

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

Call Item 6

A Bill

HOUSE BILL 1105

5 By: Representative Jackson
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7

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR COMBINED REPORTING BY
10 CORPORATIONS THAT ARE MEMBERS OF AN AFFILIATED
11 GROUP; AND FOR OTHER PURPOSES.
12

Subtitle

14 TO PROVIDE FOR COMBINED REPORTING BY
15 CORPORATIONS THAT ARE MEMBERS OF AN
16 AFFILIATED GROUP.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 26-51-805(a), concerning the reporting of
22 income by corporations that are members of an affiliated group, is amended to
23 read as follows:

24 (a)(1) All corporations which are eligible members of an affiliated
25 group as that term is defined in 26 U.S.C. § 1504(a) and (b) as of January 1,
26 1989, which affiliated group files a federal consolidated corporate income
27 tax return pursuant to 26 U.S.C. §§ 1501-1505 as of January 1, 1989, may
28 elect to file a consolidated Arkansas corporate income tax return subject to
29 the provisions of subdivision (a)(2) of this section.

30 (2)(A) ~~However, only~~ Only corporations in the affiliated group
31 that have gross income from sources within the State of Arkansas that is
32 subject to taxation under the provisions of the Arkansas Income Tax Act, as
33 amended, § 26-51-101 et seq., shall be eligible to file consolidated
34 corporate income tax returns in Arkansas.

35 (B)(i) Each corporation that is a member of an affiliated
36 group and is also a member of a unitary business group is not eligible to



1 file a consolidated corporate income tax return.

2 (ii) Corporations that are members of a unitary
 3 business group shall file an Arkansas corporate income tax return utilizing
 4 the combined reporting method in § 26-51-817.

5 (iii) A corporation is presumed to be a member of a
 6 unitary business group if the group of businesses of which the corporation is
 7 a member share the following three (3) characteristics:

8 (a) Functional integration;

9 (b) Centralization of management; and

10 (c) Economies of scale.

11
 12 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 8 is amended
 13 to add an additional section to read as follows:

14 26-51-817. Combined corporation income tax reports.

15 (a) As used in this section:

16 (1) "Affiliated corporation" means a member of an affiliated
 17 group to which the taxpayer filing a return under this section belongs;

18 (2) "Affiliated group" means a group of two or more corporations
 19 in which fifty percent (50%) or more of the voting stock of each member of
 20 the group is directly or indirectly owned by one or more corporate or
 21 noncorporate common owners, or by one or more of the members of the group;
 22 and

23 (3) "Water's-edge combined reporting method" means a domestic
 24 combined reporting basis where only the income of the reporting corporation
 25 and its United States affiliates that are in the same unitary business is
 26 included in the apportionable base.

27 (b) The income of any two (2) or more corporations that are members of
 28 a unitary business group is allocated or apportioned under subsection (c) of
 29 this section as if the corporations were a single corporation if:

30 (1) Fifty percent (50%) or more of the voting stock of each
 31 corporation is owned directly or indirectly by a common owner or owners; and

32 (2) The corporations are engaged in a unitary business.

33 (c)(1) The taxable income of a corporation that is a member of a
 34 unitary business group is determined by use of a combined report that
 35 includes the income, determined under subsection (d) of this section, of all
 36 corporations that are members of a unitary business group, allocated and

1 apportioned using the apportionment factors and methods under §§ 26-51-701 -
 2 26-51-723 for all corporations included in the combined report.

3 (2)(A) The separate corporate identities of the members of the
 4 unitary business group are not disregarded by utilizing a combined report.

5 (B) Each corporation transacting business in this state is
 6 subject to income tax on the corporation's apportioned share of unitary
 7 business income plus the corporation's nonbusiness income or loss allocated
 8 to Arkansas, less the corporation's net operating loss carry forward.

9 (d) The income of a corporation included in a water's-edge combined
 10 report is determined as follows:

11 (1)(A) If a corporation is incorporated in the United States or
 12 is included in a consolidated federal corporation income tax return, the
 13 income included in a combined report is the taxable income for the
 14 corporation after making adjustments under the Income Tax Act of 1929, § 26-
 15 51-101 et seq.

16 (B) If the corporation is incorporated outside of the
 17 United States but is not included in a consolidated federal corporation
 18 income tax return, the corporation's unitary business income is the net
 19 income of the corporation before income taxes stated on the profit and loss
 20 statements included within the consolidated profit and loss statement of the
 21 corporations within the unitary business group that is prepared for filing
 22 with the United States Securities and Exchange Commission; and

23 (2)(A) If the corporations within the unitary business group are
 24 not required to file a profit and loss statement with the United States
 25 Securities and Exchange Commission, the profit and loss statement prepared
 26 for the shareholder's report may be used to obtain net income before income
 27 taxes.

28 (B) In the alternative, adjustments may be made to the
 29 profit and loss statements of the corporation incorporated outside the United
 30 States to conform the statements to tax accounting standards as required by
 31 the federal Internal Revenue Code.

32 (e)(1) A corporation that is a member of an affiliated group shall
 33 file an Arkansas corporation income tax return using the water's-edge
 34 combined reporting method.

35 (2) The following corporations must be included on the return if
 36 the corporations are part of a unitary business with the filing corporation:

1 (A) An affiliated corporation in which fifty percent (50%)
 2 or more of the voting stock of the corporation is directly or indirectly
 3 owned by one or more members of the group if:

4 (i) The corporation's property, payroll, and sales
 5 factors in the United States average twenty percent (20%) or more;

6 (ii) The property, payroll, and sales factors in the
 7 United States average under twenty percent (20%), and the corporation does
 8 not derive at least eighty percent (80%) of its gross income from the active
 9 conduct of a trade or business in a foreign country;

10 (iii) The determination of the sales factor in
 11 subdivision (e)(2)(A)(i) and (e)(2)(A)(ii) of this section shall be computed
 12 by equally weighting each factor;

13 (B) A domestic international sales corporation as defined
 14 under 26 U.S.C. 992(a);

15 (C) A corporation that is incorporated in or does business
 16 in a country that does not impose an income tax, or that imposes an income
 17 tax at a rate lower than ninety percent (90%) of the United States' income
 18 tax rate on the income tax base of the corporation in the United States if:

19 (i) Fifty percent (50%) or more of the sales,
 20 purchases, or payments of income or expenses of the corporation are made
 21 directly or indirectly to one or more members of a group of corporations
 22 filing under the water's-edge combined reporting method; or

23 (ii) The corporation does not conduct significant
 24 economic activity.

25 (3) If the income computation for a group under subdivision
 26 (e)(1) of this section results in a loss, the loss will be taken into account
 27 in other years, subject to the provisions of § 26-51-427.

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 29 SECTION 3. This act shall become effective for tax years beginning on or
 30 after January 1, 2004.