its beneficial interests without becoming subject to income, gift, estate, or generation-skipping taxes.
- **Act 447** separates the Offices of Sheriff and Tax Collector in Ouachita County. Additionally, the Act consolidates the Offices of Tax Collector and County Treasurer in Ouachita County.
- **Act 344** appropriates personal services and operating expenses for the Department of Parks, Heritage, and Tourism. Most notably, the Act appropriates \$65,577,178 from proceeds derived from the state’s Conservation Tax to the Department for the fiscal year ending June 30, 2024.
- **Act 278** is not strictly tax legislation, but it is consequential for the Arkansas energy industry (especially solar businesses) concerned with customer billing and the effect on revenue. The Act amends the Arkansas Renewable Energy Development Act of 2001, by changing the method used to calculate the rate that electric utilities pay to net-metering customers who generate excess solar power, and would implement various changes to the utilities’ authority in rate structure determination as well as monthly grid charges. Utility conglomerates and electric co-ops were primary proponents of this legislation and their rationale for it has generally been to promote “indigenous energy fuels” and “provide greater consumer choices.”

*Potential effects of net-metering rule changes for Arkansas solar businesses.* The Act’s general, most probable effects on solar business’ customer bases (residential and commercial) are as follows: (i) residential customers would be charged the lesser of 25 kW or 100% of the customer’s highest monthly usage in the 12 months prior. However, this provision of the Act would not apply if the customer’s net-metering facility is part of an interconnection agreement that was executed before December 31, 2022 (Ark. Code Ann. § 23-18-603(10)); and (ii) commercial customers would be charged less than 5,000 kW or 100% of their highest monthly usage in the 12 months prior, but only if the commercial customer’s array is physically located within Electric Utility’s service area and behind a meter that accurately represents all of the customer’s energy use. *Id.* If a residential or a commercial customer chooses to be subject to a grid charge, “a commission” (e.g., the Arkansas Public Service Commission) must approve that option. Ark. Code Ann. § 23-18-607.

## V. Tax Credits and Incentives

- **Act 172** amends the law concerning the management and sale of tax-delinquent lands by the Commissioner of State lands. The Act amends Ark. Code Ann. § 21-6-203(c) and requires the Commissioner of State Lands to deposit all funds, including proceeds, rates, fees, and charges the Commissioner collects into a financial institution in the state of Arkansas or United States Treasury Securities. The statute also strikes the word “land” from Ark. Code Ann. § 26-37-103 and replaces it with “parcel”.
- **Act 191** amends the tax credit for supporting a child with a developmental disability and removes the requirement for five-year recertification of a developmental disability that is expected to continue indefinitely.
- **Act 204** makes technical corrections to Title 15 of the Ark. Code concerning natural resources and economic development (including tax incentives under the Digital Product and Motion Picture Industry Development Act of 2009). Ark. Code Ann. § 15-4-2003(1).
- **Act 358** amends the income tax exemption for retirement and disability benefits and amends the Income Tax Act of 1929 to allow taxpayers receiving military retirement or survivor benefits to receive the full amount of the income tax exemption for retirement benefits.
- **Act 517** amends the Digital Product and Motion Picture Industry Development Act by expanding the Director of the Arkansas Economic Development Commission’s maximum production tax incentive from 20% to 25% and providing ways for an additional 5% tax incentive.
- **Act 650** amends the amount of the Arkansas historic rehabilitation income tax credit for qualified rehabilitation expenses to 40% if incurred in a city with a population less than 10,000, 35% if incurred in a city with a population of 10,000–50,000, and 30% in cities of 50,000 or more.
- **Act 651** extends the application period for the Arkansas major historic rehabilitation income tax credit to June 30, 2030.
- **Act 814** amends the Water Resource Conservation and Development Incentives Act. The Act specifically amends the law concerning the projects eligible for the income tax credit for surface water conversion in critical areas to include projects in Chicot County.
- **Act 845** amends the wood energy products and forest maintenance income tax credit to allow an income tax credit for wood energy products and forest maintenance expansion products.
- **Act 881** provides additional funding for the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund and creates an investment tax credit for capital improvements relating to water transportation in the state.

## VI. Procedure

- **Act 190** amends Ark. Code Ann. § 26-74-502, which regulates a county’s authority to levy taxes, and requires voter approval of tax levies or tax increases. Under the Act, if a county quorum court enacts an ordinance levying or increasing a tax, the court must submit the question of levying or increasing the tax to the electors at the earliest date permitted for a special election. The tax will be levied or increased upon approval by a majority of the qualified electors voting on the question.
- **Act 251** clarifies the effective date of filing by mail with the Arkansas Tax Appeals Commission by adding the Commission to Ark. Code Ann. § 26-18-105(a)(1), which specifies that if the filing is delivered by mail, the date of the postmark shall be deemed the date of delivery.
- **Act 346** amends the procedure for appointing commissioners to the Arkansas Tax Appeals Commission to fill vacancies more effectively.
- **Act 357** amends the law concerning the payment of professional development recognition payments to county assessors, full-time employees of county assessors’ offices, and state employees who actively work with property taxes.

## VII. Abandoned and Unclaimed Property

- **Act 173** amends the law concerning the redemption or sale of tax-delinquent property. Additionally, the Act allows a redemption deed or sale deed to be canceled if the payment instrument used to redeem or purchase tax-delinquent property fails or is dishonored. The Act also imposes a penalty for dishonored payment instruments used to redeem or purchase tax-delinquent property. The penalty amount is equal to the greater of ten percent of the face value of the payment instrument or twenty dollars.
- **Act 241** amends the law concerning the sale and redemption of tax-delinquent property and declares an emergency. The Act replaces the use of the term "land" with the term "parcel." Additionally, the Act requires the Commissioner of State Lands to notify by mail the owner and all interested parties of the right to redeem a particular parcel before 4:00 pm (CST) on the last business day before the date of the sale regarding the sale of the tax-delinquent parcel at an in-person tax-delinquent property auction.