

TAX ADVISORY COUNCIL

2010 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, Field Audit;

Clarence Collins, Administrator, Income Tax;

Martha Hunt, Chief Counsel, Revenue Legal Counsel;

David Foster, Administrator, Arkansas Integrated Revenue System (AIRS)

Roberta Overman, Manager, Sales and Use Tax;

Rodney Richard, Manager, Motor Fuel Tax Section;

Warren Fagan, Manager, Individual Income Tax;

Scott Fryer, Manager, Individual Income Tax;

Caroline Glover, Tax Examiner Supervisor, Arkansas E-File Support;

Kathy Horner, Assistant Manager, Individual Income Tax;

Michelle Baker, Attorney Supervisor, Revenue Legal Counsel;

Travis Venable, 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 2010 on the following dates:

<u>Meeting dates</u>	<u>Total Present</u>
May 11, 2010	16
August 10, 2010	17
November 9, 2010	18

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 9, 2010 was cancelled due to inclement weather.

Summary

Tax Advisory Council Activities: The following is a brief summary of what transpired during the Tax Advisory Council's 2010 meetings.

Office of Revenue Legal Counsel:

Summary of litigation:

Status on Ongoing Natural Gas Cases:

Alcoa World Alumina LLC f/k/a Alcoa Alumina & Chemicals, LLC v. Richard Weiss, Pulaski County Circuit Court, Case No. 60CV-07-13856— In the Alcoa case, the court ruled for DFA, and the plaintiff filed an appeal. This was a case that involved the issue of whether natural gas purchased outside the state “comes to rest” when it is used as fuel in the manufacturing process for purposes of the use tax. During the May 11, 2010 TAC Meeting, Ms. Hunt stated that on February 25, 2010 the Arkansas Supreme Court upheld the trial court's decision that the natural gas did “come to rest” in Arkansas and was subject to tax because the transportation of the gas in interstate commerce ceased before it was combusted. A petition for rehearing was denied.

Duke Energy Trading & Marketing, LLC et al. v. Weiss, Pulaski County Chancery Court, Case No. 60CV-06-600—As of the May 11, 2010 TAC Meeting, this case was dismissed after the above referenced Alcoa case was finalized.

Tyson Foods, Inc. v. Weiss, Washington County Circuit Court, Case No. CV-09-744-5—As of the November 9, 2010 TAC Meeting, Ms. Baker stated a settlement on this case was favorably reviewed by the litigation subcommittee, and refunds should be paid soon. Also, the order of dismissal was submitted at that time.

Great Lakes Chemical Corporation v. Weiss, Pulaski County Circuit Court, Case No. 60CV-08-12845—This 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. Ms. Hunt stated during the August 10, 2010 TAC Meeting that the Arkansas Department of Finance and Administration (DFA) would file a motion for dismissal or a motion for summary of judgment based on the above referenced Alcoa decision if DFA didn't receive a notice of dismissal in the next few weeks after the date of that meeting. As of the November 9, 2010 TAC Meeting, Ms. Baker stated 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—This case focused on whether machinery and equipment used in the water purification plants to generate potable water is machinery and equipment used in manufacturing. During the November 9, 2010 TAC Meeting, Ms. Baker stated the case had been re-filed before the one year from the date of dismissal. Mr. Parker had a question concerning this case. Mr. Theis answered this question by stating the court dismissed the case for failure to prosecute on October 28, 2009, and it was re-filed on October 25, 2010.

Cross Oil Refining and Marketing, Inc. v. Weiss, Union County Circuit Court, Sixth Division, Case Number CV-08-0320-6—The focus of the case centers around whether natural gas used by Cross Oil as fuel in its refining (manufacturing) process is exempt as a chemical used in manufacturing pursuant to Ark. Code Ann. § 26-52-401(35)(A). During the November 9, 2010 TAC Meeting, Ms. Baker stated no further developments had been made on this case. The case is still in discovery, and a trial date hasn't been set.

Nucor Corporation v. State of Arkansas, DFA, Mississippi County Circuit Court, Chickasawba District, 6th Division, No. CV-09-353—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. As of the November 9, 2010 TAC Meeting, Ms. Baker stated DFA is currently in court on this case, and the case may be reset. She stated DFA is waiting on the judge to supply court dates to continue on with the trial.

Thru Tubing Solutions, Inc. v. Weiss, Pulaski County Circuit Court, Case No. 60CV-09-3906—The case involved assessment of tax on tools and services provided by the plaintiff to the natural gas industry. As of the May 11, 2010 TAC Meeting, the attorneys involved in the case had reached a settlement in which both parties conceded some items. The settlement was to be reviewed by the litigation review committee.

The Home Depot U.S.A., LLC v. Richard Weiss, Pulaski County Circuit Court 60CV-09-5348—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. The case was in discovery. As of the May 11, 2010 TAC Meeting, the case is still not set.

New Cases

Minor L. McNeil v. Arkansas Department of Finance, Saline County Circuit Court, 2nd Division, Case Number: CV-09-1421-2—The case was filed on December 16, 2009. The plaintiff is a wage-earner employed by UAMS and is subject to withholding. The plaintiff requested a refund of

the amount of tax withheld by UAMS. DFA filed a motion to dismiss the case. The case was dismissed. The plaintiff filed an appeal to the Arkansas Supreme Court. All briefing has been completed on this case. As of the November 9, 2010 TAC Meeting, Ms. Baker stated DFA is waiting for submission at the Arkansas Supreme Court.

Lowe's HIW, Inc. v. Department of Finance and Administration, Pulaski County Circuit Court, Case No. 60CV-10-1488—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. As of the November 9, 2010 TAC Meeting, Ms. Baker stated no further developments had been made on this case.

Walker Landscaping & Irrigation, Inc. v. State of Arkansas, Civil Division, Clark County, Case No. CV-10-120, Civil Division, Clark County—This case is an appeal on tax assessment. It was filed as a challenge under the Administrative Procedure Act (APA). The case was filed in court as an appeal from an APA hearing. During the August 10, 2010 TAC Meeting, Ms. Hunt stated all DFA cases fall under the Taxpayer's Procedure Act, and there is a specific provision in the law that provides for an appeal to circuit court from a hearing under the Taxpayer Procedure Act which requires the taxpayer to either pay a portion of the tax, full amount of tax, or file a bond. As of the August 10, 2010 TAC Meeting, Ms. Hunt stated the taxpayer didn't pay a portion of tax, full amount of tax, or file a bond. She added the taxpayer only filed a hearing through the APA, and as a result, DFA filed a motion to dismiss. As of the November 9, 2010 TAC Meeting, Ms. Baker stated that an order of non-suit was entered on August 23, 2010.

Gary Sanford et al. v. Weiss, Pulaski County Circuit Court, 5th Division No. 60CV-10-3462—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. The plaintiff alleged the collection of interest violates the 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. DFA filed a motion to dismiss. The plaintiff asked for an extension of time to respond. The plaintiff had until August 20, 2010 to respond. DFA had until September 3, 2010 to respond to the plaintiff's response. As of the November 9, 2010 TAC Meeting, Ms. Baker stated the plaintiff filed an amended complaint. DFA filed another motion to dismiss. Plaintiff responded. DFA replied, and a hearing date for motion to dismiss the case was set for December 13, 2010.

Vaughn Damon Wilson et al. v. Mike Medlock et. al., Case No. 10-CV-2036—This case was filed in U. S. District Court for the Western District of Arkansas against a number of defendants challenging, among others, orders issued by a number of U. S. District Court judges and an assessment of individual income tax. As of the May 11, 2010 TAC Meeting, DFA timely filed a motion to dismiss. During the August 10, 2010 TAC Meeting, Ms. Hunt stated this case has now been dismissed.

3M Company v. Weiss, Pulaski County Circuit Court, No. 60CV-10-0659—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. As of the May 11, 2010 TAC Meeting, DFA filed an answer to the complaint denying the income is non-business income.

Business Closures Challenges

Daniel Maestri d/b/a Mary Maestri's Café v. DFA, Washington County Circuit Court No. CV-10-448-4—During the May 11, 2010 TAC Meeting, Ms. Hunt stated DFA was drafting a motion to dismiss the case alleging that the plaintiff has no allowable defenses to business closure. As of the August 10, 2010 TAC Meeting, Ms. Hunt stated Mary Maestri's Café voluntarily closed, and the case has been dismissed.

Victoria's Tortilleria, Doyle Dennis Smith v. State of Arkansas, Washington County Circuit Court No. CV-10-572-2--During the May 11, 2010 TAC Meeting, Ms. Hunt stated DFA was drafting a motion to dismiss the case alleging the plaintiff has no allowable defenses to business closure. As of the August 10, 2010 TAC Meeting, Ms. Hunt stated this case was dismissed after a hearing.

Lottery Interpleader

Earlee Armstrong v. DFA, Jefferson County Circuit Court No. CV-10-22-5—DFA reported to the Arkansas Lottery Commission that the plaintiff has a debt for individual income tax, and the Arkansas Lottery Commission followed the statutory process to interplead winnings for a determination on whether the winnings are to be distributed to the plaintiff or DFA. During the May 11, 2010 TAC Meeting, Ms. Hunt stated DFA has filed its response, and the plaintiff had not. She added that DFA will file a motion for summary judgment at the appropriate time.

Office of Excise Tax Administration:

New Withholding Business Closure Process—During the May 11, 2010 TAC Meeting, Ms. Overman stated the Sales Tax Section has been doing business closures since July 2004. If businesses owe two or more periods of sales tax, a warning letter is mailed to taxpayers asking them to contact the Sales Tax Section to make payments arrangements. If a business is three months past due, the business could be subject to being served an actual order to close the business. Beginning with July of 2009, business closure activity now applies to withholding tax accounts. The Tax Section has contacted over 3,000 taxpayers with withholding accounts to try to bring those taxpayers into compliance on their accounts. Under the new withholding business closure process, the Tax Section has collected \$1.6 million since January 2010. The Tax Section has served over 600 business closure orders to withholding accounts. During the May 11, 2010 TAC Meeting, Ms. Overman stated that only one business closure sign had been posted for a business with a withholding account.

Streamlined Sales Tax Collections—During the August 10, 2010 TAC Meeting, Ms. Overman provided the TAC members with handouts that included Streamlined Sales Tax Collections from 2005 when the Arkansas DFA became a full member of the Streamlined Sales Tax Project until the present time. The handout reflected the state and local tax collections and how they have progressed through May 2010. Ms. Overman stated the Streamlined Sales Tax Collections have continued to grow. Overall since 2005, Arkansas DFA has collected a total of \$24 million in taxes from voluntary sellers who have registered to collect Arkansas taxes. She also added these voluntary sellers have no obligation to collect Arkansas taxes, but they have registered to collect Arkansas taxes because Arkansas DFA is a member of the Streamlined Sales Tax Project. These voluntary sellers have come forward to voluntarily collect Arkansas

taxes without a legal requirement. Ms. Overman stated there are approximately 1200 registered businesses in the Arkansas Streamlined Sales Tax Project.

During the November 9, 2010 TAC Meeting, Mr. Atchley stated there are now 23 states in the Streamlined Sales Tax Project, and Georgia was recently approved as an associate member state of the Streamlined Sales Tax Project. He further stated that Georgia's Streamlined Sales Tax membership will become effective January 1, 2011.

Mr. Atchley stated there are areas in the Streamlined Sales Tax Project that are still being fine tuned in federal legislation. He stated one of those areas is vendor compensation language may be needed in the near future.

Secondly, he stated the Streamlined Sales Tax Governing Board recently approved a bonus type vendor compensation for small remote sellers that may be encompassed in the federal legislation in order to give them extra compensation for the first five or six months they would be collecting for various states.

Mr. Atchley also stated there are plans in the future to implement a system that Streamlined Sales Tax member states can administer through a computer system. Mr. Atchley stated Arkansas currently pays a significant amount of vendor compensation, and Arkansas would need to make adjustments no matter what program came through proposed federal legislation concerning the Streamlined Sales Tax Project. He added Arkansas' cost to provide vendor compensation would not be as great as for most other states. Mr. Atchley further added that many of the states that are members of the Streamlined Sales Tax Project do not pay any vendor compensation, and he stated the proposed federal legislation would require states that are members of the Streamlined Sales Tax Project to pay vendor compensation to all sellers.

He also discussed streamlining communication taxes in the states. In prior years, Mr. Atchley stated federal legislation was introduced that dealt with streamlining communication taxes. He stated this type of federal legislation has been proposed this year as well, and he stated most Streamlined Sales Tax Project member states are at odds with this proposed legislation because most communication taxes are collected at the local level and not at the state level. Mr. Atchley described the following as types of communication taxes; 911 fees, franchise fees, and a variety of other types of fees. He stated the current proposals will require a central collection point with equal tax base and several streamline components. Mr. Atchley stated different options have been discussed on how to approach collecting communication taxes at the local level.

Even though the Streamlined Sales Tax Project has been in existence for 10 years, Mr. Theis added there has been minimal federal action taken by Congress. He also added some states are not members of the Streamlined Sales Tax Project because of their own specific reasons. Mr. Theis further stated there is action taking place in the Streamlined Sales Tax Project arena, but there is also a lot of action taking place in various state legislatures and in the courts due to the frustration with the speed of the federal legislation and the speed of the Streamlined Sales Tax Project. He stated we may see some activity of that nature in Arkansas as well.

H. R. 5660-Main Street Fairness Act—During the August 10, 2010 TAC Meeting, Ms. Overman discussed H.R. 5660, Main Street Fairness Act, which is federal legislation that was introduced on July 1, 2010. The Main Street Fairness Act would allow states to require large internet and mail-order retailers to collect state and local sales taxes.

Local Tax Rebates for a Single Transaction Business Purchase of \$2,500.00—

During the August 10, 2010 TAC Meeting, Ms. Overman stated the Sales Tax Section had received large amounts of activity in recent months, and they continue to receive both refund and rebate requests claimed on filed monthly returns. She further stated the Sales Tax Section saw large amounts of activity from taxpayers who may have realized they weren't claiming any rebates. Ms. Overman stated there is a time limitation, and the tax must have been paid within the last six months in order for that rebate to be eligible. She added the time limitation is set by a statute. Ms. Overman further stated the Sales Tax Section received a lot of calls from taxpayers on local tax rebates, and she emphasized to tax professionals in the TAC Meeting to urge their clients to claim the rebate when they self assess the tax directly to the Sales Tax Section.

Mr. Parker had a question for Ms. Overman concerning how taxpayers are receiving notification about contacting the Sales Tax Section for the reduced sales tax rate for natural gas or electricity used directly in the manufacturing process and the local tax rebate for a single transaction business purchase under \$2,500.00. He stated the Arkansas State Chamber of Commerce has had a hard time encouraging manufacturers to take advantage of the electricity and natural gas refund and the local tax rebate for single transaction business purchase under \$2,500.00. He added they are having a hard time encouraging the small to mid-sized businesses to apply for these types of refunds and rebates.

Ms. Overman stated the taxpayers may have become aware of the local tax rebate as a result of an outside contact from a third party that mentions the rebate. She added the third party may be assisting them with reviewing their compliance activity, and the first thing the third party asks the taxpayer is if they are taking advantage of the local tax rebates. In March 2010, Ms. Overman stated the Sales Tax Section mailed out renewal notices advising taxpayers that they need to renew their certification for the reduced sales tax rate for natural gas or electricity used directly in the manufacturing process. In recent months in response to the renewal notices, the Sales Tax Section has received a large number of refund requests for the reduced sales tax rate for natural gas or electricity used directly in the manufacturing process which include three years worth of refund requests.

Mr. Parker asked Mr. Walker a question concerning information he's receiving from the Arkansas State Chamber of Commerce about the difficulty manufacturers are having with qualifying for the certification for the reduced sales tax rate for natural gas or electricity used directly in the manufacturing process. Mr. Parker stated manufacturers believe the certification process is relatively lenient on documents needed to qualify for the certification, but the manufacturers are concerned about being audited and having their estimates challenged if they don't go through an engineering study or things of that nature. He stated the manufacturers are comparing the certification process in Arkansas to other states that have a similar certification process. After the manufacturers reviewed the certification process of other states, Mr. Parker stated they found that if more than half of your usage is for manufacturing, then all your usage is exempt without using the percentages that are used in the Arkansas certification process. Mr. Walker and Ms. Overman answered Mr. Parker by stating they hadn't heard of any concerns from taxpayers in which auditors have been reviewing the auditing certification process too closely or if any percentages needed to be adjusted in the Field Audit Section.

Arkansas Integrated Revenue System:

During the May 11, 2010 TAC Meeting, Mr. Foster stated that overall things went well in the 2nd AIRS Rollout that took place on January 18, 2010. He added the Motor Fuel, Withholding, and Natural Gas Severance Tax Section Rollouts went well, and only minor glitches were reported and were promptly corrected. Mr. Foster stated the Arkansas Highway Department was able to utilize AIRS Motor Fuel processing system for fuel load matching. The Arkansas Highway Department had previously used a software package that was costing them a considerable amount of money. As of March 31, 2010, the older return filing system was replaced by the Arkansas Taxpayer Assistance Program (ATAP). Also, as of March 31, 2010, approximately 30,000 people had enrolled in ATAP. Combined registration forms are currently available to tax accounts currently on the AIRS system. The combined registration forms have replaced the older way of registering for taxes individually. As other tax sections are added to AIRS, more combined processing will become available to taxpayers. Combined processing provides more stability and a better process for handling tax procedures. Mr. Foster further stated that hopefully in the future we will be able to provide taxpayers with a single point of contact for taxpayer assistance.

During the May 11, 2010 TAC Meeting, Mr. Foster and Mr. Fagan stated that withholding annual reconciliation forms for 2009 should be processed in about three weeks from the date of that TAC Meeting. Mr. Fagan stated the Income Tax Withholding Section has made substantial progress on processing withholding annual reconciliation forms. Mr. Foster added that AIRS has sped up annual reconciliation processing because it's a much more automated system. He stated that next year withholding annual reconciliation processing should go smoother because this year was a conversion year where there was converted data, and there was a limitation on how much automation you could put into matching converted data with new data coming in.

Mr. Fagan added that taxpayers need to use the appropriate voucher when making manual payments on their withholding tax accounts for a specific month because a scan line at the bottom of the voucher is specific to a certain month on the tax account. If a taxpayer attempts to use an old voucher to make a payment, it will cause an error on the account. If taxpayers need replacement vouchers, Mr. Fagan stated they can call the Withholding Tax Section to order more vouchers.

Mr. Theis opened the floor to TAC members who are tax professionals and asked them for feedback they are receiving from their clients concerning ATAP. Mr. Theis stated that he received enthusiastic feedback from a taxpayer. The taxpayer stated to Mr. Theis that he can now process his tax information in less time by using ATAP. In the past, the taxpayer stated that it took him three hours to process his tax information, and now it takes him only 15 minutes to complete the process. Mr. Theis added that a taxpayer can now change or update information more effectively on ATAP.

Mr. Parker also had a concern about ATAP specifically concerning Motor Fuel. He stated that Motor Fuel ATAP taxpayers have two sets of identifying numbers. One is their ATAP number, and one is their Motor Fuel permit number. Mr. Parker stated this caused him and his client a high level of confusion when using ATAP for Motor Fuel tax procedures. He stated there was a lack of good instructions on ATAP for Motor Fuel taxpayers. His clients also had a question about passwords that were needed to access their Motor Fuel ATAP account. Mr. Parker stated there was a communication problem between his taxpayer and the Motor Fuel Section employee they received assistance from. He further stated he basically thought ATAP was user friendly, but going back from one screen to another was a bit of a problem. He

generally believed the layout of ATAP was good, and he thought the option of filing returns on ATAP was great. If taxpayers need assistance on making payments on their tax accounts on ATAP, Ms. Overman stated they will most likely be routed to the Help Desk, and the Help Desk Staff will be happy to assist the taxpayer. While it took him awhile to speak to someone in the Help Desk Section, Mr. Parker thought it was very helpful. Mr. Theis noted the instructions on ATAP concerning Motor Fuel may need to be revamped, and he also asked tax professionals at the TAC Meeting to continue to get feedback from their clients concerning ATAP. Mr. Burchfield added that he's receiving good feedback from one of his clients concerning the Sales Tax Section on ATAP.

Mr. Theis added that DFA will be reorganized to get the full benefit out of the new integrated tax system in order for DFA to be more organized along functional lines than in tax lines. Mr. Parker had a question concerning the organization along functional lines. He stated that there could be a loss of expertise in a certain tax area if an employee doesn't have qualifications in a specific tax section on tax specific issues. Mr. Parker further stated that an employee processing returns may not have tax expertise on legal interpretations of tax law. He suggested this may cause questions that he or other tax professionals may have to be forward to the Revenue Legal Section. Mr. Theis assured Mr. Parker that DFA will find some way to maintain that single point of contact for tax specific issues.

During the November 9, 2010 TAC Meeting, Mr. Foster stated the 3rd AIRS Rollout would be implemented on January 10, 2011, and it would include the following income tax sections: Individual, Corporation, Fiduciary, Partnership/LLC, Composite, and etc. He also stated the AIRS Section was making good progress on data conversion by making sure everything is being implemented correctly.

He also stated all tax returns that show an additional tax due liability will require a payment voucher. Mr. Foster also stated the AIRS section is in the process of programming the AIRS system to create a tax due voucher much like an AR1000V that is produced with a Legacy e-file tax return. Hopefully, the taxpayer's software will automatically generate a payment voucher which will be coded with an AIRS scan line. Mr. Foster added this type of payment voucher which includes the scan line will decrease misdirected payments, and he stated this also allows the money to be deposited faster.

At conversion time, he added there will be fourth quarter estimates outstanding for individual and corporate income tax, and taxpayers must submit them on existing vouchers. He stated the AIRS Section is in the process of implementing an internal program to convert the existing estimated individual and corporate income tax vouchers to new vouchers. He stated the AIRS System will provide new vouchers for the next year that will have the AIRS scan line. The taxpayer can also go to the DFA website and create a voucher that will have the AIRS scan line. The taxpayer must print the voucher and submit it with his or her return. Mr. Foster stressed that taxpayers keep the copy of the payment voucher and send DFA the original voucher. He added the scanner transporter that is used to read and automatically capture data off the payment vouchers does not like copied vouchers. He further added that the copied payment vouchers don't line up, and the font shift is always off enough to cause problems. When copied payment vouchers are mailed in to be processed, Mr. Foster stated the payment voucher has to be processed manually which adds additional time and change for making errors.

Arkansas Taxpayer Access Point (ATAP) Changes—During the November 9, 2010 TAC Meeting, Mr. Venable stated ATAP gives taxpayer more access to their tax accounts, the ability to file and pay their returns, and access their tax information. In Rollout 3, he stated ATAP will be available for corporate, partnership, and individual income tax, and taxpayers will be able

to check on their income tax refund or make a payment on their income tax due by going to the ATAP website located at: <https://www.atap.arkansas.gov>. Mr. Venable stated taxpayers will have to supply limited security information such as their social security number and amount of refund requested on the income tax return to login on the ATAP website to conduct an income tax refund inquiry.

During the November 9, 2010 TAC Meeting, he further stated taxpayers can make payments without logging onto ATAP after January 10, 2011 for all tax types by supplying their social security number for individual income tax accounts, their Federal Identification Number (FEIN) for corporate income tax, and their account identification number for business tax accounts. He also stated individual income tax taxpayers can submit address changes from the login page without logging onto ATAP. He added that ATAP will be enhanced with more options on the login page, and there will be more opportunities for better instructions for taxpayers who have already signed up on ATAP.

Mr. Burchfield had a question concerning making payments without logging onto ATAP. He asked if a taxpayer had to re-enter their bank account information every time they made a payment without logging onto ATAP because there is a name associated with the account as opposed to an account number. Mr. Foster answered by stating the taxpayers enter their name, social security number, account information, and tax period for the payment. If a tax account doesn't exist, Mr. Foster stated a payment can not be made.

Office of Income Tax Administration:

2009 Individual Income Tax Filings to Date and any Issues with Processing—

During the May 11, 2010 TAC Meeting, Mr. Collins stated he is currently in charge of the cash processing. The Income Tax Section assisted with the overall processing of tax due tax documents. During the process of taking over the cash processing for all tax sections, Mr. Collins stated it took a cooperative effort from all tax sections (sales tax, withholding tax, and income tax). He added that a cooperative effort will be needed in the future as well. Mr. Collins stated 2009 income tax refund processing is comparable to 2008 income tax refund processing with the exception being that fewer tax returns have been received. The average refund has gone down by \$17.00. Mr. Collins stated the Individual Income Tax Section has received 10,000 fewer refund documents than last year, and he also stated refund processing is down by 1.3 %. Mr. Collins attributes the decline in refund processing to the declining economy, unemployment from last year, and the fact that the Arkansas Tax Table is indexed every tax year. Mr. Collins expects tax returns to be processed more timely than last year. Mr. Theis added that withholding tax collections are looking fairly strong. The individual, corporate, and estimated payments with returns were lower than DFA's expectation.

2007 Non-filer Notices and CP2000 Notices—During the August 10, 2010 TAC Meeting, Mr. Fagan stated the Individual Income Tax Section is responding to assessment letters on the 2007 non-filer notices. He stated the Individual Income Tax Section is proceeding with those assessments as necessary.

Also, during the August 10, 2010 TAC Meeting, Mr. Fagan added they are not working on CP2000 notices at this time because they are going to incorporate those in the AIRS Individual Income Tax Rollout scheduled for January 10, 2011.

General Withholding Updates—During the November 9, 2010 TAC Meeting, Mr. Fagan stated the Withholding Tax Section was waiting to see how automated filing of annual reconciliation forms will flow through the AIRS system. Since the AIRS system is automated, he stated that he doesn't anticipate any problems. Mr. Fagan added non-filing notices are going well, and the Withholding Tax Section hasn't seen any errors on the non-filing notices.

Also, during the November 9, 2010 TAC Meeting, Mr. Burchfield had a question concerning ATAP in reference to withholding tax account payments. If a taxpayer makes a withholding tax account payment too early on ATAP, Mr. Burchfield asked if they will still receive a notice of non-payment. At this TAC Meeting, Mr. Fagan and Mr. Foster each stated this issue should have been corrected recently, and they will continue to monitor this issue to see where it needed to be improved. Mr. Burchfield added he wished ATAP could show the taxpayer what month the payment is going towards. If there are specific instances concerning withholding tax account payments incorrectly showing as non-payments, Mr. Venable stated the AIRS team would be happy to review it. Also, if a taxpayer makes a payment for the next month during the last few days during the current month, Mr. Venable stated that it will show as a non-payment for the upcoming month. Mr. Foster and Mr. Fagan stated that depending on when a taxpayer makes a payment this issue could arise again where an early payment may show up as a non-payment the following month. Mr. Fagan added that withholding tax account payments are date driven.

2010 Arkansas E-File for Individual, Corporate, and Partnership Income Tax—During the November 9, 2010 TAC Meeting, Ms. Glover stated the Individual Income Tax Section is introducing Modernized E-file (MeF) for individual, corporate, and partnership income tax returns. If taxpayers file using MeF, she stated the business incentive credits can be electronically filed for individual income tax, corporate, and partnership income tax returns. If taxpayers use Legacy for filing their tax return, Ms. Glover added those taxpayers will not be able to file for the business incentive tax credits. She added the amended year returns and prior year returns will not be allowed to be filed electronically. On MeF from the income tax years of 2010 and forward, Ms. Glover stated taxpayers can file amended and prior year returns. She also stated reject codes will change tremendously for 2010 returns because it will reflect MeF, Legacy, corporate, and partnership returns.

Legacy e-file will remain until such time the federal government mandates it away which will most likely be sometime in 2011. As the Income Tax Section begins to use MeF for business returns, Mr. Foster stated the AIRS system is being configured to allow and consolidate a return such as a corporate return and all the subsidiary related companies to file MeF which lessens the potential mistakes in data entry and conversion.

Old Business:

Update on Individual and Corporate Income Tax Regulations—During the August 10, 2010 TAC Meeting, Mr. Parker requested an update on the status of individual and corporate income tax regulations. Ms. Hunt stated she had already received input on this matter from the attorneys in the Legal Section. She added that she is attempting to integrate individual and corporate income tax regulations into one coherent document for approval. As of the August 10, 2010 TAC Meeting, Ms. Hunt added that an individual and corporate income tax regulation draft would not be completed by the next legislation session which was scheduled to start on January 10, 2011.

Status of Income Tax Technical Correction Act Draft—During the November 9, 2010 TAC Meeting, Mr. Theis stated at this point various elements of an Income Tax Technical Correction Act Draft have been compiled together, but he added the elements predated the Small Business Jobs Bill President Barak Obama signed at the end of September 2010. Mr. Theis stated that Mr. Kozij had asked if elements of the Small Business Jobs Bill would be considered for the Income Tax Technical Correction Act. Mr. Theis stated the Arkansas Department of Finance and Administration (DFA) would like to recommend some of the elements of the Small Business Jobs Bill to be incorporated into the Income Tax Technical Correction Act. He stated the 50% bonus depreciation provision and the Section 179 expansion of limits on small business expensing provision are included in the Small Business Jobs Bill, but they can not be included in the Technical Corrections Bill due to their cost.

During the November 9, 2010 TAC Meeting, Mr. Theis told the TAC members that they still had an opportunity to provide other suggestions to the Income Tax Correction Act .

New Business:

Notification of Acceptance of Requested—During the May 11, 2010 TAC Meeting, Mr. Kozij discussed a situation where a CPA and his client complied with DFA by sending in the requested information on the client's tax account. DFA didn't respond to the CPA or his client on the status of the tax account after the requested documents were received, and the issue was resolved with no change. DFA's originally response to the CPA and his client was that a taxpayer or POA will not be contacted about the tax account unless changes have been made on the account. Mr. Kozij provided copies of the original letters from the CPA to DFA for TAC members to review. Mr. Fagan stated the Individual Income Tax Section is now providing a 'no change' letter to taxpayers on the status of their tax account. Mr. Fagan and Ms. Horner added that until the Individual Income Tax Section is rolled out on AIRS the 'no change' letters will be done on a manual system.

Mr. Parker added that one of his clients had a similar problem on the notification of acceptance of requested information from DFA. Mr. Parker agreed with Mr. Kozij by stating that DFA needs to provide taxpayers with a 'no change' letter if the status of their tax account hasn't changed after an audit inquiry, and he also believed the current manual system for mailing 'no change' letters isn't acceptable. Mr. Theis stated he made a note to see if the 'no change' notification letter that has been implemented in the Individual Income Tax Section can be incorporated in other tax sections at DFA. Mr. Bailey also added that many of his clients have also experienced similar situations in the Individual Income Tax Section where they send in requested information on tax returns for the prior year. He stated DFA did not respond on the status of their account after the tax returns were received initially, then years later, his clients received a notice from DFA stating the tax returns for the prior years weren't received. Mr. Bailey stated he and his clients have proof the tax returns for prior years were sent to DFA as requested. He added the Internal Revenue Services (IRS) sends a notification letter that states the information was received but has not been reviewed at this time. Mr. Burchfield wanted an estimate on how many Individual Income Tax audits are conducted in a year. Ms. Horner stated the number of audits done in a year depends on the auditor's time and how many auditors the Individual Income Tax Section has in place at a certain time. She added the Individual Income Tax Section usually has between 8 to 12 senior auditors that conduct audits, but at times, the senior auditors may be asked to fill in as needed in other areas of the Individual Income Tax Section. Ms. Horner also added that the senior auditors may do less than 1 audit per week.

AIRS Employee Death—During the May 11, 2010 TAC Meeting, Mr. Theis stated that Scott Miller, Project Director of AIRS, passed away un-expectantly in April 2010. He stated Mr. Miller was an outstanding employee and project director. Brandy Herbert, Former AIRS Project Director in New Mexico, will become the new project director.

Update on Southeastern Association of Tax Administrators Conference—During the August 10, 2010 TAC Meeting, Mr. Foster stated Arkansas was the host state this year for the 60th Annual Southeastern Association of Tax Administrators (SEATA) Conference. He stated SEATA is one of four regional tax administration organizations that is under the oversight umbrella of the Federation of Tax Administrators (FTA). He stated usually each of the regional organizations holds an annual meeting in the summer to bring together industry and state tax individuals to discuss various topics of current interest on taxes, displays for new products, new tax applications, and to conduct general tax presentations.

There were a total of 191 state delegates (120 from the tax industry and 71 from state government) at the SEATA Conference. The original estimates of delegates for the SEATA Conference were 360 delegates. As a result of low turnout, Mr. Foster stated there will be future discussions about future activities and about how best to proceed with future SEATA Conferences. Mr. Foster stated the low attendance rate at the SEATA Conferences is due in part to the change of environment we are all operating in because it alters the networking capabilities we had come accustomed to in the past which may be due in part because of the sagging economic conditions in the United States.

Preview of 2011 of Arkansas General Assembly—During the November 9, 2010 TAC Meeting, Mr. Theis stated that after the elections in November 2010 the Arkansas General Assembly has probably the highest number of first time legislators since term limits first began. He stated the Arkansas Senate's Revenue and Taxation Committee has new members, but they are legislators who have a considerable amount of experience. Since there are several new members in the Arkansas House of Representative's Revenue and Taxation Committee, Mr. Theis stated the legislative process may be slower than usual because there is a lot of education that must be done when a bill is introduced and comes before the committee.

Mr. Theis stated he was scheduled to give a brief presentation focusing on the introduction to Arkansas state taxes on November 18, 2010 to the Joint Revenue and Taxation Committees. He will also discuss the connection between the Arkansas state budget, fulfilling the state budget needs, and tax cuts. Mr. Theis' discussion was scheduled to include a brief introduction on the following subjects:

1. Sales and use tax,
2. Income tax,
3. Mention other taxes, and
4. Tax incentives.