

TAX ADVISORY **COUNCIL**

2018 ANNUAL REPORT

(Meetings Chaired by A.W. Bailey, Arkansas Society of Accountants)

Definition

Purpose: The Tax Advisory Council (TAC) was created by Act 998 of 1991 (codified at Ark. Code Ann. § 26-18-902). TAC consists of tax professionals and representatives of interested public and professional groups, including the Arkansas Bar Association Tax Section, the Arkansas Society of Accountants, the Arkansas Society of Certified Public Accountants, and employees of the Department of Finance and Administration's Revenue Division. TAC provides input to the General Assembly during the legislative process by studying and recommending changes to tax laws. TAC 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 TAC is prepared to inform the chairmen of the Revenue and Taxation Committees and members of the State's House of Representatives and Senate.

Membership **(Arranged by Organization)**

Arkansas Bar Association:

TJ Lawhon and Matt Boch

Arkansas Society of Accountants:

A.W. Bailey

Arkansas Society of Certified Public Accountants:

Mike Touhey

Arkansas Department of Finance and Administration (DFA), Revenue Division: Paul Gehring, Assistant Commissioner of Revenue for Policy and Legal; Joel DiPippa, Senior Legal Counsel, Revenue Legal Counsel; Tom Atchley, Administrator, Excise Tax; Deanna Munds-Smith, Administrator, Field Audit; Lynne Reynolds, Administrator, Income Tax; Andrew Smith, Assistant Administrator, Sales and Use Tax; Scott Fryer, Assistant Administrator, Corporation Income Tax; Andy Morgan, Manager, Central Audit District; Dale Breshears, Assistant Administrator, Individual Income Tax; Jesse Williams, Tax Auditor, Individual Income Tax; Brian Sansoucie, Manager, Sales and Use Tax; Joel DiPippa, Senior Legal Counsel, Revenue Legal Counsel; Bryan West, Manager, Collections; Steve Wilkins (former Manager), Individual Income Tax; Kimberly Dyson, Manager, Individual Income Tax; David Rector, Problems Resolution Officer; and Brandon Smith, Public Information Specialist.

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Meetings

Members of TAC met four times during 2014 on the following dates:

<u>Meeting dates</u>	<u>Total Present</u>
February 13, 2018	15
May 8, 2018	15
August 14, 2018	10
November 13, 2018	12

These meetings were held in Conference Room 2330 of the Joel Y. Ledbetter Building. Meetings averaged thirty-five (35) minutes to one (1) hour in length and were open to the public and to all representatives of the State Senate and House of Representative Revenue and Taxation Committees.

Summary

Tax Advisory Council Activities: The following is a brief summary of what transpired during the TAC's 2018 meetings.

Office of Revenue Legal Council

Summary of Tax Litigation and Status:

Welspun v. Walther

The Welspun and Other Tobacco Products (OTP) cases have not changed in status since last time. They are both in the discovery phase, and neither have gone to trial. There is no significant progress on the OTP cases yet, though they have all been put in one court. Previously, the cases were all filed separately in different court divisions. All cases are now in Judge Wendell Griffen's division. Matt Boch asks if the OTP cases were dismissed since he heard of a case that was dismissed. Joel responds that there were other OTP cases with different plaintiffs who failed to serve the Department that were dismissed. There are seven cases that are still active.

Flis Enterprises

The Flis case was argued in front of the Court on February 8, 2018. The case began as an audit in which the plaintiff paid and protested. The Plaintiff cited Arkansas Code section 26-18-407 as a basis for jurisdiction in its complaint, while the proper basis for jurisdiction was section 26-18-406. That's where the confusion happened. The Arkansas Supreme Court took the case under consideration, and Joel anticipated at least another two if not four weeks before a decision would be issued. Matt Boch asked whether DFA would be willing to put in writing on DFA letterhead that it would not raise sovereign immunity as an affirmative defense if the Court issued a decision not based upon jurisdiction. Joel responded that the Governor had made it clear that his direction and DFA's policy (which was stated in the supplemental briefing to the Court) was in favor of taxpayers being able to take tax concerns to the court after administrative relief has been exhausted. Joel added that if the Court addressed the sovereign immunity question and deemed it to be an affirmative defense, DFA would provide an update to the taxpayer community, especially through CPA's and attorneys, as to the state policy. In the November 18 meeting, Joel updated the Council that this case was decided in the Department's favor.

The Court held that it would not address 'sovereign immunity' in this appeal, and the state and it would have to raise in a lower court for the trial court to address. The Court ruled in favor of the Department and that the Alamo case is still used so that it was the retail value of the meal and not the value of the individual components on which the tax should be based. Matt Boch asked concerning the 'sovereign immunity' issue if the Department has considered putting out a news

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release, announcing the policy in addition to what is stated in the briefing of the Flis Enterprises case? It would be good for tax advisors to have something to point to say, 'here is the announced policy'. Joel responded that the Department will take that up with the people who are in higher levels of administration. Matt Boch said he understood and appreciated that course of action. Joel added that by the next time the Tax Advisory Council meets, the Department should be either in the middle of or having just finished some public hearings on the revised sales tax rules. He says that the Department will use the Tax Advisory Council list to inform people of the public hearings and public hearing dates. The sales tax rules will be divided into more than one day.

Medco v. Walther

In the November 13, 2018 meeting, Joel update that Council that the trial has been concluded. An order has yet to be issued in the case. The judge has asked for the findings of fact to be prepared by the parties. The multiday trial included experts testifying as to the status of manufacturing machinery and equipment and as to whether grit that is shot at a pipe is considered machinery or equipment qualifying for the exemption. The Department contends that the purchase of the grit is subject to tax because it is something that is consumed in the process; it does not meet any of the other requirements of machinery and equipment. Matt Boch asks about the requisite complexity of "equipment". Joel says that the taxpayer has not met the standard threshold or requirements for the exemption.

Raytheon Company Co. v. Walther

Raytheon Company has filed two similar cases in both the federal and state court. The case in the federal court being a hypothetical potential application of statute of sovereign immunity, that the Tax Injunction Act does not apply. Otherwise being identical cases, this regards apportionment and throwback. This case is still in discovery.

American Honda Co. v. DFA

This case questions whether or not there was an appropriate non-business allocation income for certain credits that were earned or disposed of by the taxpayer. This case is still in discovery.

EPM Inc. v. Walther

This case deals with energy and heating and cooling machinery equipment in buildings. This case is ongoing and in discovery.

Arkansas Vending v. Larry Walther

This case was appealed and dismissed. The appellate court ruled in favor of the Department.

Industrial Ironworks v. Walther

This case is ongoing and in discovery.

Sage Meadows Property Association v. DFA

This case involves alcohol sales by the private golf course pro shop, and other parts of that entity. The calculation per drink by the auditor is the primary basis for the taxpayers claim, which the Department states was calculated correctly. This case is ongoing.

South Dakota v. Wayfair

The U.S. Supreme Court ruled on the Wayfair case. The Court ruled physical presence is no longer the only method by which to determine if there is sufficient nexus to require a remote seller to collect sales tax.

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Tax Legislation:

The Department is preparing for the 2019 General Session. The Tax Reform and Relief Legislative Task Force is finalizing all of its suggestions, with one of the suggestions being a reduction of the top marginal income tax rate and collapsing of the brackets in what the Task Force is calling “Option A”. The Task Force is recommending an extension of net operating losses, a removal of the ‘throwback rule’, and a sales only single sales factor. The Department projects estimated budget impact from the implemented policies will be approximately \$500 million in tax reduction.

The Department is observing issues regarding changes in the federal law for purposes of possibly recommending that these federal changes be adopted by Arkansas. Among these issues is a proposal to provide a sales tax exemption for car wash businesses. However, these businesses would be required to pay a user fee based on the volume metric measure of the water consumed.

The Department is formulating a revenue impact for providing a constant rolling update on all tax credits, incentives, and exemptions. The Legislature is seeking updated fiscal impacts from the Department before each Session. The Department expects the initial financial impact of exempt organizations will triple or more.

Updates were made to the “529 Plan” in 2017. Arkansas will adopt this federal legislation change.

Tax Rules:

The Apprenticeship Program Income Tax Credit rule will be released for public comment this year.

The Department anticipates that the updated Sales Tax rules will be released in 2019. The Department initially anticipated that the updated sales tax rules would be released before the General Session, but the rules won’t be approved until after Session begins. Joel said that he will make a request to the General Assembly to approve that rules during Session, but that he will go through the Joint Budget Committee – Administrative Rule and Regulation Review Subcommittee rather than the Arkansas Legislative Council – Administrative Rule and Regulation Review Subcommittee. Joel explains that logistically that would be more efficient in the future because the General Rule updates could be individually updated rather than having the omnibus updates, which have proven to be more difficult to implement. As soon as the sales tax rules are published, the Department will use the Tax Advisory Council email list to keep members apprised as to when the sales tax rules are published.

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Individual Income Tax Administration:

Individual Income Tax Updates for 2018:

February 13, 2018

Steve Wilkins, DFA Manager I of Individual Income Tax - updated the Council on the status of Rule 2018-1 (adoption of the Federal Mileage Rate); and Individual Income Tax processing.

- a. The Governor's Request for Approval for Rule 2018-1 has been accepted and will be sent out for public comment. There is a thirty (30) day public comment period before we can have a public hearing on the rule.
- b. As of today, The Individual Income Tax (IIT) Section has entered in 43,000 more electronic file (e-file) returns this year, compared to last year. Individual Income Tax is the bulk of the filings, 328,000 out of 338,000 compared to last year. With the Federal changes that just came into the system Thursday night, some of the Federal extenders were extended. The number of returns has slacked off the last few days because the software preppers have to update their systems for the Federal changes.

May 8, 2018

I. Dale Breshears, Assistant Administrator of Individual Income Tax - updated the Council on Individual Income Tax processing.

- a. Income Tax Rule Update: Rule 2018-1 "Standard Mileage Rates for Income Tax Purposes" was adopted. The business mileage rate is 54.4 cents, one cent higher than last year. The medical and moving mileage rate is 18 cents, one cent higher than last year. The charitable organizations rate remains at 14 cents.
- b. Processing Update: Individual Income Tax processed 114,000 paper returns to date. 1,026,044 were electronically filed (e-filed), and 830,000 refunds have been processed so far. The Department has refunded 385,522,168 to date, compared to last year when the Department refunded an amount of 447,000,00. The revenue for tax year 2016 was 4.6 billion. Comparing 2017-2018 we are getting more e-file than paper returns. This year paper returns are only 114,000, this time last year it was 176,000. So instead of 1,026,044 e-file returns it was only 990,000 e-filed last year. So, the trend is still moving in the direction of electronic filing and that is a good thing.
- c. A.W. Bailey stated that there seemed to be quite a delay between electronic filing returns and people getting their refunds. Compared to 2017, 2018 is much worse. Dale responded that the big difference is this is nationwide and not just Arkansas. This is due to employers having to file W-2's on January 31st rather than February 28th. The Department is trying to match the W2's that it is receiving with the returns with the actual W-2's from the employers. In the past that wasn't done, so the Department is trying to catch fraudulent returns and errored returns in advance rather than on the back end before the taxpayer is billed in June or July. Dale mentioned that Georgia does not issue refunds until March first, so that trend from the days of receiving a refund ten days after the return is filed, is not coming back. Given the nature of the amount of fraud, the Department is committed to catching it. A.W. Bailey asked how much fraud is the Department fighting. Jesse Williams said that

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it depended whether it was fraud or identity theft. In previous years, the Department caught roughly \$100,000 - \$125,000 in identity theft. A.W. Bailey asked if it is identity theft that is causing the delay. Dale and Jesse say 'no'. Jesse says that the fraud runs in the millions of dollars a year. People are trying to get larger refunds than usual. Dale stated that a decade ago, before they had the fraud schemes they do now, it was millions of dollars recalled and that was when the Department was doing it the old-fashioned way. The better and better the Department gets at it, the less and less people are going to try and commit fraud. Dale stated that a part of that is because the Fraud Division is working better than in the past, so now it's thousands of dollars and not millions of dollars. A.W. Bailey stated that CPA's are getting calls every day about client's refunds and that it is unacceptable, in this electronic age. Dale stated that two things need to be done: 1) Require employers to e-file their W-2's in January, because the paper returns are sitting on the system for two months, and it slows the process; and 2) Advise taxpayers to look up their employers as much if not more than the State. This year the Feds didn't start accepting returns until January 15th. Dale thought the Department will get better. Dale also stated that he advises taxpayers that they control the withholding. Taxpayers control whether a refund is coming. A.W. Bailey stated that Dale was shifting the blame. Dale stated that it doesn't make sense to lose millions of dollars because someone wants a refund in ten days.

- d. A.W. Bailey asks why his client would receive a letter from the Department about wanting a copy of W-2's and 1099-R's when it is only a single return that was electronically filed by him that has the W-2 and 1099-R attached. Dale responded that it is built into the system and no system is perfect. A.W. Bailey stated the system needs some tweaking. Lynne Reynolds responded that the system might need some tweaking, or maybe the employee missed it or overlooked the W-2 on the return. People aren't perfect, and she agreed with Joel that this example can be used as a case study to train employees and improve the process and the system in the future. A.W. Bailey asked, even with all these efforts, how much money would DFA expect to lose? Dale stated that there is no way to quantify how much money the Department could stand to lose from fraud. Jesse stated that the loss from fraud and identity theft could not be quantified. The Department mainly quantified how much money could be lost due to identity theft and fraud, based on what was caught. The Department and the IRS notify each other of fraud and identity theft cases. Mike Tuohey asked if the ASPCA was notified regarding the length of the refund process. Lynne and Joel said it was in a press release, but Lynne does not know if anything was specifically sent to the ASPCA. Joel stated that it was more of a general press release. Mike Tuohey says CPA's weren't notified, and he has clients asking him about their refunds, and although he shows them where to go on the DFA website, they still ask about and wonder about their refund.
- e. Matt Boch stated this brings up the broader question of where the state's tax records go in reference to security. Joel answered that there are policies and laws in place that make sure that the Department is a good steward of taxpayer information and keeping it secure. If the Department needs to use that list for that, it can look at that with the Administrator of Communications Scott Hardin. Joel reiterated that he planned on using the Tax Advisory Council email distribution list for the revised sales tax rules hearings. Matt Boch asked if DFA has thought about using social media such as Facebook, LinkedIn, and Twitter pages, even if it is just passively pushing out the press releases, and that it might be an efficient way and essentially free way to do so. Joel stated that the Department has thought about it. Joel continued that the Department has thought about the question of how much of a public forum it wants to create, and the extent to which it would be positive or negative to have a passive setting in which no one could comment. Joel stated that the Department has improved in its press releases but still has a long way to go. A.W. Bailey stated that although most organizations in taxes are represented on the Council, ninety percent (90%) of the people outside of these walls don't know about the DFA website and its services. Therefore, they don't know where to look to find out about their refunds, especially when there is not any quantifiable

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time. It is perceived that the public knows, but they don't. Joel stated that the Department is working on the website and is trying to make it easier to navigate and user friendly.

August 14, 2018

II. **Lynne Reynolds, Administrator of Individual Income Tax - Updated the Council on Individual Income Tax processing and IRS Withholding Paycheck Checkup.**

- f. Processing Update: Individual Income Tax is currently up to date in its processing of electronic and paper returns. Partnerships were originally processed at the end of the year, but they are processed also. Lynne said that if a taxpayer is looking for his or her return and does not see it, it does not mean that the return is not processed. The taxpayer should then contact the Individual Income Tax Division about the delay.
- g. IRS Withholding Paycheck Checkup: Individual Income Tax Administration has been receiving phone calls on Federal Income Tax Withholding. Lynne passed out a printout from the IRS.gov website about the "Paycheck Checkup" service which allows taxpayers to calculate their current federal income tax withholding and to make sure that they are not under-withholding. Matt Boch states that the IRS (Internal Revenue Service) has been really promoting this "Paycheck Checkup" service and that he read in tax news that there are approximately three million taxpayers were going to owe because they were under-withholding. Joel said the IRS is working intently on raising taxpayer awareness of their federal tax withholding. Lynne suggested that the representatives from the tax community on the Tax Advisory Council could disseminate this information to their clients and to the tax community at large. The various representatives of the tax community agreed that they will share this with their clients and the greater tax community.

November 13, 2018

I. **Dale Breshears, Assistant Administrator of Individual Income Tax – 2018 Tax Updates**

Tax Changes: Act 141 of 2017 allows for a military retirement exemption. The tax exemption includes retirees from the National Oceanic and Atmospheric Administration and the Commissioned Officers Corps. If a taxpayer who qualifies for the military retirement exemption opts to take the \$6,000 tax exemption, the taxpayer will not be able to take the exemption.

Unemployment benefits are now taxable under Arkansas law. The Department is concerned about how taxpayers who are not used to owing taxes on unemployment will be affected by this change, since unemployment benefits currently do not have withholding.

The Apprenticeship Program kept the sixteen year old minimum but removed the twenty-one year old age limit. There is a limit of \$10,000 for an employer to take for a tax year. The law allows for \$2,000 per apprentice.

Individual Income Tax (IIT) has changed the ARK-1 form concerning partnerships to accommodate the requirement transition to the apportionment method. The Department has adopted only the "529 Plan" from the federal "Tax Cuts and Jobs Act". The primary change is to the definition of "qualified education expenses". These expenses include tuition for elementary, secondary schools, religious schools and private schools. The federal Act has caused the Department to change some of its forms. Itemized deductions on casual theft on the Federal form are designed for federally acquired disaster areas. Arkansas did not adopt that policy, choosing to create a separate form for Arkansas that resembles the federal code. The deductions on the 'Unreimbursed Employee Business

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Expense' on the federal form are subject to two percent (2%). The Department still allows those deductions. The Arkansas tax form for Unreimbursed Employee Business Expense is AR-2106. On the AR-3 form, the federal rate is currently seven and a half percent (7.5%); the Arkansas rate will be ten percent (10%) for the upcoming tax year. The Adjustment form (ADJ) for moving expenses changed under the Tax Cuts and Jobs Act. Moving expenses under the Tax Cuts and Job Act beginning TY 2018 is for Military PCS moves only. The deduction is on the AR-1000ADJ, the AR-3903 must be attached. The AR-3903 was created to allow for the military moving expense deduction. In reference to alimony and separate maintenance deductions, the form did not change but is still on the AR-1000ADJ. The change is on the federal form, so that the person who is paying the alimony can no longer deduct that income; and the person receiving the alimony does not have to claim it as income. No new form was created for the deduction.

Processing Update: The Individual Income Tax Section had ninety thousand (90,000) phone calls last tax season compared to sixty-six thousand (66,000) from the year before, primarily because the refunds are taking a little longer to be sent to the taxpayer. The main reason for this is because of the changes requiring employers to submit the W-2's and 1099's on January 31st. The Department anticipates that due to the date change, employers will do better with meeting that date, and improvements will be made by the Department to process returns from employers who did not send W-2's. If a taxpayer sends an electronic return, with a W-2, on time, and the taxpayer does a direct deposit and doesn't have any issues like a missing form, the Department anticipates that the taxpayer will receive his or her refund in approximately three (3) weeks. If the taxpayer chooses to have a paper check refund, the approximate time for the mailed refund will be four (4) weeks. If there is a problem with the employer not submitting a W-2, or if the return is a paper return, the approximate time for the refund is going to be five (5) weeks if it is direct deposit and six weeks if it is a paper check refund. What the Department wants to improve the process when an employer does not send a W-2 and the Department cannot match the W-2 with the return. In this case, the Department will not hold the refunds instead there are other criteria that will be used to release the refund.

A.W. Bailey asks about the Department's policy on 'backend checking' to see how long the Department has been holding a return that was still being processed before action was taken. Dale explains that the Department is improving, but when a return is being processed, there may be a breakdown in communication between the supervisors and the Tax Service Representatives (TSR's) who are working the returns. The Department will work to be more efficient with processing returns, communicating more and using our procedures. Scott Fryer said that some of the same people who are working the returns are also the same people who are answering the ninety thousand (90,000) phone calls. Dale said that if the taxpayer meets certain criteria and has not received refund in three weeks, the taxpayer should call the Department. It is possible that the Department did not receive the return or there was a breakdown in communication. Dale suggested that if a taxpayer who has been waiting three (3) weeks and is expecting a paper check refund to wait an extra week or go to the "Find My Refund" webpage on the DFA website. The taxpayer should even make sure that the employer actually sent the W-2's. Dale stated that if taxpayers would do this, the volume of calls could be reduced back to sixty thousand from ninety thousand calls, and that this could possibly help the processing system work better. A.W. Bailey asked where the Department is on the amount of fraud that has come through the system this year. Dale said that the AIRS system sent a report that it received approximated \$100,000 - \$200,000 in fraud cases. However, what the Department has caught as cases was not really fraud or identity theft rather, it was mistakes and things that needed to be corrected on the return. The cost of these mistakes may come close to one million dollars, but these cases did not really constitute fraud or identity theft. The actual fraud cases the Department has caught could equal approximately three hundred (\$300,000) dollars, but that number may not be correct.

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A.W. Bailey said that he is seeing letters from the State of Arkansas that date back three years and it is very out of the norm. He was wondering what created that considering that normally he would receive a letter in about a year. Lynne said the letter was probably about the current year and the Department decided to go back three more years.

Sales Tax:

February 13, 2018

III. **Andrew Smith, Assistant Administrator of Excise Tax – Sales and Use updated the Council on the Sales tax rate change on candy and soft drinks and on individual consumer use tax reporting.**

- a. Sales Tax Rate Change on Candy and Soft Drinks – Act 141 of 2017 brought candy and soft drinks to the full six and a half percent (6.5%) state tax rate. Letters were sent to taxpayers electronically and to anyone calling in about the sales tax changes. He reported that the Sales and Use Tax Section didn't receive too many communications from the taxpayer base regarding Act 141. Act 141 also included specified digital products and digital code. The Sales and Use Tax Section only received one call on this portion of the Act. Matt Boch asked if small businesses now use a form of commonly provided software. Andrew answered that some of the convenience stores were using software. Some of their distributors were also using software because they deal with states that already tax candy and soft drinks at their own rate. Therefore, it doesn't seem like a real problem for the auditors when communicating with the taxpayer base.
- b. Individual Consumer Use Tax – The Sales and Use Tax Section has been in communication with the Income Tax Section as well as the developers in trying to get Individual Consumer Use Tax reporting on the Income Tax filing form. We are working on that with the developers, Dale and Lynne, on what our capabilities are and what issues may occur. Matt Boch stated that there are businesses out there that are not registered for excise tax who buy online that might be able to be picked up on business returns as well. Andrew asked if he meant contractors and similar taxpayers. Andrew stated that approximately two-hundred (200) taxpayers use the CU-1 Form. He added that some of the contractors have sales tax accounts just so they can file the use tax, and that's all they ever file every year. Matt said that he was referring to just the typical office business that was not selling anything taxable. Andrew says they are part of the two-hundred (200) filers that don't have a registered account. Matt Boch mentioned that he remembered when Illinois allowed for estimating the use tax with brackets, but that he didn't know if that could be done in Arkansas with existing law. Tom Atchley said that there are several states that give estimates, but generally that it is through law. If a state's law allows taxpayers to file under those methods, it eliminates any actual calculations because taxpayers are just estimating high or low. Tom stated that he believed that one state actually allowed estimated payments based upon the taxpayer's income level. Therefore, allowing for use tax filing has been in place a long time. DFA has a short form for annual filing on the website. DFA answers questions and gets calls from many taxpayers. DFA does not get a lot returns from individuals. Last year, DFA had a couple hundred of those returns. DFA sometimes receives individual item use tax filings; aircrafts are a good example of that. DFA had had very little contact on digital products. There are certain companies that have a vast majority of the market, and those companies are registered with the State of Arkansas. However, there is very little communication from consumers on that. Tom noted that most of the activity in that area comes from registered businesses. Tom said that DFA has adopted common definitions for the three types of specified products. The companies selling those products work in states with the same exact definitions, so hopefully the implementation of that tax change will be easy and work well. Matt Boch said that from the people he has spoken to, he has not heard much of any problems with compliance with the digital products stream and digital products definitions. Tom Atchley said since DFA has knowledge

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that at least some of the companies are heavy into that, the agency will be monitoring their tax payments to determine if there has been a change in reporting concerning this issue.

Matt Boch mentioned the Tax Reform Taskforce meeting and he says that DFA and BLR discussed e-fairness. In addition to a Colorado-style reporting and a South Dakota-style nexus, he urged that whoever is contributing to this policy consider what states like Pennsylvania are doing with marketplace collection.

August 14, 2018

- IV. **Brian Sansoucie, Manager I of Sales Tax – Updated the Council on Remote Seller information on the DFA website; and the new on-line application process for those looking to apply with the Department due to Supreme Court ruling in the South Dakota v. Wayfair Inc. case.**
- a. Remote Seller Information on DFA website: Remote seller information is on the DFA website on the sales tax section. The sales tax section on the website has general information on what is considered as a ‘remote seller’. Some FAQ’s (Frequently Asked Questions) are on the website for remote sellers to try and familiarize themselves with the Arkansas State Sales Tax rates and laws. In addition, the Department has created a shortened application process for remote sellers.
 - b. On-line application process for those looking to apply with the Department: Any business that intends to register with the Department on any tax on ATAP (Arkansas Taxpayer Access Point) on the DFA website is asked if the registrant is a remote seller. A definition of remote seller is given, and then the registrant is directed to the paper application depending on the answer. If the answer is ‘yes’, then the registrant is directed to the shortened application, so they can quickly register with the State of Arkansas. Matt Boch asked what definition of remote seller is being used by the Department. Tom Atchley answered, remote seller is defined as a business that lacks a physical presence in the State of Arkansas. Tom Atchley added that the registrant is asked if the registrant is registering as a remote seller and if it is registering because of the Wayfair decision on ATAP. He continued by saying that the remote seller information on the website was reviewed by the Tax Community, and Matt Boch was one of the people who reviewed and commented on the information that was updated and published on the website. The Department has ‘gone live’ with the shortened registration for someone who is now a state company and who considers himself or herself a remote seller. That application went ‘live’ August 1, 2018. In the first few hours, there were companies using the application and registering with the State. Across the country, companies are watching various states nationwide in how they may implement current or future laws and policies concerning the Wayfair decision. Tom Atchley suggested that remote sellers go to the Streamlined Sales Tax website (www.streamlinedsalestax.org) for additional information on each state’s laws concerning remote sellers and the Wayfair decision. There is a link labeled “remote sellers” and there are additional links for all states with published information for companies that deem themselves remote sellers to see what that state is requiring. Some states currently have laws in place with respective effective dates. Currently some states seem to be using October 1, 2018 as a key effective date for their laws, as for other states, January 1, 2019 seems to be the key effective date. There seems to be an increase in Streamlined Sales Tax registrations under the current procedures. When companies register under Streamline, they register with all twenty-four (24) states. There is an ongoing discussion about allowing companies that register under Streamline being automatically registered with all twenty-four (24) states due to the

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Wayfair decision, because some sellers may register and never report sales certain states. As to the threshold issue, Arkansas currently meets the threshold in every state.

The Sales Tax Division has taken quite a few calls from out of state businesses concerning Arkansas rules and procedures, but not many from Arkansas businesses about collecting in other states. Tom Atchley thinks the Department will have more activity concerning these issues and procedures soon. Matt Boch thanks the Department's Sales Tax Division for all the time put into Streamline, and that it put the 'tax community' in an acceptable position.

November 13, 2018

I. **Andrew Smith, Assistant Administrator of Sales Tax – Updated the Council on the change in tax on food, effective January 1, 2019.**

There is a change in food and food ingredient tax rates from one and a half percent (1.5%) to one eighth of one percent (1/8 of 1%). Notices were sent to taxpayers concerning the sales tax change on October 19th and it is on the DFA website. The sales tax change will take effect on January 1, 2019. At the beginning of December, a follow up reminder notification about the sales tax change will be sent to taxpayers. Andrew Smith thinks the change should be an easy adjustment for businesses or registrants because the Sales and Use Tax Section has not received many calls concerning the change.

Matt Boch asked a question about the status of the food tax once it goes to zero. Andrew said that the one eighth of one percent (1/8 of 1%) is the constitutional rate. Matt Boch asked if the rate phases down any further. Andrew says that it does not phase down any further than this and the constitutional rate cannot be reduced to zero.

New Business:

August 13, 2018

Joel said the Department has completely updated the Sales Tax Rules and Income Tax rules concerning apprenticeship law changes that were passed during the 2017 General Session. The Department will have had at least two sets of rules that have gone out for public comment, by the next Tax Advisory Council meeting. When the Department is ready to schedule public hearing dates, particularly about the sales tax rules, the Department will use the Tax Advisory Council email distribution list to notify various stakeholders of the rules that are being presented during the public comment period. There will be multiple days for hearing because it is an update of all the Sales Tax rules. The public hearing dates will be divided in a way that stakeholders do not have to attend all the public hearing days but can focus on the specific sales tax rule of their choice.

November 14, 2018

A.W. Bailey asks about the next meeting date on February 12, 2019 since it falls in the middle of tax season. Brandon Smith said that by tradition, the Tax Advisory Council meets on the second Tuesday of the second month of each year. Joel suggests that the Council reschedule the date from Tuesday for the February meeting to Monday, February 11, 2019. The purpose of the date change is due to the fact that the legislative tax committees meet on Tuesdays and Thursdays during the General Session. Joel thinks that changing the date to Monday, rather than keeping it on a Tuesday, would be less restrictive on attendance. The Council agreed by majority vote to change the date to Monday, February 11, 2019. The meeting was adjourned at 10:36 am.

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