

TAX ADVISORY COUNCIL

2017 YEAR-ENDING REPORT

(Meetings Chaired by Matt Boch, Arkansas Bar Association)

Purpose: The Tax Advisory Council (TAC) was created by Act 998 of 1991. It consists of tax professionals and representatives of interested public and professional groups, including the Arkansas Bar Association Tax Section, the Arkansas Society of Accountants, the Arkansas Society of Certified Public Accountants, and employees of the Department of Finance and Administration's Revenue Division. The Council provides input to the General Assembly during the legislative process by studying and recommending changes to tax laws. It also promotes a better understanding of those tax laws and changes. At the end of every calendar year, a report summarizing discussions and decisions made by the TAC is prepared to inform the Chairmen of the Revenue and Taxation Committees and members of the State's House of Representatives and Senate.

Membership

(Arranged by Organization)

Arkansas Bar Association:

TJ Lawhon, Matt Boch

Arkansas Society of Accountants:

AW. Bailey

Arkansas Society of Certified Public Accountants:

Stan Kozij and Jennifer Bell

Arkansas Department of Finance and Administration (DFA), Revenue Division:

Paul Gehring, Assistant Commissioner of Revenue for Policy and Legal;

Joel DiPippa, Chief Counsel, Revenue Legal Counsel;

Deanna Munds-Smith, Administrator, Field Audit;

Lynne Reynolds, Administrator, Income Tax;

Scott Fryer, Manager I, Corporation Income Tax;

Steve Wilkins, Division I Manager, Individual Income Tax;

David Rector, Problem Resolution Officer;

Andrew Smith, Assistant Administrator, Sales and Use Tax;

Brandon Smith, Public Information Specialist;

Todd Cockrill, Assistant Administrator, Miscellaneous Tax;

Ashley Phillips, University of Central Arkansas;

Brian Sansoucie, Division Manager I, Sales and Use Tax;

Andy Morgan, Manager, Central District – Audit;

Robert Pugh, Audit Supervisor, Individual Income Tax;

Ben Johns, Tax Auditor, Individual Income Tax;

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Meetings

Members of the TAC met three times during 2017 on the following dates:

<u>Meeting Dates</u>	<u>Total Present</u>
May 9, 2017	12
August 8, 2017	16
November 14, 2017	13

These meetings were held in Conference Room 2330 of the Joel Ledbetter Building. Meetings averaged forty (40) minutes to one (1) hour in length and were open to the public and to all representatives of the State Senate and House of Representative Revenue and Taxation Committees.

Summary

Tax Advisory Council Activities: The following is a brief summary of what was discussed during the TAC's 2017 meetings.

Office of Revenue Legal Counsel

Tax Rules Update:

- a. A list of rules are being compiled and updated. Good progress is being made on getting the sales tax rules updated. Joel says "we intend to leverage the mailing list for notice when Legal has the rules ready so that during the public comment the public may be well advised by the members of the public practitioners." Matt Boch stated that Joel considered that he would "piece out" the rules rather than write a comprehensive rewrite of the rules. Joel stated "that this is going to be a comprehensive rewrite first, because there are some rules that need to be updated at which point then we could do individualized updates moving forward. We need a platform to start from because there is some interpolation in the way some of the Acts in the last several sessions have been passed." Matt Boch asks "what is the ball park 'eta' (estimated time of arrival) for this? I understand that this is a tremendous body of work." Joel responded that "we hope to have it out for public comment by the end of the year, but, 'end of the year' has a huge margin of error." The income tax rules are going to be updated next and he says that there will be more public hearings for sales tax rules.
- b. Joel updated that Council that the Tax Advisory Taskforce did meet last quarter and they are currently working.

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- c. Although work continues on the rules, a date for completion cannot be given at this time. The process of incorporating interpretations of statutes provided through Department opinions, along with time consumed responding to new lawsuits, have slowed the rule promulgation process.

Tax Acts Adopted in 2017:

- a. Acts 78 and 79 implements Governor Asa Hutchinson's Individual Income Tax plan that reduces taxes for the lowest income tax bracket. The acts also created a sixteen (16) member taskforce for the purpose of studying and providing recommendations to possibly reform the state tax system. Matt Boch asks when "the committee or taskforce is supposed to be meeting". Joel responded that the Speaker or his designee has not called the first meeting, but they are required to have the first meeting within the first month of the legislature adjourning sine die. "Speaker Gillam and his designee Rep. Lane Jean may call the meeting in the next few weeks." Matt Boch asked about DFA's position to make recommendations to the taskforce by providing information to them from a policy perspective. Joel responded that the stakeholders will most likely contact the taskforce directly and if the taskforce asks for DFA to make recommendations, the department will assist.
- b. Act 141 included tax changes across different tax types. The act provides exemptions for military retirement pay and survivor benefits for individual income tax. This act levied income tax on unemployment benefits that is similar to what other states have implemented. This has not been implemented in this state before. Gross receipts tax is levied on specified digital products as well as lowered the food rate. Matt Boch asks what DFA defines as a "digital product" besides the streamlined definitions. Joel DiPippa responded that the concern about the "digital product" definition referring to software does not apply to software.
- c. The Medical Marijuana Amendment adds a four percent (4%) special privilege tax on medical marijuana. The four percent (4%) tax is on each transfer of medical marijuana at each stage. The special revenue that is generated from the medical marijuana is going to the program before it can be used for anywhere else to be appropriated for the purpose of program implementation expenses. The projected sales of the medical marijuana is \$40-45 million. There are approximately 30-35,000 qualified patients may be able to receive medical marijuana services (according to the statistics provided by the Arkansas Department of Health).
- d. Act 1075 allows fantasy sports gaming in Arkansas in which "game operators" (businesses that own and run online gaming systems that members of the general public have to pay to play for cash prizes) have to an eight percent (8%) special privilege tax on gross receipts.

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Status of Lawsuits Filed:

Welspun v. Walther

This case addresses the manufacturing machinery & equipment standard and its interpretations after Walther v. Weatherford. Specifically, this manufacturer claims that steel grit which is propelled against manufactured steel pipe to scrub or grade the pipe and must be replaced as it deteriorates is manufacturing machinery & equipment exempt from tax. The Department contends that the steel grit does not qualify as machinery and equipment and is instead used up in the process with no independent utility subject to tax. The original trial date for November, has been delayed as parties continue to go through discovery in anticipation of trial. A trial date is anticipated in early 2018.

Flis Enterprises

This case is a challenge to determining the valuation of goods subject to a withdrawal from stock by the taxpayer. The Taxpayer contends that the wholesale price of the food at issue should be used when determining the valuation subject to the gross receipts tax as a withdrawal from stock while the Department maintains that the retail price of the prepared food is the appropriate valuation under the Alamo v. Ragland case.

Briefing at the appellate courts has been completed and the Arkansas Supreme Court has agreed to allow oral arguments in the case. However, oral arguments has not been set at this time. We would not anticipate oral argument to be before early 2018 because of the Court's schedule and due to how far out they've already calendared other oral arguments. Matt Boch asks "in the litigation, is there an element of challenge to the Department's rule or is it just a question of interpretation of the Department's rule?" Joel responds that "It is just a question of which valuation is applied. There is no question of if sales tax applies; no question as to withdrawal of stock; no question of what is being withdrawn from stock. The question is whether to apply the wholesale cost or the retail cost. Will they provide that?" Stan Kozij asks "are they trying to separate this case from the Alamo case?" Joel responds "In an interesting way. They are claiming that there is a distinction with the Alamo case in that that was the only amount of recompense being provided; that it is factually distinct based on the nonprofit status or attempted nonprofit status. The Department's view is that this is not applicable." A.W. Bailey asks "did they receive any benefit?" Joel answers "our argument is that it's a benefit provided to the employee". A.W. Bailey asks "Did the company itself receive any additional income over and above the wholesale cost?" Joel answers "they don't make that argument and we don't either. That's not something that's been raised with regard to whether it was prepared or not prepared, under the difference of the valuation of wholesale versus retail. The question of valuation for whether they received something for providing it would get wrapped up in the question of their employees who are being provided that as a part of the enticement to work."

May 9, 2017 TAC meeting, Joel DiPippa, Senior Legal Counsel updated the Council on tax litigation pertaining to Flis Enterprises and the Welspun Tubular Case. DFA has filed a Notice of Appeal in the Flis Enterprise case. Briefs have not been filed and an oral argument date has not been set at this time. Stan Kozij asks if the case started as an audit. Joel responded that he does not recall if the case started as a refund or audit case. The trial court has not ruled in the Wellspun case. The case will be set later this year. The DFA's position in the case is that certain products in question do not meet the prerequisite requirements for the manufacturing machinery and equipment tax exemption.

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Concerning the Flis case, an appeal has been filed. Joel says “We have received a copy of the appellees brief this morning. No date for oral argument has been set or whether that will be granted or decided on the briefs, but that (the case) is proceeding”. The Welspun case has discovery ongoing and the trial is set for November of this year. Arkansas Vending LLC d/b/a Arkansas Amusement is asking the Circuit Court of Saint Francis County to issue a declaratory judgement that the amusement devices Arkansas Vending LLC owns, operates, and leases are lawful under Arkansas law. Arkansas Vending LLC owns, operates, and leases amusement devices in which the Plaintiff pays privilege taxes to DFA. DFA’s Alcohol Beverage Control Division (ABC) has removed amusement devices similar to those owned and operated by the Plaintiff. Arkansas Vending LLC has filed an illegal exaction claim that states that ‘the Plaintiff has been unlawfully taxed on the amusement devices that the Plaintiff owns and operates’. Another lawsuit has been filed as an appeal of an administrative decision of Industrial Iron Works which is about whether the taxpayer has satisfied the burden of proof to receive the manufacturing machinery and equipment exemption. The Department’s position is that the Plaintiff has not satisfied the burden of proof for the position. The trial court denied DFA’s Motion to Dismiss, so the trial will proceed.

New Litigation:

November 14, 2017 Joel discussed the cases **Medco v. Walther and Core-Mark Midcontinent, Inc., Forest City Grocery Co., Heber Springs Wholesale Grocery, Inc., and Tom Fitts Tobacco, Inc. v. Larry Walther, Director Arkansas Department of Finance and Administration.**

Medco v. Walther

Medco seeks a refund of Arkansas corporate income tax paid for 2009 and 2011. Arkansas employs a statutory formula to apportion the amount of income of a multistate corporation. This formula compares property, payroll, and sales in Arkansas to the property, payroll, and sales of the corporation in all states to determine the percentage of the corporation’s income that will be taxed in Arkansas. Medco filed its original 2009 and 2011 returns with Arkansas and reported its sales from services as taxable in Arkansas if the service resulted in an Arkansas resident acquiring pharmaceuticals from an Arkansas pharmacy. Medco’s amended 2009 and 2011 returns removed sales receipts for those Arkansas transactions from the sales reported to Arkansas contending that those sales should be apportioned to New Jersey, Indiana, and Nevada based on the cost of performance.

Progress to Date

Medco filed its complaint in Pulaski County Circuit Court on October 6, 2017 and served the Department on October 11, 2017. Since the meeting on October 8, 2017, the Department timely filed an answer to the complaint.

Response from the Department

Arkansas law provides that sales from activities other than sales of tangible personal property are to be attributed to Arkansas if the income producing activity is performed both within and without Arkansas and the greater cost of performance occurs within Arkansas. Medco contends that the greater cost of performing its pharmacy benefits services for Arkansas consumers occurs in other states. DFA denied the requested refund because Medco’s original method of filing the 2009 and 2011 returns more fairly represented Medco’s business activity in Arkansas. This determination was consistent with Ark. Code Ann. § 26-51-718, which provides that “If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer’s business activity in the state, the taxpayer may petition for or the Director... may require ... the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income.” DFA contends that apportioning Medco’s sales to

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Arkansas based on a market based approach that recognizes the contribution of Arkansas consumer transactions to Medco's profitability more fairly represents Medco's Arkansas business activity.

Ten different lawsuits have been filed on the same issue that we refer to as the "OTP" cases (Other Tobacco Products). A total of ten to eleven wholesalers of tobacco products (not cigarettes) have filed lawsuits in Pulaski County Circuit Courts. They are requesting a refund of tax plus interest around 7.3 million dollars, which stems from a claim that a change in the statute effective October 1, 2013 meant that they should have paid tax at a certain valuation prior to October 1, 2013 and have asked for a refund for taxes paid prior to the effective date of that Act.

Core-Mark Midcontinent, Inc., Forest City Grocery Co., Heber Springs Wholesale Grocery, Inc., and Tom Fitts Tobacco, Inc. v. Larry Walther, Director Arkansas Department of Finance and Administration, Circuit Court of Pulaski County, Arkansas Case No. 60-CV-17-3883

On July 26, 2017, the plaintiffs filed the above-captioned matter in Circuit Court of Pulaski County, Arkansas against DFA and served the Department with the complaint on October 24, 2017. The Department timely filed a Motion to Dismiss on November 22, 2017. The Complaint alleged that the plaintiffs, who are wholesalers of "other tobacco products" (OTP) (tobacco products other than cigarettes), are due refund of taxes paid to DFA for OTP.

Before October 1, 2013, Arkansas law taxed the sale of OTP at a rate of 68% of the "manufacturer's selling price." After October 1, 2013, Arkansas law taxed the sale of OTP at a rate of 68% of the "invoice price to a wholesaler or retailer." The plaintiffs purchased their OTP products from the separate sales affiliate of a tobacco manufacturer.

The wholesalers claim that they incorrectly paid Arkansas OTP tax to the state based upon the invoice price from the tobacco distributor (sales entity affiliate) rather than on the selling price by the tobacco manufacturer. The wholesalers hinge their argument in support of the refund claims upon Act 631 of 2013, contending that, until the passage of that Act, the definition of "manufacturer" included "sales entity affiliate" only for sales of cigarettes, not for sales of OTP. Because the amendment added the term "other tobacco products" to the definition of sales entity affiliate, the wholesalers argue that for OTP taxes, the proper basis for the computation of the tax levy should be the price at which the manufacturer sold OTP to its sales affiliate. Thus, using the price at which the sales affiliate then sold OTP to wholesalers, which is higher, was not the proper basis for the computation of the tax levy. The wholesalers contend that they are entitled to a refund because of the higher valuation by the Department.

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Office of Income Tax Administration

General Individual Income Tax Update:

August 8, 2017, Steve Wilkins, DFA Manager I of Individual Income Tax - updated the Council on the new letter for the Individual Income Tax (IIT) Non-Filer Notices for Tax Year 2015; the new process for 2018 Estimate Vouchers; and an update on 2017 IIT short booklets.

- a. The old and new letter was presented to the Council to show the differences in how the letters are formatted. He stated that the purpose of the new letter was to make it easier for the taxpayer to understand and gives the taxpayer the opportunity to check boxes with various explanations as to why the taxpayer did not file. The new letter helped the IIT Division because he stated that fourteen thousand (14,000) non-filer letters were sent to out and their division has not received as many calls as a result of the letter.
- b. IIT is working on a new letter for Estimate Vouchers that is still in in development. The new letter will go out for the 2018 tax year in December. Rather than sending out so many estimate voucher packets, the Individual Income Tax Division will be letting taxpayers know that there are other avenues to pay estimated taxes, such as, paying online through ATAP, using a software provider or their tax preparer. The letter will not have any of the taxpayer's personal information on it, such as their social security numbers. This measure was implemented in regards to 'identity theft' concerns.
- c. IIT will eventually stop sending out short booklets because not many taxpayers fill-out a short form. It is not economically feasible to mail the short booklets anymore. In the future, only the long booklet will be mailed to the taxpayer. If the taxpayer wants a copy of the short booklet, it will be available online or mailed to the taxpayer's address by request.

November 14, 2017 Ben Johns, DFA Tax Auditor – 2017 Individual Income Tax Highlights.

- a. Legislative Acts 1173 of 2015; Acts 666, 763, 883, 481 and 141 of 2017 were summarized for the Council. AR 1000F/AR 1000NR IIT form is updated to add a Driver's license/State Identification number to the form. The I.D. section of the form is not required by the State to fill out and it is designed to prevent and/or reduce identify theft and expedite the refund process. A.W. Bailey raised the concern that this I.D. line and that possibly adding this information to the tax return could increase identity theft, considering that the taxpayer's name and Social Security Number are on it already if someone were to get their hands on the return. Ben Johns assured Mr. Bailey that this line is "optional and not required to be filled out. At best, the I.D. is a way for IIT to keep track of the income tax returns and to possibly reduce identity theft in case a fraudulent return was filed.

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- b. The AR 1000 ADJ form adds a “Teachers Qualified Classroom Investment Expense” adjustment on Line 17. The AR 1000CE lists the instructions and itemized deductions for teachers who have expenses that qualify for the deduction. The AR1055-IT has an extension form for each type of tax account (Individual, Composite, Partnership, and Fiduciary). The AR1055-IT can be filed electronically by using a software package (for CPA’s, PA’s and tax preparers).
- c. The new non-filer letters and estimated tax letters were discussed. The non-filer letters (Adjustment and Proposed Assessment letters) will be sent at the same time. The adjustment letter will explain the non-filer adjustment and the proposed assessment letter will give the taxpayer an updated balance including penalties and interest.
- d. Information Exchange programs such as the CP2000 and Revenue Agent Reports (RAR’s) were discussed. CP2000: If the IRS discovers unreported income, the IRS assesses additional federal tax on the omitted income and then notifies the State of Arkansas. The taxpayer’s state tax return is then reviewed for unreported income. Revenue Agent Reports (RARs): When the IRS adjusts a taxpayer’s federal income tax return as the result of an audit, details are provided to the State of Arkansas. The taxpayer’s state tax return is then reviewed and adjusted if appropriate.
- e. If a taxpayer thinks he or she may be the victim of suspect’s identity theft, the taxpayer may contact the IRS Identity Protection Specialized Unit at (800) 908-4490 and inform the Unit that his or her identity was stolen and may have been used to file a fraudulent tax return. A stamped IRS Form 14039, an identity theft affidavit, should be submitted to support the claim. Send a copy of the completed IRS identity theft affidavit to:

Arkansas Individual Income Tax
PO Box 3628
Little Rock, AR 72203-3628

Update on Individual and Corporation Income Tax Filings:

On May 9, 2017, Steve Wilkins, DFA Division Manager I updated the Council on 2016 Income Tax Filings and expounded on Act 155 – The Income Tax Technical Corrections Act. Juxtaposing corporate and individual income tax, from 2016 to 2017, corporate tax filings as of May 8th are down two thousand (2000) returns. Twenty-five hundred (2500) paper filed returns have been received and processed but, because of the April 15th filing due date, the Income Tax Division has not processed all of the returns as of this date. Individual Income Tax is down eight hundred and twenty (820) fiduciary returns compared to last year. 2017 is the first year for electronic filing (e-file) for composite returns. Electronic filings for composite returns are up five hundred for the year. Compared to last year, Individual Income Tax filings are down approximately twenty thousand (20,000) for paper filings; up over nine thousand (9000) in e-files and down approximately eleven thousand overall. Over sixty percent (60%) of composite returns were electronically filed. Act 155 adopts Federal code and aligns Arkansas tax code with the Federal code. For more information on statistical data see the attachment.

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Individual and Corporate Income Tax Acts:

- a. Act 48 changes the Corporation Income Tax due date to April 15th for calendar year 2016. This Act moves the due date for returns and extension payments but does not affect quarterly estimated tax payment dates.
- b. Act 434 requires all Federal Sub-S corporations to file Arkansas Sub-S corporation returns. If a corporation elects to file a Federal Sub-S, the corporation will be treated as a Sub-S and will not be treated nor can it file as a C-corporation for Arkansas income tax purposes. Stan Kozij asks if a corporation files a Federal S-Corp then do you not need to see the state S-Corp Election. Scott Fryer responded that compliance is more focused on shareholders because the agency has found that the Federal government has been allowing taxpayers to wait until they file their first tax return, to file their Federal election rather than filing within the first seventy-five days. In order to ease the process and possibly reduce any confusion between Federal and state status, we will assume you are going to file an Arkansas S Election. The Department of Finance and Administration may revoke some Federal Sub-S corp. status elections they are not filing state returns. The department may decide to convert these particular Sub-S elections to C-Corp status for state tax purposes. If a corporation doesn't respond to the correspondence from the agency that they need to respond in order to remain a Sub-S Corp status, they will be revoked on the state level as an S-Corp and treated as a C-Corp. Matt Boch asks does the agency (DFA) have the statutory authority to enforce this act. Scott Fryer responded that the agency does have the statutory authority. Matt Boch asks "could you go after the S-Corp for failure to withhold?" Joel DiPippa added that "withholding for pass-through entities is another bill. The purpose of this bill is to promote frontend compliance rather than scrambling on the backend to make it right. We expect, with this change that 90% of these issues will stop because these filings will matchup." Joel acknowledges that there will always be errors, but this change most likely reduce these errors. Scott Fryer mentions that the Corporate Income Tax Division sends a significant amount of notice letters to taxpayers, concerning Sub-S elections. A.W. Bailey expressed his concern that sending over 10,000 letters a month at ten cents a piece is ridiculous and a poor use of taxpayer dollars. Lynne asks "are we (the state) doing that?" Bailey says "no, I was referring to the Fed."
- c. Act 482 requires partnerships with multistate operations to apportion their income rather than allocate income to Arkansas. Scott Fryer thanked Matt Boch for supporting this act in the private sector and he admits that this act originally, didn't have any support. You can still petition to use direct accounting. That approval by DFA needs to be done before the tax return is filed. The partners will still continue to allocate their income. The state will not continue to apportion income on the corporation, partnership or individual level.
- d. Act 760 requires partnerships to withhold income tax at a rate of 6.5% unless the corporation has signed an agreement to file Arkansas income tax returns and be subject to jurisdiction of Arkansas courts Arkansas income taxes for tax years beginning on and after January 1, 2018. It also allows corporations to participate in a composite return if their only activity in Arkansas is the ownership of partnerships that do business in Arkansas.

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Office of Excise Tax Administration

Sales and Use Tax Update:

August 8, 2017 Andrew Smith, Manager I of Excise Tax – Sales and Use updated the council on the status for DFA Medical Marijuana and reporting implementation. As far as the registration and reporting is concerned, we have the applications and returns ready to go, they are going to be finalized as of August 31st. Taxpayers are required to file online as of October 1st. The accounts we receive will be flagged based on the type of business they stated they wish to conduct on their application (either as a cultivation facility, dispensary, or other marijuana business). Andrew Smith says “according to the Act the sale of ‘Usable Marijuana’ is what would require the Special Additional Marijuana tax of 4%.” Joel states that there will be some additional ones coming online that will be subject to tax like processors to the extent that a cultivation facility can sell to a processor who would then do a value add manufacturer to then sell to dispensary. The transporters are different from the distributors and the processors. Matt Boch asks “if the title transfers, then the marijuana special privilege tax kicks in, if it is just transporting without the title transfer then they’re okay?” Joel states that the Gross Receipts Tax applies to the end of the sale of marijuana.

November 14, 2017 IV. Brian Sansoucie, DFA Division Manager I – Sales and Use Tax Section update – Highlight Act 431 and the sales tax change on January 1 regarding candy, soft drinks and specified digital products.

- a. Two emails will be sent to taxpayers concerning candy, soft drinks and specified digital products. The first email concerning candy and soft drinks will have three attachments that include a copies of Act 431, examples for candy that is taxed at the full rate and reduced rate; and examples for soft drinks that are taxed at the full rate and reduced rate. The second email concerning specified digital products provides examples from specified digital products and also has an attachment of Act 431.
- b. These emails should be sent to all taxpayers who have ATAP accounts to let them know there are changes coming. Matt Boch asks “how often does DFA use ATAP as a kind of distribution list? How frequent and what kind of news is being pushed through ATAP?” Brian answers “anytime we have a big change like this, we try to use it. If not, we include it (the tax changes) in some of our other notices to all our taxpayers.”

Miscellaneous Tax Acts:

August 8, 2017 Todd Cockrill, Manager I of Excise Tax – Miscellaneous updated the council on Act 1075 Concerning Paid Fantasy Sports Gaming; Act 317 Waste Tire fee expansion; Act 671 Amending the tax rate regarding Hard Cider.

- a. Act 1075 concerning Paid Fantasy Sports Gaming. The Act requires gamers to electronically file on a quarterly basis. Arkansas has registered a small number of operators.
- b. Act 317 is a revamp of the original waste tire bill in which the current waste tire fee is levied on the sale of a new tire. DFA is working in close communication with the Arkansas Department of Environmental Quality (ADEQ); DFA is essentially the

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collector of the waste tire fee. This Act is changing not only the definition of a “new tire” it is going to add a “rim removal fee”. DFA collects a three dollar (\$3.00) fee for a new tire or a one dollar (\$1.00) fee for a used tire. Regardless of whether or the tire is bought new or changed on the car as new or used, the fee is still the same. The Act requires a commercial generator to remit a commercial generator fee of three dollars (\$3.00). That is going to catch your fleet operators that hereto had not had to pay a waste tire fee. ADEQ is in the process of revamping their regulatory rules and have been meeting with DFA monthly in which DFA has had some input but not much on their regulatory rules. ADEQ is implementing a ‘used tire electronic manifest system’. DFA is not involved with that aspect of what ADEQ does. Even though anyone who is the business of removing and changing tires will be required and is required to have a waste tire account with DFA, that will not change. DFA is going to start collecting from any person that is strictly a “used tire dealer” and are not selling new tires at all, will now be required to register with DFA. “Used tire dealers” who do not have a registered waste tire account with DFA are required to register by December 1st. The effective date is January 1, 2018. DFA has registered some “used tire dealers” to date.

- c. Act 671 makes hard cider to be taxed at the beer rate.

Initially hard cider was taxed by the percentage of alcohol it contained. It could be taxed as light wine or vinous wine. Now the tax on hard cider will be at the beer rate. Period end the tax will appear as a line item on the beer return. It will not appear as the Beer, Malt and Cider return. This Act goes into effect on September 1st.

New Business

Matt Boch expressed his thoughts on how the Tax Advisory Council could be more innovative in its response to the taxpayer about the services DFA provides. He asked for clarification on the legislative process for tax legislations in the legislature and how the Tax Advisory Council or DFA can be more influential in advising the legislature on tax legislation during the process. With regard to planned DFA rulemakings, Matt Boch asked “where can we as taxpayers find notices of proposed rules?” David Rector responded “the Secretary of State’s website is where all proposed rules are posted from there they are subject to public hearing notification in the newspaper prior to formal adoption by the Legislative Council”. Matt Boch asked for the purpose of clarifying the multiple ways the taxpayer is able to see, know, understand and contribute to the process of rule promulgation. Matt Boch also asked about putting the Tax Advisory Council members on an email list to help the taxpayers to know the rules that are proposed. Joel DiPippa agreed and spoke on the Governor’s call to streamline government and make it more efficient. With respect to rulemaking and informing taxpayers of Arkansas tax requirements more generally. A.W. Bailey suggests that the private sector can be utilized through them to get the information to the taxpayer. Matt Boch also suggests leveraging industry groups and trade organizations to provide information to specific industries where there are widespread compliance issues or significant tax changes. Joel DiPippa reiterates that he agrees that there is more that the Tax Advisory Council can do and that DFA may be able to utilize the Tax Advisory Council to be more efficient in spreading the information that we have to the taxpayer.

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Matt Boch opens the floor to new business and mentions that the Tax Reform Taskforce is more focused on effecting tax change and policy on a macro level and acknowledges that it is not within the scope of the Tax Advisory Council to address tax reform on the macro level. He also asks if this is an opportunity for tax simplification on the micro and procedural level. He states that maybe this is a way to affect change at the micro level as a part of the broader tax reform process. He encourages that Council to think about that and to possibly converse with him about possibly working together on this and to just think about it. Assistant Commissioner Paul Gehring responds that during the 2017 Session the Department had several bills that were suggested by CPA's and tax preparers, that DFA made it a part of their housekeeping legislation. He continued, "This is an ongoing matter, so if there is ever an issue that comes to our attention internally or outside of DFA, we will certainly evaluate that in putting that into a bill as a part of our housekeeping package. He stated that the Department always wants to let people know that it is open to suggestions."

It was announced that A.W. Bailey will be the Chairman of the Tax Advisory Council for the 2018/2019 year.