

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 675 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S2/24/05

A Bill

SENATE BILL 309

5 By: Senator Wooldridge
6
7

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE
10 ARKANSAS INCOME TAX LAWS BY ADOPTING RECENT
11 CHANGES TO THE INTERNAL REVENUE CODE; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14 TO MAKE TECHNICAL CORRECTIONS TO THE
15 ARKANSAS INCOME TAX LAWS BY ADOPTING
16 RECENT CHANGES TO THE INTERNAL REVENUE
17 CODE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 26-51-301(c), concerning the definition of
24 "head of household" is amended to read as follows:

25 (c) As used in this section, the term "head of household" shall have
26 the same meaning as defined in section 2(b) of the federal Internal Revenue
27 Code of 1986, in effect on January 1, ~~1991~~ 2005.
28

29 SECTION 2. Arkansas Code § 26-51-404(b)(1), concerning exclusions from
30 gross income, is amended to read as follows:

31 (1) Section 1033 of the Internal Revenue Code of 1986, as in
32 effect on January 1, ~~1999~~ 2005, relating to the exclusion from gross income
33 of gain resulting from the involuntary conversion of a taxpayer's property,
34 is hereby adopted for the purpose of computing Arkansas income tax liability;
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1 SECTION 3. Arkansas Code § 26-51-404(b)(2), concerning exclusions from
2 gross income, is amended to read as follows:

3 (2) Section 121 of the Internal Revenue Code of 1986, as in
4 effect on January 1, ~~1999~~ 2005, relating to the exclusion from gross income
5 of gain from the sale or exchange of property owned and used as the
6 taxpayer's principal residence, is hereby adopted for the purpose of
7 computing Arkansas income tax liability;

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9 SECTION 4. Arkansas Code § 26-51-404(b)(12), concerning the exclusion
10 of dependent care assistance from gross income, is amended to read as
11 follows:

12 (12) Section 129 of the Internal Revenue Code of 1986, as in
13 effect on January 1, ~~1997~~ 2005, regarding the exclusion from income for
14 dependent care assistance, is hereby adopted for the purpose of computing
15 Arkansas income tax liability. However, no amounts excluded from gross income
16 pursuant to this subdivision (b)(12) shall be taken into account in computing
17 the dependent care credit contained in § 26-51-502;

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19 SECTION 5. Arkansas Code § 26-51-404(b), concerning exclusions from
20 gross income, is amended to add an additional subdivision to read as follows:

21 (26) Section 134 of the Internal Revenue Code of 1986, as in
22 effect on January 1, 2005, regarding the exclusion from income of child care
23 benefits provided to members of the United States military, is adopted for
24 the purpose of computing Arkansas income tax liability.

25
26 SECTION 6. Arkansas Code § 26-51-409 is amended to read as follows:

27 26-51-409. Federal Subchapter S adopted.

28 (a) Subchapter S of the Internal Revenue Code of 1986, as in effect on
29 January 1, ~~2003~~ 2005, regarding small business corporations, is hereby
30 adopted for the purpose of computing Arkansas income tax liability.

31 (b) The corporate election and shareholder consents required to be
32 filed under Subchapter S of the federal Internal Revenue Code of 1986 for
33 Arkansas income tax purposes shall be filed with the Director of the
34 Department of Finance and Administration of the State of Arkansas in the same
35 manner and at the same time as required under Subchapter S.

36 (c)(1) However, all nonresident shareholders of S corporations

1 receiving a prorated share of income, loss, deduction, or credit pursuant to
2 the provisions of this section must file a properly executed state income tax
3 return with the Director of the Department of Finance and Administration and
4 remit the applicable state income tax due.

5 (2) Failure to so report and remit on the part of any
6 shareholder shall be grounds upon which the director shall be authorized to
7 revoke the corporation's Subchapter S election and collect the tax from the
8 corporation by any manner authorized by the Arkansas Income Tax Act of 1929,
9 § 26-51-101 et seq.

10
11 SECTION 7. Arkansas Code § 26-51-411(e), concerning the installment
12 method of accounting, is amended to read as follows:

13 (e) Sections 453, 453A, and 453B of the Internal Revenue Code of 1986,
14 as in effect on January 1, ~~1995~~ 2005, are adopted concerning the installment
15 method of accounting.

16
17 SECTION 8. Arkansas Code § 26-51-419 is amended to read as follows:
18 26-51-419. Deductions – Charitable contributions.

19 (a) Section 170 of the Internal Revenue Code of 1986, as in effect on
20 January 1, ~~2001~~ 2005, regarding deductions for charitable contributions, is
21 hereby adopted for the purpose of computing Arkansas income tax liability.
22 This adoption is for taxable years beginning on or after January 1, ~~2001~~
23 2005, and will have no effect on years prior to its adoption. Provided,
24 however, with respect to contributions of qualified appreciated stock within
25 the meaning of Internal Revenue Code § 170(e)(5) made after May 31, 1997, the
26 provisions of this section shall apply after taking into account the
27 extension of the provisions of Internal Revenue Code § 170(e)(5) by § 602 of
28 the Taxpayer Relief Act of 1997 and § 1004(a) of the Tax Extension Act.

29 (b) The provisions of subsection (a) of this section shall apply to a
30 corporation that files an Arkansas consolidated corporation income tax return
31 pursuant to § 26-51-805, provided that each member of the affiliated group
32 shall follow the provisions of § 26-51-805(f) and calculate its contribution
33 limits separately.

34
35 SECTION 9. Arkansas Code § 26-51-423 is amended to read as follows:
36 26-51-423. Deductions – Expenses.

1 (a) In computing net income, there shall be allowed as deductions the
2 following expenses:

3 (1) Business expenses. All of § 162, except subsection (n), of
4 the Internal Revenue Code of 1986, as in effect on January 1, ~~1999~~ 2005,
5 regarding trade or business expenses, is hereby adopted for the purpose of
6 computing Arkansas income tax liability;

7 (2) Medical and dental expenses. Section 213 of the Internal
8 Revenue Code of 1986, as in effect on January 1, 1997, is adopted in
9 computing the medical and dental expense deduction under the state income tax
10 law;

11 (3) Travel expenses. In determining travel expenses deductible
12 as a business expense in computing net income as provided under subdivision
13 (a)(1) of this section, the deduction for vehicle miles shall be determined
14 by the Director of the Department of Finance and Administration under his
15 regulatory authority in § 26-18-301; and

16 (4) Moving expenses. Section 217 of the Internal Revenue Code of
17 1986, as in effect on January 1, 1995, regarding the deduction of moving
18 expenses, is hereby adopted for the purpose of computing Arkansas income tax
19 liability.

20 (b) Section 274 of the Internal Revenue Code of 1986, as in effect on
21 January 1, ~~1999~~ 2005, regarding the deductions of expenses for entertainment,
22 amusement, recreation, business meals, travel, et cetera, is hereby adopted
23 for the purpose of computing Arkansas income tax liability.

24 (c)(1) An individual who is self-employed shall be allowed a deduction
25 equal to the applicable percentage as set forth in 26 U.S.C. § 162(1)(1)(B)
26 as in effect on January 1, 1999, of the amount paid during the taxable year
27 for insurance which constitutes medical care for the taxpayer, his spouse,
28 and dependents.

29 (2)(A) No deduction shall be allowed under subsection (c) of
30 this section to the extent that the amount of such deduction exceeds the
31 taxpayer's earned income derived by the taxpayer from the trade or business
32 with respect to which the plan providing the medical care coverage is
33 established.

34 (B) Subsection (c) of this section shall not apply to any
35 taxpayer who is eligible to participate in any subsidized health plan
36 maintained by any employer of the taxpayer or the spouse of the taxpayer.

1 (3) Any amount paid by the taxpayer for insurance to which
2 subsection (c) of this section applies shall not be taken into account in
3 computing the amount allowable to the taxpayer as a deduction under
4 subdivision (a)(2) of this section.

5 (d) Section 221 of the Internal Revenue Code of 1986, as in effect on
6 January 1, 2003, regarding the deduction of interest paid on qualified
7 education loans, is adopted for the purpose of computing Arkansas income tax
8 liability.

9 (e) Section 198 of the Internal Revenue Code of 1986, as in effect on
10 January 1, ~~1999~~ 2005, regarding the deduction of costs paid or incurred for
11 the cleanup of certain hazardous substances, is adopted for the purpose of
12 computing Arkansas income tax liability.

13 (f) Section 190 of the Internal Revenue Code of 1986, as in effect on
14 January 1, 2001, regarding the deduction of costs paid or incurred to improve
15 access to vehicles and facilities for handicapped and elderly persons, is
16 adopted for the purpose of computing Arkansas income tax liability.

17 (g)(1) A deduction pursuant to subsection (a)(1) of this section for
18 interest or intangible-related expenses paid by the taxpayer to a related
19 party shall be allowed only if:

20 (A) The interest or intangible-related income received by
21 the related party is subject to income tax imposed by the State of Arkansas,
22 another state, or a foreign government that has entered into a comprehensive
23 income tax treaty with the United States;

24 (B) The interest or intangible-related income received by
25 the related party was received pursuant to:

26 (i) An "arm's length" contract or at an "arm's
27 length" rate of interest; and

28 (ii) A transaction not intended to avoid the payment
29 of Arkansas income tax otherwise due;

30 (C) The taxpayer and the director enter into a written
31 agreement prior to the due date of the taxpayer's Arkansas income tax return:

32 (i) Authorizing the taxpayer to take the deduction
33 for the tax year at issue; or

34 (ii) Requiring the use of an alternative method of
35 income apportionment by the taxpayer for the tax year at issue; or

36 (D) During the taxable year, the related party recipient

1 of interest or intangible related income, in a location not described
2 in(g)(1)(A), a "non-tax location":

3 (i) Operates an active trade or business in the non-
4 tax location;

5 (ii) Has a minimum of fifty (50) full-time-
6 equivalent employees in the non-tax location;

7 (iii) Owns real or tangible personal property with a
8 fair market value in excess of one million dollars (\$1,000,000) located in
9 the non-tax location; and

10 (iv) Has revenues generated from sources within the
11 non-tax location in excess of one million dollars (\$1,000,000).

12 (2) "Related party" means a related party as defined by Section
13 267 of the Internal Revenue Code of 1986, as in effect on January 1, 2003.

14 (h) Section 194 of the Internal Revenue Code of 1986, as in effect on
15 January 1, 2005, regarding the amortization of qualified reforestation
16 expenses, is adopted for the purpose of computing Arkansas income tax
17 liability.

18
19 SECTION 10. Arkansas Code § 26-51-429 is amended to read as follows:
20 26-51-429. Deductions – Depletion allowances.

21 (a) In the case of all natural resources for which a deduction for
22 depletion is allowed under § 611 of the Internal Revenue Code of 1986, the
23 provisions of §§ 611-613, 614, 616, and 617 of the Internal Revenue Code of
24 1986, as amended and in effect on January 1, ~~1999~~ 2005, are adopted in
25 computing the depletion allowance deduction under Arkansas income tax law.

26 (b) In computing the depletion allowance deduction allowed by this
27 section for oil and gas wells, the provisions of § 613 of the Internal
28 Revenue Code of 1986 shall not be in effect, but instead the computation of
29 the amount of the depletion deduction shall be controlled by the provisions
30 of § 613A of the Internal Revenue Code of 1986, as amended and in effect on
31 January 1, ~~1999~~ 2005, which are adopted as part of the state income tax law.

32
33 SECTION 11. Arkansas Code § 26-51-436, concerning limitations on
34 deductions, is amended to add a new subdivision to read as follows:

35 (7) Section 470 of the Internal Revenue Code of 1986, as in
36 effect on January 1, 2005, regarding leasing transactions between taxpayers,

1 is adopted for the purpose of computing Arkansas income tax liability.

2
3 SECTION 12. Arkansas Code § 26-51-439 is amended to read as follows:
4 26-51-439. Capitalization of certain expenses.

5 (a) Section 263A, subsections (a), (b), (c), (d), (e), (f), (g), and
6 (h) of the federal Internal Revenue Code of 1986, as in effect on January 1,
7 1989, regarding capitalization and inclusion in inventory costs of certain
8 expenses, is hereby adopted for the purpose of computing Arkansas corporate
9 income tax liability.

10 (b) Section 195 of the Internal Revenue Code of 1986, as in effect on
11 January 1, 2001, regarding capitalization and amortization of a corporation's
12 start-up expenses, is adopted for the purpose of computing Arkansas income
13 tax liability.

14 (c) Section 248 of the Internal Revenue Code of 1986, as in effect on
15 January 1, ~~2001~~ 2005, regarding capitalization and amortization of a
16 corporation's organizational expenses, is adopted for the purpose of
17 computing Arkansas income tax liability.

18 (d) Section 709 of the Internal Revenue Code of 1986, as in effect on
19 January 1, 2005, regarding the amortization of partnership organizational
20 expenses, is adopted for the purpose of computing Arkansas income tax
21 liability.

22
23 SECTION 13. Arkansas Code § 26-51-448 is amended to read as follows:
24 26-51-448. Educational individual retirement accounts.

25 Section 530 of the Internal Revenue Code of 1986, as in effect on
26 January 1, ~~2002~~ 2005, relating to educational individual retirement accounts,
27 is adopted for the purposes of computing Arkansas income tax liability. Any
28 additional tax or penalty imposed by this section shall be ten percent (10%)
29 of the amount of any additional tax or penalty provided in the federal income
30 tax law adopted by this section.

31
32 SECTION 14. Arkansas Code §26-51-501(a)(3)(B), concerning the
33 definition of dependents for purposes of personal income tax credits, is
34 amended to read as follows:

35 (B) ~~For the purposes of subdivision (a)(3)(A) of this~~
36 ~~section, the term "dependent" means any of the following persons over half of~~

1 ~~whose support for the income year was received from the taxpayer;~~

2 ~~(i) A son or daughter or descendant of either;~~

3 ~~(ii) A stepson or stepdaughter;~~

4 ~~(iii) A brother, sister, stepbrother, or stepsister;~~

5 ~~(iv) The father or mother or an ancestor of either;~~

6 ~~(v) A stepfather or stepmother;~~

7 ~~(vi) A son or daughter of a brother or sister;~~

8 ~~(vii) A brother or sister of the father or mother;~~

9 ~~or~~

10 ~~(viii) A son-in-law, daughter-in-law, father-in-law,~~

11 ~~mother-in-law, brother-in-law, or sister-in-law of the taxpayer As used in~~

12 ~~subdivision (a)(3)(A) of this section, "dependent" has the same meaning as~~

13 ~~defined in § 152 of the Internal Revenue Code of 1986, in effect on~~

14 ~~January 1, 2005.~~

15
16 SECTION 15. Arkansas Code § 26-51-502(b), concerning household and
17 dependent care services, is amended to read as follows:

18 (b)(1) Section 21 of the Internal Revenue Code of 1986, as amended and
19 in effect on January 1, ~~2003~~ 2005, is adopted for purposes of determining the
20 allowable credit under the Income Tax Act of 1929, § 26-51-101 et seq., for
21 household and dependent care services necessary for gainful employment.

22 (2) The amount of credit shall be twenty percent (20%) of the
23 federal credit allowable.

24
25 SECTION 16. Arkansas Code § 26-51-801(d), concerning individual income
26 tax returns, is amended to read as follows:

27 (d) DEFINITIONS.

28 (1) As used in this section, the term "head of household" shall
29 have the same meaning as defined in section 2(b) of the federal Internal
30 Revenue Code of 1986, in effect on January 1, ~~1991~~ 2005;

31 (2) As used in this section, the term "qualifying widow or
32 widower with dependent child" shall mean surviving spouse as defined in
33 section 2(a) of the federal Internal Revenue Code of 1986, in effect on
34 January 1, ~~1991~~ 2005;

35 (3) As used in this section, the term "jointly" means filing a
36 joint return;

1 (4) As used in this section, the term "dependent" shall have the
2 same meaning as defined in section 152 of the federal Internal Revenue Code
3 of 1986, in effect on January 1, ~~1991~~ 2005.

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5 SECTION 17. This act shall become effective for tax years on and after
6 January 1, 2005.

7 /s/ Wooldridge

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10 APPROVED: 3/09/2005
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