TAX ADVISORY COUNCIL

2011 YEAR-ENDING REPORT

(Meetings Chaired by Jerry Burchfield, Arkansas Society of Certified Public Accountants)

Definition

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 Certified Public Accountants, the Arkansas Society of 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:
John Lessel, Michael Parker, and Jane Strike

Arkansas Society of Certified Public Accountants:
Jerry Burchfield, Phyllis Holifield, Stan Kozij, and Mike Watts

Arkansas Society of Public Accountants:
A.W. Bailey

Arkansas Department of Finance and Administration (DFA), Revenue Division:
John H. Theis, Assistant Commissioner of Revenue for Policy and Legal;
Tom Atchley, Administrator, Excise Tax;
Danny Walker, Administrator (Retired on June 30, 2011), Field Audit;
Walter Anger, Administrator (As of July 1, 2011), Field Audit;
Clarence Collins, Administrator, Income Tax;
Martha Hunt, Chief Counsel, Revenue Legal Counsel;
David Foster, Former Administrator, Arkansas Integrated Revenue System (AIRS)
Roberta Overman, Manager, Sales and Use Tax;
Joe Ellis, Manager, Corporation Income Tax;
Warren Fagan, Manager, Individual Income Tax;
Scott Fryer, Manager, Income Tax;
Matthew Turner, Manager, Individual Income Tax;
Travis Venable, Former Tax Division Manager, Arkansas Integrated Revenue System (AIRS);

Lynne Reynolds, Problem Resolution Officer; and
Monica Carmichael, Public Information Specialist.

Meetings

Members of the TAC met three times during 2011 on the following dates:

Meeting dates	Total Present
May 10, 2011	16
August 9, 2011	16
November 8, 2011	17

These meetings were held in Conference Room 2330 of the Joel Ledbetter Building. Meetings averaged one (1) to one and one-half (1 ½) hours in length and were open to the public and to all representatives of the State Senate and House of Representative Revenue and Taxation Committees. The TAC Meeting scheduled for February 8, 2011 was cancelled due to the Arkansas Regular Legislative Session.

Summary

Tax Advisory Council Activities: The following is a brief summary of what transpired during the TAC's 2011 meetings.

Office of Revenue Legal Counsel:

Summary of litigation:

Status on Ongoing Natural Gas Cases:

Great Lakes Chemical Corporation v. Weiss, Pulaski County Circuit Court, Case Number 60CV-08-12845—The case was filed on November 19, 2008. The plaintiff is a manufacturer who claims entitlement to a refund of use tax paid on purchases of natural gas in its manufacturing process. As of the May 10, 2011 TAC Meeting, Ms. Hunt stated that no further developments had been made on this case.

Status of Other Lawsuits Filed:

Carrothers Construction Company, LLC v. Richard Weiss, Pulaski County Circuit Court, 9th Division, Case Number 60CV-07-15814—During the November 9, 2010 TAC Meeting, Ms. Michelle Baker stated the case had been refilled before the one year from the date of dismissal. Mr. Theis also stated the court dismissed the case for failure to prosecute on October 28, 2009, and on October 25, 2010, the case was refilled. As of the May 10, 2011 TAC Meeting, Ms. Hunt stated there had been no further developments made on this case.

Cross Oil Refining and Marketing, Inc. v. Weiss, Union County Circuit Court, Sixth Division, Case Number CV-08-0320-6—During the May 10, 2011 TAC Meeting, the case was still in discovery, and a trial date hasn't been set. Ms. Hunt stated no further developments had been made on this case.

Nucor Corporation v. State of Arkansas, DFA, Circuit Court of Mississippi County, Chickasawba District, 6th Division, Case Number CV-09-353—During the May 10, 2011 TAC Meeting, Ms. Hunt stated the issue in this case is whether items (components parts of machinery and equipment) are entitled to the exemption for machinery and equipment used in manufacturing. Ms. Hunt stated this case was dismissed by the taxpayer.

The Home Depot U.S.A., LLC v. Richard Weiss, Pulaski County Circuit Court, Case Number 60CV-09-5348—During the May 10, 2011 TAC Meeting, Ms. Hunt stated this is a "bad debt" case filed to appeal the denial of a claim for refund made by a lender. The refund requests were based on transactions involving a private-label credit card serviced and administered by unrelated finance companies. The refunds were claimed pursuant to Ark. Code Ann. § 26-52-309 and GR-18. DFA denied the refunds because Home Depot did not satisfy the requirements of Ark. Code Ann. § 26-52-309 and GR-18 to claim a bad debt refund. Ms. Hunt stated this case is not set for trial, and she also stated no further developments had been made on this case.

Lowe's HIW, Inc. v. Department of Finance and Administration, Pulaski County Circuit Court, Case Number 60CV-10-1488—During the May 10, 2011 TAC Meeting, Ms. Hunt stated, the taxpayer in this case alleges the apportionment method used by DFA in making the assessment was discriminatory under the Commerce Clause and was accordingly unconstitutionally applied. DFA filed an answer to the complaint denying the apportionment method was incorrect or unconstitutional. Ms. Hunt stated the taxpayer has submitted DFA a settlement offer, and DFA is evaluating the settlement offer. She added no decision has been made on the taxpayer's settlement offer.

3M Company v. Weiss, Pulaski County Circuit Court, Case Number 60CV-10-0659—During the May 10, 2011 TAC Meeting, Ms. Hunt stated this case was filed on February 3, 2010 and involves a challenge to an assessment of corporation income tax. The plaintiff reported income from a sale of its pharmaceutical division as non-business income. DFA reclassified the income as business income, resulting in an assessment of tax. The taxpayer challenged this assessment. DFA filed an answer to the complaint denying the income is non-business income. Ms. Hunt stated this case was dismissed by the taxpayer on December 2, 2010.

Gary Sanford et al. v. Weiss, Pulaski County Circuit Court, 5th Division, Case Number 60CV-10-3462—During the August 9, 2011 TAC Meeting, Ms. Hunt stated this case is a challenge to the interest that is assessed on tax delinquencies after a Certificate of Indebtedness (COI) has been filed. The case was filed as an "illegal exaction" challenge and civil rights claim. The plaintiff alleges the collection of interest violates Article 19, § 13 which is the constitutional usury provision as made applicable by Ark. Code Ann. § 16-65-114 which is the statute that governs the interest rates on judgments. The relief requested seeks an injunction against the continued collection of the interest and a mandatory injunction for the escrow of funds that are collected and for attorney's fees. Ms. Hunt stated DFA's motion to dismiss hearing was held on July 13, 2011. At that time, the judge dismissed the civil rights claim, but he left the "illegal exaction" challenge pending. She further added the order has not been entered, and DFA has not answered.

New Cases

Theresa Holbrook v. Healthport, Inc., Pope County Circuit Court, Case Number CV2010-588—During the May 10, 2011 TAC Meeting**,** Ms. Hunt reported that an action for declaratory judgment was filed by the defendant, naming DFA as a third party defendant. The original complaint was filed by Holbrook against Healthport requesting a refund of sales tax collected by Healthport in connection with providing medical records to Holbrook for a fee and requesting the court to certify a class of persons or entities who had paid tax on the sale of medical records. Healthport subsequently filed the action for a declaratory judgment asking the court to determine whether medical records are subject to sales tax and naming DFA as a necessary third party defendant for purposes of that determination. Ms. Hunt stated the taxpayer went straight to the court and sued the seller and did not go through the steps prescribed by law in the Tax Procedure Act. The seller asked DFA to intervene or take some type of action in the lawsuit, and Ms. Hunt stated DFA didn't feel they could intervene because of sovereign immunity. Healthport filed a third party complaint against DFA for declaratory judgment. DFA filed an answer. During the November 8, 2011 TAC Meeting, Ms. Hunt stated DFA interprets the sales tax law to subject the sale of medical records for a fee as a taxable sale of tangible personal property. As of the November 8, 2011 TAC Meeting, Ms. Hunt stated DFA is involved in the case only for the purpose of a declaratory judgment on the legal issue of whether the sale of medical records is taxable, and she stated a hearing on the declaratory judgment pleadings was set for December 2, 2011.

Magalene Harris Taylor v. DFA Claims Commission, Claim Number 11-0497-CC—During the May 10, 2011 TAC Meeting, Ms. Hunt stated that this case involves a claim for refund of income tax for tax years 2001, 2002, 2003, 2007, 2008, and for relief from liens that were filed for tax years 2001, 2002, and 2003. The motion to dismiss was based upon failure to state facts, lack of subject matter jurisdiction, and refunds barred by the statue of limitations. By the order dated April 7, 2011, the Arkansas State Claims Commission unanimously granted DFA's motion to dismiss this case.

Flakeboard America Limited v. Richard Weiss, Hot Spring County Circuit Court, Case Number 30CV-2011-200—During the November 8, 2011 TAC Meeting, Ms. Hunt stated the taxpayer is claiming the mold and dye exemption used for machinery or parts of machinery or equipment the taxpayer uses in the manufacturing process. She stated they manufacture multi-density fiberboard.

H&S Maintenance, Inc. v. Weiss, Pulaski County Circuit Court, Case Number 60CV-2011-4268—During the November 8, 2011 TAC Meeting, Ms. Hunt stated this case is a challenge by a company that installs lawn sprinklers to the tax on the initial installation of lawn sprinklers. Ms. Hunt stated DFA's argument is that the sprinklers contain mechanical and electrical components, and the installation is taxable. She stated the taxpayer filed the original lawsuit as an illegal exaction and asked two subclasses be certified. Ms. Hunt stated DFA filed a motion to dismiss. She stated the plaintiff amended its complaint, and DFA filed another motion to dismiss. Mr. Parker asked if this case had gone through administrative review. Ms. Hunt answered that an administrative hearing had been conducted.

Donald A. Bryant v. IRS et al (Martha Hunt & Janis Harrison), Pulaski County Circuit Court, Case Number 60CV-2011-3918—During the November 8, 2011 TAC Meeting, Ms. Hunt stated the plaintiff was attempting to obtain IRS tax documents related to lottery payments in Texas. Ms. Hunt stated the lottery payments were made to a limited liability company (LLC) who sent some amounts to the plaintiff, who is an Arkansas resident. The case was filed and dismissed. Ms. Hunt added the plaintiff filed a number of federal lawsuits relating to the same claims, and there is a possibility he may file another state court case.

Weatherford Artificial Lift Systems, Inc. v. Weiss, Pulaski County Circuit Court, 6th Division, Case Number 60CV-2011-3290—During the November 8, 2011 TAC Meeting, Ms. Hunt stated the plaintiff in this case alleges three alternative causes of action, all relating to the purchase of various tangible personal property (including silicon dioxide, silicon dioxide coated with resins, aluminum silicate, and aluminum oxide based ceramics) that was used by the plaintiff in the services it provides to the natural gas extraction industry in areas where the gas is extracted from areas of shale. As of the November TAC Meeting, Ms. Hunt stated DFA has filed an answer in this case. The three alternative causes of action are:

1. Refund of sales tax paid following an assessment based upon the claim the property that was used and installed as propping agents to complete new wells are exempt as equipment under Ark. Code Ann. § 26-52-402.

2. The property used as propping agents are exempt as chemicals used in manufacturing under Ark. Code Ann. § 26-52-401 (35).

3. The withdrawals from stock were not taxable from January 1, 2008 to March 10, 2009.

Business Closures Challenges

JW's Paint & Body Shop v. DFA, Phillips County Circuit Court Case Number CV2011-93—During the May 10, 2011 TAC Meeting, Ms. Hunt stated this case is a circuit court challenge to an administrative decision ordering that a business be closed for failure to file and pay sales or withholding tax under the business closure law.

Dorothy B. Gettings and Fros-T-Treat, Inc. V. DFA, Garland County Circuit Court Case Number CV-2011-77—During the May 10, 2011 TAC Meeting, Ms. Hunt stated this case is a circuit court challenge to an administrative decision ordering that a business be closed for failure to file and pay sales or withholding tax under the business closure law.

Office of Excise Tax Administration:

Sales Tax Acts Passed During the 2011 Arkansas Regular Session—During the May 10, 2011 TAC Meeting, Mr. Atchley discussed the following Sales Tax Acts:

ACT	Description
Act 291	To amend the sales and use tax laws to be consistent with the Streamlined Sales & Use Tax Agreement. Effective July 27, 2011.
Act 1274 of 2009	Repeals the state and local sales tax levied on mini-warehouses and self storage rental services. Effective July 1, 2011.
Act 755	Reduces the state sales and use tax rate on food and food ingredients to one and three-eighths percent (1.375%). When combined with the Conservation Tax levied by the Arkansas Constitution, the total state tax rate will be 1.5%. Effective July 1, 2011.
Act 1142	Requires out-of-state sellers with taxable sales averaging more than $200,000 per month to begin making prepayments equal to 80% of the monthly state liability twice each month. Sellers required to make the prepayments will receive notice with further instructions in November of each year. Prepayments are required to be paid electronically. Effective January 1, 2012.

Mr. Atchley further discussed Act 1274 of 2009 by stating many taxpayers that own mini-warehouses or self storage rental services will still maintain their sales tax registration. He added many types of these businesses sell locks, storage supplies, and other things that are subject to sales taxes. He stated these types of taxpayers who own mini-warehouses or self storage rental services also own other types of businesses such as retail stores that are not related to mini-warehouses or self storage rental services.

Mr. Atchley further discussed Act 1142 as well. He stated the out-of-state seller prepay responsibility will be administered the same way as the in-state seller prepay responsibility is currently handled. During the fall 2011, Mr. Atchley stated the Sales Tax Section will be reviewing the taxes reported and paid by all sellers for the previous state fiscal year to see who falls within that prepay sales tax requirement. In Arkansas, Mr. Atchley states the sales tax prepay requirement is met if the taxable sales are more than $200,000.00 per month on average. He added that a list is compiled of sellers who are required to prepay, and a letter is mailed out notifying the sellers of the sales tax prepayment requirement. Mr. Atchley also stated in the letter the sellers are also given information on using the chart that is provided by the Sales Tax Section to recreate or recalculate how much the sales tax prepayment would be each month based on the previous periods of times they did report. He added the first sales tax prepayment by out-of-state sellers will be made in January 2012.

Streamlined Sales Tax Agreement Question—During the May 10, 2011 TAC Meeting, Mr. Parker had a question concerning field auditors. He asked if auditors think they should audit businesses for their in-state purchases. Mr. Parker stated in the past the audit target had been out-of-state purchases because in-state purchases were left up to the vendors to collect the tax. He stated this situation derived from clients that have a re-sale permit. Mr. Parker's question focused on businesses holding a re-sale permit and if there is a presumption they are holding themselves out to be purchasing for re-sale; therefore they are entitled to be audited on their in-state purchases. He states there is some confusing language that has been added with connection to the Streamlined Sales and Use Tax Agreement that may be causing problems for his clients. Mr. Parker asked if there was a change in instructions given to auditors in terms of what sorts of purchases they are looking for when they conduct an audit. Mr. Walker answered Mr. Parker's question by stating that to his knowledge there hasn't been a change, and he stated auditors look at all items to see if a purchaser did provide a re-sale permit. If the purchaser did provide a re-sale permit, Mr. Walker stated the account would be subject to further review by an audit. If they look at all the items and see that a re-sale permit was not issued, Mr. Walker stated they would then contact the retailer for an audit.

Mr. Atchley asked Mr. Parker if some of the Arkansas businesses have been giving the Streamlined Sales and Use Tax Agreement Blanket Certificate of Exemption to sellers. If they have the Streamlined Sales and Use Tax Agreement Blanket Certificate of Exemption, he states they are claiming to be exempt for a particular reason, and if the seller accepts it, the purchaser is accepting the responsibility. Mr. Atchley states he hasn't heard of many Arkansas businesses that use the Streamlined Sales and Use Tax Agreement Blanket Certificate of Exemption. He states the Streamlined Sales and Use Tax Agreement Blanket Certificate of Exemption is broad based and is used for all types of items. Mr. Atchley stated to Mr. Parker there isn't any language in the Streamlined Sales and Use Tax Agreement that would affect the audit issue that he was referring to. Mr. Parker stated he didn't know any businesses that use the Streamlined Sales and Use Tax Agreement Certificate of Exemption and keep a record of the people they give them to. Mr. Parker finished by stating the audit issue he was referring to may have been an isolated incident.

Streamlined Sales Tax Agreement as it Relates to the Arkansas Sales Tax Holiday—Mr. Atchley stated during the May 10, 2011 TAC Meeting that because of the Streamlined Sales and Use Tax Agreement Arkansas is required to provide a notice to all taxpayers who will be impacted by the Arkansas Sales Tax Holiday. He added the notice is required to be mailed out 60 days prior to the 1st day of the calendar quarter in which the holiday would be held. He stated the notices were mailed to approximately 75,000 taxpayers during the last 10 days of April 2011 prior to the May 1st deadline. Mr. Atchley stated the notices included the *What's New for Sales Tax* bulletin. This bulletin provides information on sales tax changes that occurred during any given legislative session.

Arkansas Sales Tax Holiday—During the May 10, 2011 TAC Meeting, Mr. Atchley stated the Sales Tax Section had written a press release titled, *Instructions for Retailers*. He also stated the Emergency Rule 2011-2, Arkansas Sales Tax Holiday, had been filed as well.

After the brief discussion by Mr. Atchley, Ms. Overman discussed the Arkansas Sales Tax Holiday. She gave copies of Emergency Rule 2011-2 to the TAC members before the meeting. Ms. Overman instructed the TAC Members to review Emergency Rule 2011-2. She stated Emergency Rule 2011-2 followed the guidelines of the Streamlined Sales and Use Tax Agreement as required by being a full member state.

Due to time constraints, Mr. Theis stated DFA borrowed heavily from other states that already had a Sales Tax Holiday with special emphasis on states that are members of the Streamlined Sales and Use Tax Agreement. He stated Emergency Rule 2011-2 will be allowed to expire. After the Arkansas Sales Tax Holiday has expired, Mr. Theis stated the Sales Tax Section will be requesting feedback from business owners. He asked the TAC members who had clients who are retailers involved in the Arkansas Sales Tax Holiday to gather their questions on any issues that arise from the first Arkansas Sales Tax Holiday. Mr. Theis stated the comments or suggestions gathered from business owners will be used to prepare a final rule before the second Arkansas Sales Tax Holiday. He added the comments or suggestions from business owners may allow the second Arkansas Sales Tax Holiday to be more targeted to the needs of Arkansas retailers.

Ms. Overman stated the clothing or clothing accessory items listed on the *Instructions for Retailers* press release are just an example of exempt items from state and local sales taxes. If clothing or a clothing accessory item is not listed on the *Instructions for Retailers* press release, Ms. Overman stated that it could possibly qualify as an exempt item. She stated sporting and protective equipment are taxable items. Ms. Overman added the list of taxable sporting and protective equipment items are listed on the *Instructions for Retailers* press release. Mr. Kozij asked Ms. Overman what identifying measures retailers are implementing to differentiate between non-exempt items versus exempt items. Mr. Theis answered by stating retailers have the ultimate decision on what qualifies as a non-exempt item. Since the Arkansas Sales Tax Holiday is on a weekend, Ms. Overman added the Sales Tax Section will not be in the office to answer any questions from retailers. She also added that consumers can view and also print Arkansas Sales Tax Holiday information at the following webpage: http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Pages/taxHoliday.aspx.

She stated clothing items are exempt to the total of $100, but accessory items are exempt to the total of $50. Ms. Overman stated school supplies, school art supplies, and school instructional materials are limited to the items listed on the *Instructions for Retailers* press release. If the school supply, school art supply, or school instruction material in question is not on the list, she stated it does not qualify as an exempt item for the Arkansas Sales Tax Holiday. Mr. Lessel asked if the limited school supplies, school art supplies, and school instruction materials had a price limit. Mr. Theis stated there was not a price limitation on these items during the Arkansas Sales Tax Holiday. Ms. Overman added that computers are not included as an exempt item during the Arkansas Sales Tax Holiday. She urged TAC members who had clients that are retailers to pay special attention to the limited exempt item list for school supplies, school art supplies, and school instructional materials.

Ms. Overman briefly discussed the taxable items listed on the back of the 2011 Arkansas Sales Tax Holiday handout she gave to TAC members before the meeting.

Mr. Parker asked if surrounding states start their Sales Tax Holiday the same time Arkansas will start theirs. Mr. Overman stated she did not have that information with her at the time of May 10, 2011 TAC Meeting, but she strongly believed most surrounding states hold their Sales Tax Holiday the first weekend of August. She also stated most surrounding states hold their Sales Tax Holiday during the same time as other surrounding states to keep business in their respective state. She added the Federation of Tax Administrators (FTA) has information on their website concerning the starting dates for the Sales Tax Holiday in other states. The link to the FTA's website is included in the following: http://www.taxadmin.org/.

Ms. Overman also discussed the Procedures for Administration of the Sales Tax Holiday by Retailers section located on the *Instructions for Retailers* press release. She discussed rain checks, buy one get one free or for a reduced price, refunds, layaways, discounts, coupons, rebates, back orders, and delivery charges. If the exempt items go into layaway on the Arkansas Sales Tax Holiday or comes out during the Arkansas Sales Tax Holiday, it qualifies as a purchase during the Arkansas Sales Tax Holiday.

For a 60 day period immediately after the Arkansas Sales Tax Holiday if a customer returns an exempt item, Ms. Overman stated the retailer is not obligated to refund the tax unless the customer has a receipt showing they paid tax. She added this type of returned item is presumed to have been acquired during the Arkansas Sales Tax Holiday. Mr. Atchley further added this is a Streamlined Sales and Use Tax Agreement provision implemented in order to assist retailers for tax reporting purposes in order for them not to have additional reporting burdens.

Also, during the Arkansas Sales Tax Holiday, Ms. Overman stated items normally sold and priced to be sold as a unit can't be divided to be sold separately in order to get under the $100 threshold price limit for each item to get an exemption.

Ms. Overman briefly discussed rebates by stating a manufacturer's rebate can't be used to lower the price of an exempt item under the $100 limit.

Mr. Atchley stated the Arkansas Sales Tax Holiday for 2011 will begin on Saturday, August 6, 2011 at 12:01 a.m. and will continue through Sunday, August 7, 2011 at 11:59 p.m. He added retailers are responsible for participating in the Arkansas Sales Tax Holiday if they sell exempt items.

During the May 10, 2011 TAC Meeting, Mr. Atchley stated he expects heavy advertisement from retailers concerning the Arkansas Sales Tax Holiday. Mr. Atchley stated the Sales Tax Section is here to assist the business community during the implementation of the holiday. Mr. Atchley added that local convenience stores, home improvement stores, and restaurants are types of retailers that sell exempt items that would qualify them to participate in the Arkansas Sales Tax Holiday.

Update on Arkansas Sales Tax Holiday—During the August 9, 2011 TAC Meeting, Ms. Overman stated the Sales Tax Section spent a considerable amount of time during the latter part of July and the first week of August working with sellers concerning the Arkansas Sales Tax Holiday. Ms. Overman stated they received a large amount of questions from taxpayers concerning the definition of cosmetics. She stated the definition of cosmetics is not clearly defined in Emergency Rule: 2011-2, Arkansas Sales Tax Holiday. If the Food and Drug Administration (FDA) considers it a cosmetic, Ms. Overman stated the Sales Tax Section advised taxpayers it would qualify for an exemption during the Arkansas Sales Tax Holiday. She added the Sales Tax Section follows the same guidelines as the FDA concerning cosmetics.

As of the date of August 9, 2011 TAC Meeting, Ms. Overman stated the Sales Tax Section received a considerable number of questions concerning sellers collecting tax when they should not have during the Arkansas Sales Tax Holiday. She added most of these instances centered on small businesses that were not aware the Arkansas Sales Tax Holiday applied to them. If taxpayers were charged tax incorrectly, Mr. Overman stated the Sales Tax Section is advising taxpayers to return to the seller and request a refund on the tax. She added the Sales Tax Section is attempting to contact the sellers to make sure they knew the item should have not been taxed in order for the Sales Tax Section to better address the issue next year during the Arkansas Sales Tax Holiday. She further added it may not have been clearly understood by small businesses that it was mandatory for them to participate in Arkansas Sales Tax Holiday if they are selling an exempt item. Ms. Overman stated businesses were notified by mail that they had to participate in the Arkansas Sales Tax Holiday, but she added it may not have been emphasized enough in the mailing for them to notice. Mr. Overman asked TAC members to ask their clients for any input in reference to the 1st Arkansas Sales Tax Holiday. Before Emergency Rule: 2011-2, Arkansas Sales Tax Holiday, becomes permanent, Ms. Overman stated it will need to be tweaked. Emergency Rule: 2011-2, Arkansas Sales Tax Holiday, expires on September 1, 2011.

Local Tax Rebates for Single Transaction Business Purchase of $2,500—During the August 9, 2011 TAC Meeting, Ms. Overman stated the Sales Tax Section is receiving a large volume of local tax rebate refund requests for single transaction business purchases of $2,500. If the purchase is a business purchase, the invoice exceeds $2,500, and they paid tax on the purchase, Ms. Overman reminded TAC Members to advise their business clients they can either claim the rebate on their reporting form or submit a refund request. She added the rebate is only good for 6 months from the date the tax was paid. Under normal circumstances, Ms. Overman stated the Sales Tax Section relies on the invoice date to determine the 6 month cutoff to receive a refund, but in certain instances, she stated some purchasers do not pay the invoice as soon as they receive them. If the business owner paid the invoice and the six months has expired based on the invoice date, Ms. Overman stated they need to send a copy of proof of payment that includes the date the invoice was paid.

Streamlined Sales Tax Collections—During the August 9, 2011 TAC Meeting, Mr. Atchley provided TAC Members with handouts showing the total amount of state and local streamlined sales tax collections from 2005 to 2011. The amount for 2011 is from the months of January through May. He added there are 24 states in the Streamlined Sales Tax Project. He stated 21 states are full members, and three states are associate members. He further stated Georgia became a full member of the Streamlined Sales Tax Project on August 1, 2011.

Mr. Atchley stated federal legislation had been introduced in Congress concerning the Streamlined Sales Tax Project. He stated the legislation was presented by Senator Richard Durbin of Illinois. Mr. Atchley explained the legislation is mentioned in United States (U.S.) Senate Bill S.1452 which is also known as the Main Street Fairness Act. A copy of Senate Bill S. 1452 can be found at the following link: http://taxcloud.files.wordpress.com/2011/07/s-1452.pdf. Mr. Atchley added U.S. Senate Bill 1452 is currently assigned to the U.S. Senate Finance Committee, and the bill was introduced on July 29, 2011. Also, on July 29, 2011, he stated House Bill H.R. 2701 was introduced by U. S. Representative John Conyers, Jr. from Michigan, and this bill is currently in the House of Representative Judiciary

Committee. A copy of House Bill 2701 can be found at the following link: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_bills&docid=f:h2701ih.txt.pdf. He stated these two bills represent the text that has been agreed upon by the Streamlined Sales Tax states, Streamlined Sales Tax Governing Board, and the business community that is a part of the Streamlined Sales Tax Project. Mr. Atchley added Amazon.com has also stated they agree with the text of both bills, and Amazon.com also considers both bills good legislation.

Mr. Atchley explained the Arkansas Streamlined Sales Tax Collection handout. He stated Arkansas became an associate member state on October 1, 2005 which is the first date any state became a member of the Streamlined Sales Tax Project. Mr. Atchley stated Arkansas became a full time member of the Arkansas Streamlined Sales Tax Project on January 1, 2008. He added tax collections continue to grow every year. The U.S. businesses registered in the Streamlined Sales Tax Project report taxes to Arkansas when they have a taxable sales tax transaction. He stated the number of U.S. businesses registered in the Streamlined Sales Tax Project continue to grow.

Sales Tax Changes Effective July 1, 2011—During the November 8, 2011 TAC Meeting, Ms. Overman discussed the following Acts related to sales tax changes effective July 1, 2011:

ACT	Description
Act 1274 of 2009	Mini-warehouse and self storage rental fees are now tax exempt beginning July 1, 2011. If a mini-warehouse or self storage business parks or stores vehicles and boats, she clarified those services remain taxable. Also, if one of these types of facilities sales packing supplies or locks, Ms. Overman stated these types of sales remain taxable as well.

Sales Tax Changes Effective January 1, 2012 (Passed During 2011 Regular Session)—During the November 8, 2011 TAC Meeting, Ms. Overman discussed the following Acts related to sales tax changes effective January 1, 2012.

ACT	Description
Act 753	The sales tax exemption on new and used vehicles, trailers, and semi-trailer purchases will increase from $2,500.00 to $4,000.00 on these types of purchases on or after January 1, 2012. Ms. Overman stated many taxpayers believe this sales tax exemption is based on the registration date, but she stated this sales tax exemption is based on the purchase date.
Act 754	There is a new reduced rate for natural gas and electricity that is purchased by a qualified generator of electric power that uses natural gas to operate a new or existing generating facility with combined-cycled gas turbine technology. Ms. Overman stated the new reduced state tax rate including the conservation tax will be 5.25% beginning January 1, 2012. She stated letters were mailed to qualified generator of electric power facility taxpayers who are eligible for the reduced rate. Ms. Overman added there are only a few eligible qualified generator of electric power facility taxpayers. She asked TAC members to tell their clients to contact the Sales Tax Section if they are qualified generator of electric power facility taxpayers who have not received mail notification of the new reduced rate for natural gas and electricity purchased by a qualified generator of electric power.
Act 1142	Out-of-state sellers with Arkansas taxable sales averaging more than $200,000 per month will start making prepayments equal to 80% of the monthly state liability twice each month beginning January 1, 2012. As of the November 8, 2011 Meeting, Ms. Overman stated notification letters would be mailed to taxpayers who would be affected by Act 1142 in the upcoming weeks.

Severance Tax –During the November 8, 2011 TAC Meeting, Mr. Atchley stated severance tax filers who report small amounts of tax will be able to file quarterly or annually beginning January 1, 2012. He stated two thirds of the severance tax filers will fall into the new filing system, and he also stated the filing system will be similar to the filing system already in place in the Sales Tax Section. Mr. Atchley added severance tax filers have been mailed notification of this new filing process. He is confident two thirds of the current monthly severance tax filers will start filing their reports quarterly or annually. If a severance tax filer would like to continue filing his or her severance tax reports monthly, Mr. Atchley stated the Miscellaneous Tax Section is willing to work with the severance tax filer. He believes this new filing process will relieve the burden of severance tax filers who file small amounts of tax on a monthly basis.

Act 700—During the November 8, 2011 TAC Meeting, Mr. Atchley explained Act 700, which was passed during the 2011 Regular Session and involves taxation for real estate transfers. Mr. Atchley stated Act 700 asked DFA to review the process of the current real estate transfer stamp filing system to identify opportunities to modernize that system. If DFA conducts a study, Act 700 further states the study findings must be reported to the legislative committee for review. Mr. Atchley stated DFA is currently conducting a study, and the study findings are due on July 1, 2012. Mr. Atchley stated that DFA is currently working with three circuit clerks to view their process of recording documents. DFA is also working with title and closing company representatives to understand how they acquire the real estate stamps they place on warranty deeds, how they record the real estate transfer stamps, and how they file the warranty deeds with the circuit clerk.

Mr. Atchley stated not all Arkansas counties are receiving what is referred to as electronic warranty deed filings at this time. He stated a few Arkansas counties are filing warranty deeds electronically and are promoting it heavily.

Mr. Atchley mentioned that DFA in the process of meeting with representatives from the Arkansas Bar Association (ABA) and Arkansas Land Title Association (ARLTA) to discuss their part in real estate reporting. Mr. Atchley stated that DFA has attended the most recent Arkansas Electronic Recording Commission's Meeting. He stated the Arkansas Electronic Recording Commission has been in existence since 2007, and it is composed of governor appointees which normally includes a circuit clerk. Mr. Atchley stated that DFA expects to be finished with their review and have it ready to report to the legislative committee by July 2012. Mr. Atchley asked TAC members to ask their clients who are involved in filing real estate documents for input, and he stated these clients would be kept informed throughout the reviewing process of updating the real estate transfer stamp system.

Mr. Parker asked a question concerning the process of real estate stamp electronic filing in counties which are currently filing in that manner. He wanted to know if those circuit clerks' offices place the real estate stamps on paper and then scan them as images. Mr. Atchley stated the company or individual preparing the paper warranty deed documents will place the real estate transfer stamps on the paper warranty deed document. He added the real estate deed and stamps are scanned, and then the scanned real estate deed and stamps are filed. For the circuit clerks' offices such as the Pulaski County Circuit Clerk's Office that receive electronic documents, Mr. Atchley stated there is a system in place where those offices can receive electronic images. He stated the Pulaski County Circuit Clerk's Office is strictly maintaining their files electronically, but they send taxpayers paper documentation of the real estate deed and stamps for their records.

Mr. Parker asked if filing fees are the same for electronic documents in comparison to paper documents. Mr. Atchley answered by stating yes. Mr. Parker also had a question concerning how the filing fee process is handled. Mr. Atchley answered by stating those companies that receive the electronic real estate transfer stamps use a third party provider between the company such as a closing company sending the document and the circuit clerk's office. He stated the third party provider receives the electronic real estate transfer stamp, transmits the real estate transfer stamp, and then sends acknowledgement back with a fee cost. He added the company then deals with their client to make sure the fees have been paid.

He also stated the Benton County Circuit Clerk's Office seems to be more aggressive in warranty deed electronic filing, and he added 40 percent of their warranty deed filings are received in electronic format. Mr. Atchley stated the Pulaski County Circuit Clerk's Office is currently receiving 20 percent of the warranty deed filings in electronic format. Mr. Atchley added the Madison County Circuit Clerk's Office is aggressively promoting electronic filing of deeds and real estate stamps.

Arkansas Integrated Revenue System:

AIRS Income Tax Conversion Update—During the May 10, 2011 TAC Meeting, Mr. Venable stated the 3rd AIRS Rollout happened a few days earlier than the expected date of January 10, 2011, and it included the following tax sections: Individual Income Tax, Corporation Income Tax, and Partnership Income Tax. Mr. Venable stated the AIRS Section had to transfer over eight million records, and the implementation process went well. Mr. Collins stated five to six thousand partnership and Subchapter S returns were successfully processed.

Mr. Kozij stated he has been working with Mr. Collins and Mr. Ron Mitchell from the Individual Income Tax Section concerning individual income tax disclosure data reports, and he states hopefully in the future there will be a way to program AIRS to retrieve individual income tax disclosure data reports without imposing a considerable amount of work on DFA. Mr. Venable stated he would research this issue for Mr. Kozij.

AIRS Rollout 4—During the May 10, 2011 TAC Meeting, Mr. Venable stated AIRS Rollout 4 is scheduled for August 1, 2011. AIRS Rollout 4 will include 11 different miscellaneous taxes. He stated some of those are: the remaining Severance Taxes, Alcohol and Beverage Tax, Tobacco Tax, and Soft Drink Tax. Mr. Venable stated there will be significant changes on the forms for these tax sections, and these tax sections will be eligible for Arkansas Taxpayer Access Point (ATAP) access.

During the August 9, 2011 TAC Meeting, Mr. Foster provided an update and stated the AIRS Rollout 4 implementation included the following Miscellaneous Taxes: Beer, Wine, Liquor, Soda, Brine, Timber, Oil, Other Severance, Cigarette, Cigarette Papers, and Other Tobacco Product Taxes. He stated 11 new tax types have been added as a result of Rollout 4. Due to Rollout 4, Mr. Foster added the taxpayer base had increased by approximately 1200. Out of this increased taxpayer base, Mr. Foster stated approximately 330 already had an Arkansas Taxpayer Access Point (ATAP) account. Mr. Foster encouraged TAC Members to recommend their clients to add any tax type account to their existing ATAP account. He added taxpayers were mailed new tax forms. Mr. Kozij asked when the Legacy system will become non-existent at DFA. Mr. Foster answered by stating the use of the Legacy system is very limited at this time. He added the Legacy system is only available in read only mode at the current time. Mr. Atchley added miscellaneous tax returns can be filed electronically on ATAP.

AR 1099-G EIN—During the May 10, 2011 TAC Meeting, Mr. Venable stated an identification number will be included on the AR 1099-G form. Prior to the implementation of AIRS, he stated the AR 1099-G EIN was included with the warrant that was mailed out, but it will no longer be included with the warrant. Mr. Venable stated a warrant will be mailed out first, then the AR 1099-G form that includes the identification number will be mailed second sometime in early January following the year the refund was issued.

AR3MAR Annual Withholding Wage Tax Reconciliation on Arkansas Taxpayer Access Point (ATAP)— During the May 10, 2011 TAC Meeting, Mr. Venable stated when the AR3MAR form has been filed the Withholding Tax Section is looking for the actual tax liability amount. Currently, Mr. Venable states there is not a place to report what has been previously paid because the ATAP Section already has that information. If payments are made through ATAP, he states there is a process on ATAP to view processed payments if a taxpayer needs to reconcile what they filed to what they actually paid.

Mr. Kozij stated Ms. Linda Holmstrom, former DFA Problem Resolution Officer, forwarded the question of filing AR3MAR forms on ATAP to him to include as a discussion topic during the May 10, 2011 TAC Meeting. Mr. Venable stated he would contact Ms. Holmstrom and provide her with further assistance.

If TAC members file annual reconciliation forms online through ATAP for their clients, Ms Overman instructed them not to mail in paper annual reconciliation forms as well.

Mr. Venable stated some issues have arisen where taxpayers are mailing copies of the paper W-2s with the AR3MAR forms, and he stated they are going to be making updates to the annual reconciliation filing process on ATAP. Mr. Venable stated they have made the process more user friendly by providing a link to the ARW-3 form that is required to accompany the paper W-2s. Once the taxpayer enters their monthly liabilities for the year and verifies that information, they can check the box stating they are mailing their W-2s by paper. Once the taxpayer checks that box, Mr. Venable states a link will be provided for the taxpayer to complete the ARW-3 form. He added taxpayers will still be able to print copies of the annual reconciliation forms, but it doesn't need to be mailed in with the paper W-2 forms.

Withholding Wage Notice of Non Payment—During the May 10, 2011 TAC Meeting, Mr. Kozij had a question concerning a withholding wage notice of non payment that was brought to his attention by a fellow CPA. He states the fellow CPA stated there is a real problem with DFA's new computer system. When the CPA's clients pay their tax due before the due date, the CPA states DFA doesn't want to recognize it. The CPA adds his clients are receiving notices faster than they can respond to them. The CPA further adds some of the notices are rather aggressive, and he states the notices are rather annoying for business clients that are good taxpayers. Mr. Kozij stated this issue had been brought up in a previous TAC Meeting.

Mr. Venable stated that for most taxpayers the ATAP system is looking for specific range of dates because the due date is the 15th. When taxpayers run their payroll, he states some are going to send in the payment. Mr. Venable adds the date may or may not coincide with the actual due date set up by law. He states the ATAP section has set up a process to change the range of dates for a specific taxpayer. Mr. Venable stated the taxpayer's account can be adjusted to anticipate a certain range of dates if the ATAP section is contacted ahead of time. Mr. Kozij asked if the withholding wage notice of non payment issue had to be taxpayer specific. Mr. Venable answered by stating it would have to be a tax specific issue because it would make the range of due dates so wide that it wouldn't be beneficial to review it. He further stated the default expects taxpayers to pay on due date or around the due date. Mr. Venable stated he could be contacted for assistance on issues such as this or other ATAP issues.

Mr. Kozij stated he had a client with a 2009 overpayment that was applied to 2010. In 2010, he stated the taxpayer received a notice of underpayment. He stated the taxpayer came in person to speak to someone at DFA concerning this issue, and they were told the refund was showing up on the old system, but not in the current ATAP system. Mr. Kozij believes there must have been a disconnect between when the records of the old computer system were converted to AIRS. Mr. Bailey added he had an issue similar to this. Mr. Venable stated some conversion issues may still arise, and he can be contacted for assistance.

AIRS Rollout 5—During the November 8, 2011 TAC Meeting, Mr. Foster stated nine remaining miscellaneous taxes and seven promotion fee taxes will be implemented on February 27, 2012, and taxpayers will be able to e-file returns, make payments, and other actions taxpayers may need to accomplish on their account by March 1, 2012. He stated things have gone quite well with both current and previous rollouts. Mr. Foster stated the AIRS Section will continue to do production support, and he stated the AIRS Section is open to suggestions or ideas in order to make improvements.

Arkansas Taxpayer Access Point (ATAP)—During the November 8, 2011 TAC Meeting, Mr. Foster explained the functions of ATAP. He also stated a power of attorney (POA) can manage their client's account, file returns, make payments, check balances, and check on refunds electronically. He added a taxpayer can make a payment electronically without logging on as an ATAP user. Mr. Foster stated currently taxpayers can not file an individual income tax return electronically due to their current partnership with the Free File Alliance which has restrictions against it. He stated all other tax types can be filed electronically using ATAP.

During Rollout 5 in 2012, Mr. Foster stated the ATAP software will be upgraded. He stated Silver Light will no longer be used, and ATAP will be using standard html Java Script software which will allow for broader access such as cell phone or tablet personal computer (pc) access capabilities. Mr. Foster stated the AIRS Section is attempting to expand availability and application to make AIRS more accessible. He stated all the new tax types such as the promotion fees will be added to the upgraded software. Mr. Foster stated most miscellaneous tax forms have been updated to a more standardized format, and the forms are mailed out each month to taxpayers, therefore the taxpayer does not have to make copies. He stated the miscellaneous tax forms include a payment voucher at the bottom.

Mr. Foster also stated the third party manager availability on ATAP has been updated in order for the taxpayer or POA to have multiple managers for different types of accounts and data points. He stated security has not been compromised by adding this feature, but the ability to manage and make payments on the tax accounts has been expanded.

AIRS DS-MV—On September 19, 2011, Mr. Foster stated the AIRS Section launched AIRS DS-MV which includes the Driver Services and Motor Vehicle Sections. He added these sections will migrate from the existing Legacy system into the AIRS system. Mr. Foster further explained that it is basically the same software but in a different server based environment.

Mr. Theis added that Arkansas is the first state using the initial implementation of the software used in the AIRS migration of Driver Services and Motor Vehicle Sections. Because Arkansas is the first state to use this software and because hopefully the AIRS DS-MV project can be marketed to other states, the state will reap significant savings in the future.

Mr. Kozij asked when the mobile phone application would be available. Mr. Foster answered by stating March 1, 2012, and he stated the AIRS Section is attempting to keep pace with the new technology.

Mr. Lessel asked if the AIRS DS-MV launch of Driver Services and Motor Vehicle Sections included such services as vehicle tag renewal and driver license renewal. Mr. Theis stated the AIRS DS-MV launch focused more on services such as record keeping, checking with other states on driver and motor vehicle information such as title information, ticket violation database, accident reports, safety violations, and other administrative activities. Mr. Foster added all 146 Arkansas revenue offices will have access to the new AIRS DS-MV system.

If a person bought a used vehicle out of state, Mr. Lessel asked will that person still have to go to the Arkansas State Police Headquarters (ASP) and have them check the vehicle identification number (VIN). If you have a title that doesn't have the VIN on it, Mr. Theis stated you will need to have the VIN checked by ASP. To the best of his knowledge, Mr. Theis stated VIN verification is limited to certain circumstances.

Sales Tax Account Numbers in AIRS—Mike Parker asked Ms. Overman if there had been some confusion concerning the new sales tax account numbering system versus the old sales tax account numbering system on sales tax permits. He wanted to know if there was going to be a reissuance of the sales account numbers in the future. Ms. Overman stated there has been some confusion concerning the sales account numbers. She stated all the sales and use tax account numbers end with the designation SLS (Sales and Use Tax Section) which does not mean the taxpayer has a sales tax permit. If a taxpayer is registered in the Sales Tax Section with only a consumer use tax account, she stated the taxpayer does not have a permit, but he or she does have a sales tax account number that still ends in SLS to report tax on purchases directly to the Sales Tax Section. Ms. Overman added this type of taxpayer does not have a sales tax permit they can buy, sell, or resell with. She stated an indicator is placed on the account when it is established, and the taxpayer should receive a letter from the Sales Tax Section that should state they are registered for consumer use tax only. Ms. Overman added the Sales Tax Section is currently reviewing the letter to see if revisions need to be made to the language for contractors and those types of businesses that would not be eligible for a sales tax permit. Mr. Parker asked that this topic be given considerable attention because he is receiving a lot of feedback from contractors on this topic. Ms. Overman stated she would research the subject. Mr. Theis added he had spoken with Ms. Overman, and they both agreed this topic would best be handled at the point of registration. He also stated the registration staff needed to be trained on routine questions on situations contractors might find themselves in. Mr. Theis stated examples of those situations would be contractors who are specifically contractor only and those that do a mixture of contract work and sales.

Office of Income Tax Administration:

2008 and 2009 Non-filer Notices and CP2000 Notices—During the August 9, 2011 TAC Meeting, Mr. Fagan stated the Individual Income Tax Section will mail assessment letters on 2008 and 2009 non-filer notices approximately 30 days after the date of the August 9, 2011 TAC Meeting. Instead of providing notices for one year, Mr. Fagan stated the Individual Income Tax Section will be providing notices for two years. He stated the Individual Income Tax Section will send out notices based on the IRS CP 2000 notices received towards the end of 2011.

Corporate Tax Changes Passed During 2011 Regular Session—During the November 8, TAC Meeting, Mr. Fryer discussed the following Acts related to corporate tax changes:

ACT	Description
Act 631	Water resource credits are limited to a specified amount per project and not per taxpayer. This act mostly relates to partnerships. Effective date was March 23, 2011.
Act 738	Amended the Arkansas Delta Geotourism Incentive Act. It raised the maximum investment eligible for the 25 percent credit from $100,000 to $250,000. It also extended the sunset from the end of 2016 to the end of 2021. Effective date beginning with tax year 2011.
Act 787	Known as the Income Technical Correction Act. Most of the code sections in this act only affected individual income tax, but Sections 162, 163, and 168 focused on depreciation. Sections 170, 198, 280F, Subchapter M, and Subchapter S of the Internal Revenue Code, which affect corporation income tax, were re-adopted as well. Effective date will vary.
Act 789	Allows refund of one tax type to be offset by debt from another tax type. Effective date is January 1, 2012.
Act 829	Clarified the tax credit related to an equity investment in a qualified business applies in the year of the equity investment and 9 years thereafter. Effective date was July 27, 2011.
Act 831	Extended the tax credit regarding the rehabilitation of historic structures from the end of 2015 to the end of 2021. Effective date was July 27, 2011.
Act 1166	Created the Arkansas Central Business District Rehabilitation and Development Incentive Tax Credit which was equal to 25% of the qualifying cost up to $2 million dollars for an income producing property and $800,000 for a non income producing property. The minimum investment is $30,000, and it must be approved by a Central Business District. It also has to be certified by the director which assures that there are sufficient funds for the rehabilitation and development project. Effective date is determined by Chief Financial Officer (CFO) of Arkansas.
Act 1197	Clarified that telecommuting employees would qualify as new employees under certain tax credits under the Consolidated Incentive Act. Effective date was July 27, 2011.

Internal Revenue Code (IRC) Section 179—During the November 8, 2011 TAC Meeting, Mr. Fryer stated that federal tax changes enacted after 2009 in IRC Section 179 were not enacted during the 2011 Session. Section 179 deals with expensing part of capital expenditures.

He stated the Arkansas limit under IRC Section 179 will revert back to $25,000 beginning tax year 2011 with the phase out beginning at $200,000. He added the federal limit under IRC Section 179 for tax year 2011 is $500,000 with the phase out beginning at $2,000,000.

Forms—During the November 8, 2011 TAC Meeting, Mr. Fryer stated the Corporate Income Tax Section has added four lines to the Form AR1100REC (Arkansas Corporation Income Tax

Reconciliation Schedule) to allow taxpayers to account for depreciation as well as cost of goods sold on line 25.

Arkansas Integrated Revenue System (AIRS) Update—During the November 8, 2011 TAC Meeting, Mr. Fryer stated day to day operations have gone smoothly during the first year the Income Tax Section has been integrated in the AIRS system. He states returns are processed quicker than in the past since the Income Tax Section has been integrated into AIRS.

Income Tax Section Current Issues –During the November 8, 2011 TAC Meeting, Mr. Fryer stated the Income Tax Section is having issues with multi-state partnerships which are mainly headquartered out of state. He adds a small amount of these multi-state partnerships are in Arkansas. Mr. Fryer stated these multi-state partnerships are withholding partnership distributions for corporate partners or other business entities. He wanted to remind taxpayers the withholding should only be for individual partners and not for corporate partners.

Mr. Fryer also stated late payment penalties are applied to any taxes owed with a return that is filed on an extension, and those penalties can be reduced or eliminated if the tax is paid by the original due date and if an additional extension or return payment are made after the original due date but before the actual return is filed. He states the payment may be done through ATAP with the extension or return payment voucher.

Notice of Tax Adjustment—During the November 8, 2011 TAC Meeting, Mr. Fryer stated the notice of tax adjustment that comes out of the AIRS system is not an assessment. Mr. Fryer added the proposed assessments are issued on the 1st and 15th of the month, and the notice of tax adjustment goes out the day after the return is processed. He states DFA has had problems where taxpayers pay both a proposed tax assessment and tax adjustment, and then the taxpayers receive a refund as a result.

Updates to Individual Income Tax –During the November 8, 2011 TAC Meeting, Mr. Turner stated DFA is considering whether to mail tax booklets out to taxpayers who paper file or file online using e-file for tax year 2012 in order to save on mailing, postage, and printing costs.

Mr. Turner discussed Act 68 which redefines the definition of developmental disabilities by adding spina bifida and Down syndrome as conditions that qualify for developmental disability services as well as redefining and reclassifying words on Form AR1000RC5 (Arkansas Individual Income Tax Certificate for Individuals with Developmental Disabilities).

He also discussed Act 736 which is the Low Income Tax Relief Tables Act. Act 736 added a second head of household table if a taxpayer has two or more dependents which in turn created another table for taxpayers who had one or zero dependents.

Mr. Turner discussed Act 815 which allows for a new set off. Act 815 authorizes DFA to send a refund to the Arkansas Department of Health (ADH) for any debt that is owed to their department.

He stated the Arkansas 2011 Individual Income Tax Forms and Instructions Booklet now includes an individual income tax account change form. Mr. Turner stated this form was added last year in order to have a signature on file if a taxpayer wanted to change their address, change their name, and etc.

In order to e-file a partnership return for calendar year 2011, Mr. Turner stated taxpayers must complete Form AR8453-PE (Arkansas Partnership Return Declaration for Electronic Filing). Mr. Theis had a question concerning individuals needing to send in W-2(s) with Form AR8453-OL (Arkansas Individual Income Tax Declaration for Electronic Filing). Mr. Fagan stated they will not have to send in Form AR8453-OL and W-2(s) in the mail. Mr. Fagan stated they now have other ways to verify the withholdings. In the past, Mr. Theis stated electronic taxpayers had a major complaint with mailing in both Form AR8453-OL along with a W-2(s) as a follow up. Mr. Fagan said taxpayers still need to keep copies of the W-2(s) on file just in case the Individual Income Tax Section asks for it.

Because of the AIRS system, Mr. Theis further explained income information can be verified through other sources. Mr. Parker asked how income is verified through other sources. Mr. Theis answered by stating the income is verified by the employer. Mr. Fagan added income is verified through electronic W-2(s) information, Department of Workforce Services (DWS) information, and also paper W-2(s) information that is entered into AIRS.

In recent months, Mr. Theis stated DFA has started a new partnership with DWS on gathering information. Mr. Parker asked if the income is automatically verified with the other income sources. Mr. Fagan answered by stating the income is not automatically verified at this time. Mr. Foster added that partial information can be verified at this time. If a taxpayer processed their tax return by e-file and there is not any DWS information on file matching that e-file return, Mr. Foster stated information would have to be reviewed. Mr. Theis and Mr. Foster stated partial income verification is only being done on an as needed basis at the current time.

Mr. Foster stated DFA has more informative checks than in the past by using electronic data. Mr. Theis stated DFA is currently researching direct deposit of refunds on paper filed returns. Mr. Theis stated the topic of direct deposit of refunds on paper returns was requested by Mr. Leathers. At this time, Mr. Fagan added that only taxpayers filing by e-file can receive a refund by direct deposit.

Mr. Foster stated the Internal Revenue Service (IRS) will be extending Modernized E-File (MeF) to fiduciary taxes for 2013 tax year IRS returns filed in 2014. He added Arkansas DFA will also be extending Modernized E-File (MeF) to fiduciary taxes.

Old Business:

Upcoming Rules Set for Promulgating—During the May 10, 2011 TAC Meeting, Ms. Hunt stated they are currently prioritizing rules in the order they will be drafting them. She states drafting of the rules will be an ongoing process that doesn't have a set date for completion.

Mr. Theis stated he is currently meeting with each tax section administrator on each of the Acts that just passed during the last legislative session and identifying the rules that need to be promulgated in an orderly fashion.

Update on Individual & Corporate Income Tax Regulations—During the May 10, 2011 TAC Meeting, Mr. Parker wanted an update on the status of the individual and corporate income tax regulations. Ms. Hunt stated she is currently working on individual and corporate income tax regulations, but she has been obligated with other pressing legal issues during the same time as writing the draft.

New Business:

Acts Passed During the 2011 Arkansas Regular Session—During the May 10, 2011 TAC Meeting, Mr. Theis discussed the following Acts:

ACT	Description
Act 278	Allows taxpayers paying minimum amounts of severance tax to report and pay quarterly or annually. Effective January 1, 2012.
Act 700	Authorizes the establishment of alternative real estate transfer tax documentary symbols and electronic affidavits of compliance. Effective July 27, 2011.
Act 754	Reduces the state sales and use tax rate for natural gas and electricity purchased by a qualified manufacturer classified within NAICS Codes 31 through 33 and used or consumed directly in the manufacturing process. The total state tax rate will be two and three-fourths (2.75%). Effective July 1, 2011.

Act 755 Reduces the state sales and use tax on food and food ingredients from two percent (2%) to one and a half percent (1.5%). Effective July 1, 2011.

Act 757 Creates a sales tax holiday for clothing, clothing accessories or equipment, school supplies, school art supplies, and school instructional materials. For 2011, the sales tax holiday will began Saturday, August 6 at 12:01 a.m. and end Sunday, August 7 at 11:59 p.m. Retailers are required to participate and may not charge tax on items that are tax exempt during the sales tax holiday period. Effective July 1, 2011.

Act 773 The Arkansas Highway Financing Act of 2011. Imposes an additional five percent (5%) per gallon diesel fuel tax. Funds to be used to finance a bond issue to pay for highway improvement. Contingent upon affirmative vote of the people in November 2012.

Act 791 Amends the Arkansas Code to clarify the provision concerning the salt water disposal system tax credit. Effective January 1, 2012.

Act 1001 Transfers responsibility for collection of sales and use taxes to sellers engaging in the business of selling tangible personal property and services in certain circumstances. Requires out-of-state sellers that have agreements with Arkansas residents who refer potential purchasers through an Internet website or otherwise to collect Arkansas state and local sales and use tax. Effective October 24, 2011.

Act 1142 Requires prepayment of Arkansas compensating use tax on the same basis as prepayment of Arkansas gross receipts tax and to declare an emergency. Effective July 1, 2011.

Act 736 Provides additional income tax relief to head of household taxpayers with two (2) or more dependents. Effective tax year 2011.

Act 787 Makes technical corrections to Arkansas income tax laws. Effective date will vary.

Act 585 Expedites administrative tax appeals and promote access to justice. Effective July 27, 2011.

Act 753 Increases the sales tax exemption for new and used motor vehicles, trailers, and semitrailers from two thousand five hundred dollars ($2,500) to four thousand dollars ($4,000). Effective January 1, 2012.

Act 1058 Exempts Class 6 and Class 7 trucks registered under the International Registration Plan (IRP) and semi-trailers from sales and use tax. Effective January 1, 2012.

Mr. Parker commented on Act 1001. He stated Act 1001 doesn't directly address nexus creating activity. Mr. Parker stated that it stated there must be a presumption that a seller is selling for consumption in the state. If you are selling to an Arkansas customer, he stated it would be considered consumption in the state, and he argued this doesn't create nexus.

Mr. Parker asked Mr. Theis a question concerning Act 1058. He asked if Act 1058 included trailers and if the trailer has to be pulled behind a truck tractor. Mr. Theis stated yes, and the trailers are exempt entirely regardless if they are registered under the IRP which is registration for trucks that are going to be used in multiple states.

Mr. Theis stated Class 5, 6, 7, and 8 trucks that are not registered under the IRP only pay tax on the first $9,150.00 as under current law.

Mr. Atchley added eligible truckers who are first time registrants under the IRP will also have to register with the International Fuel Tax Agreement (IFTA), and they will be required to file quarterly tax reports to the Department of Finance and Administration's (DFA's) Motor Fuel Tax Section reflecting miles driven and fuel purchased in every state.

Mr. Theis also discussed the following non-tax Acts as well:

ACT	Description
Act 67	Allows a motor vehicle renewal notification to be sent by email if the vehicle owner consents. Effective July 27, 2011.
Act 904	Allows the multiyear registration of personal use motor vehicles. Effective July 27, 2011.

Mr. Theis stated Act 67 will likely save a considerable amount on postage fees and paper costs.

Mr. Theis stated to qualify for a multiyear registration that is included in Act 904 an owner must meet certain criteria. If the owner wanted a two year registration, Mr. Theis stated the owner must have owned the vehicle for the last two years, paid property tax on that vehicle for the last two years, paid car insurance on that vehicle for the last two years, and maintained their property tax assessment on that vehicle for the last two years.

Status of Account Notices—During the May 10, 2011 TAC Meeting, Mr. Bailey stated he has been receiving negative feedback from his clients concerning statement of account notices. If DFA can send rude letters stating there is an issue with a client's account, he states they can send a follow-up notice on the status of the account if the matter has been closed. Mr. Bailey added he brought this issue up two years ago, and there still hasn't been any response. He also added DFA should have a statue of limitation on filing as they do for the statute of limitation on refunds. Mr. Bailey added DFA should follow the same statute of limitations process as the federal government.

If the final assessment has been mailed out, Ms. Hunt stated DFA's right to collect no longer exists at some point. Mr. Bailey asked what the statute of limitation was. She answered by stating that it was 10 years. Mr. Bailey stated that statute of limitation is too long. Ms. Hunt answered by stating that is the current law.

Mr. Bailey stated the taxpayer shouldn't receive notices from DFA for information needed from previous tax years that is essentially a bookkeeping error that can't be confirmed. Mr. Bailey stated a situation he recently encountered with one of his clients is an example of the wage withholding issue. He states DFA made an assessment on his client based on federal tax return numbers forwarded to DFA. Mr. Bailey believes the taxpayer is due a refund, but DFA policy is that credit can't be given for Arkansas withholding without an actual W-2. Mr. Bailey believes his client shouldn't be responsible to pay the amount. He states his client is considering filing a lawsuit against DFA. Since W-2s are now filed electronically, Mr. Bailey stated DFA has information to match to the returns.

Mr. Collins stated this happens when taxpayers did not file a state return. Mr. Bailey added this type of situation is getting better, but there are instances still occurring at this time.

Manufacturing Utility Reduced Tax Rate Form—During the May 10, 2011 TAC Meeting, Mr. Parker asked Ms. Overman a question concerning the manufacturer's electricity and natural gas exemption application (Manufacturing Utility Reduced Tax Refund Request-ET-185R Form). He stated the original form is no longer available on the Sales and Use Tax webpage. He states there is a substitute form on the webpage that focuses on renewals (Manufacturing Reduced Rate Application/Recertification-ET-185ARC Form). Ms. Overman answered by stating one form was most likely mistaken with another one, and she would contact DFA's Web Support Section for assistance because the form needs to be available on the DFA website.

Non-Resident Political Contribution—During the May 10, 2011 TAC Meeting, Mr. Parker asked Mr. Collins a question pertaining to non-resident political contributions. One of Mr. Parker's corporate tax clients stated their non-resident employees weren't able to claim the $50 credit for political contributions. He states the software provider is still not providing an easy way for in-state and out-of-state residents to claim the $50 exemption contribution in Arkansas. Mr. Parker stated the business community is working really hard to encourage employees to make contributions. He adds the employee feels mislead when they were encouraged to make a contribution, and they can't find a way to claim it. Mr. Parker asked if there was a way to contact the software company and request they adjust their compliance software. Mr. Collins answered this question by stating there is a list of software companies

DFA can contact and inform them of these types of issues. Mr. Parker asked Mr. Collins for permission to forward the list to him. If DFA doesn't have a privacy agreement with the software companies on releasing their information, Mr. Theis doesn't see a problem with Mr. Parker receiving the information. Mr. Collins stressed the non-resident employee must contribute to an Arkansas candidate.

Arkansas Society of Certified Public Accountants (ASCPA) Annual Convention in September 2011—During the May 10, 2011 TAC Meeting, Mr. Kozij stated he would be attending the ASCPA Annual Convention in September 2011. His presentation at the convention will focus on the status of Arkansas DFA, and he received permission from Mr. Theis to conduct brief interviews with each tax administrator and employees in their section to gain more information about each tax section. During the May 10, 2011 TAC Meeting, Mr. Kozij took a picture of all TAC members in attendance. During the August 9, 2011 TAC Meeting, Mr. Kozij acknowledged his appreciation to TAC Members for their participation in assisting him with his presentation at the ASCPA Annual Convention to be held in September 2011.

Recent Federal Tax Issues—During the November 8, 2011 TAC Meeting, Mr. Theis discussed collection of sales tax by remote sellers. He stated United States (U. S.). Senator Richard Durbin of Illinois introduced U.S. Senate Bill S.1452 which is known as the Main Street Fairness Act. A copy of Senate Bill S. 1452 can be found at the following link: http://taxcloud.files.wordpress.com/2011/07/s-1452.pdf. Mr. Theis stated Senate Bill S. 1452 would have allowed states that complied with provisions of the Streamlined Sales Tax Governing Board to require collection of taxes from remote sellers.

In recent months, he stated U.S. Representative Steve Womack from Arkansas' 3rd Congressional District and U.S. Representative Jackie Speier from California introduced a second bill (House Bill H.R. 3179) that was basically separate and apart from the Streamlined Sales Tax Agreement because it did not require compliance with the Streamlined Sales Tax Agreement guidelines and did not require simplification requirements as the Durbin bill. To view a copy of the "Marketplace Equity Act of 2011" a.k.a. "Womack Bill", go to the following link: http://www.gpo.gov/fdsys/pkg/BILLS-112hr3179ih/pdf/BILLS-112hr3179ih.pdf.

Mr. Theis stated U. S. Senator Michael Enzi from Wyoming introduced a third bill (Senate Bill S. 1832) that is a hybrid between U. S. Senator Durbin's and U.S. Representative Womack's version of the bill. The name of that bill is the "Marketplace Fairness Act" a.k.a. "Enzi Bill". To view a copy of that bill, go to the following link: http://www.gpo.gov/fdsys/pkg/BILLS-112s1832is/pdf/BILLS-112s1832is.pdf. He stated that Senator Durbin has given his support of Senator Enzi's bill.

With these three bills being introduced within a short period of time, Mr. Theis stated the U. S. Congress is showing interest in the Streamlined Sales Tax Project, and he hopes we will have some movement in this area.

Mr. Theis stated a bill prohibiting states from enacting discriminatory taxes on telephone usage recently passed in the U.S. House of Representatives, and it now moves on to the U.S. Senate.