

Income/Franchise:

Arkansas Tax Appeals Commission Confirms Single Sales Factor Applies to Special Industry Taxpayer

Docket No. 23-TAC-03206, Ark. Tax App. Comm. (7/10/24). In a ruling involving a construction company taxed as an S corporation, the Arkansas Tax Appeals Commission (Commission) held that the company must file its Arkansas pass-through entity tax return for the 2022 tax year by apportioning its income using Arkansas's standard statutory single sales factor apportionment formula, rather than Arkansas's previous three-factor apportionment formula which was imposed by the Arkansas Department of Finance and Administration (Department) pursuant to an administrative rule for taxpayers in the construction industry (*i.e.*, "Rule 1.26-51-718(d)"). In doing so, the Commission referenced state legislation enacted in 2019 [see S.B. 576 (2019) / Act 822 of 2019 for details on this legislation] that implemented single sales factor apportionment in place of the three-factor formula for tax years beginning on or after January 1, 2021 – noting that because the Department has not updated its administrative rules to reflect these statutory law changes, it must address "what rules remain good law and what rules have been superseded by statute." According to the Commission, "the better reading of Rule 1.26-51-718(d) after the enactment of Act 822 of 2019 is that the rule calls for certain construction industry-specific approaches to applying the single sales factor apportionment provided by current law, rather than reading it as preempting in advance an apportionment formula policy choice made by the General Assembly twenty years after the regulation was adopted." Please contact us with any questions.

URL: <https://ig.arkansas.gov/tax-appeals-commission/ig-decisions-search/>

URL: <https://www.arkleg.state.ar.us/Bills/Detail?ddBienniumSession=2019%2F2019R&measureno=sb576>

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