

Hall of the House of Representatives

88th General Assembly - Regular Session, 2011

Amendment Form

Subtitle of House Bill No. 1495

TO CREATE THE ARKANSAS SMALL BUSINESS TAX FAIRNESS ACT AND TO
REQUIRE COMBINED REPORTING FOR INCOME TAX PURPOSES.

Amendment No. 1 to House Bill No. 1495

Amend House Bill No. 1495 as originally introduced:

Page 5, delete line 15 and substitute the following:

“this subchapter and multiplying the remainder by the combined apportionment factors of all members of the combined group.”

AND

Page 5, delete lines 32 and 33 and substitute the following:

“(4) Income sourced to Arkansas from the sale or exchange of capital or assets;”

AND

Page 6, delete line 1 and substitute “26-51-1401-26-51-1405; and”

AND

Page 6, delete lines 2 through 5 and substitute the following:

“(6)(A) Net operating loss carryover.”

AND

Page 6, delete line 10 and substitute the following:

“applied as a deduction in a subsequent year only to the extent that the combined”

AND

Page 6, delete lines 12 through 24 and substitute the following:



“(C)(i) Only a taxpayer member that joins a combined group and has a net operating loss from a tax year before the taxpayer member joined the combined group is subject to the carryover provisions of § 26-51-427, the net operating loss limitations, and the separate return limitation year restriction.

(ii) Separate return limitation year restrictions allow the net operating loss of a member that joins a combined return to offset the combined income of all corporations that were members of the same federal consolidated group when the net operating loss was created or that were members of the same Arkansas combined group when the net operating loss was created.

(b)(1) A tax credit earned by a member may be applied against the total tax liability of the combined group.

(2)(A) A charitable contribution made by a taxpayer member of the combined group is available as a deduction of the combined group subject to the limitations of 26 U.S.C. § 170, as it existed on January 1, 2011.

(B) A charitable contribution under subdivision (b)(2)(A) of this section is subtracted from the business income of the combined group before apportionment, and the remaining balance is treated as a nonbusiness expense allocable to the nonbusiness income of the combined group subject to the income limitations of 26 U.S.C. § 170, as it existed on January 1, 2011.

(C) A charitable contribution under subdivision (b)(2)(A) of this section that is disallowed under the income limitations of this subsection is allowed as a carryover deduction for up to five (5) years in accordance with 26 U.S.C. § 170, as it existed on January 1, 2011.”

AND

Page 8, delete lines 7 through 13 and substitute the following:

“(c) Except as otherwise provided in this subchapter, the profit and loss statement of each member of the combined group and the related apportionment factors shall be expressed in United States dollars.”

AND

Page 8, line 14, delete "(e)" and substitute "(d)"

AND

Page 9, delete lines 27 through 36.

AND

Page 10, delete lines 1 through 29.

AND

Page 10, line 30, delete "(i)" and substitute "(g)"

AND

Immediately following SECTION 1, add a section to read as follows:

"SECTION 2. Arkansas Code § 26-51-419(b), concerning deductions for charitable contributions, is amended to read as follows:

(b) ~~The provisions of subsection~~ Subsection (a) of this section ~~shall apply~~ applies to a corporation that files an Arkansas ~~consolidated corporation combined~~ income tax return pursuant to ~~§ 26-51-805~~, provided that each member of the affiliated group shall follow the provisions of ~~§ 26-51-805(f)~~ and calculate its contribution limits separately under the Arkansas Small Business Tax Fairness Act, § 26-51-2401 et seq., in accordance with § 26-51-2405.

AND

Page 14, line 9, delete "SECTION 2" and substitute "SECTION 3"

AND

Delete SECTION 3 in its entirety and substitute the following:

"SECTION 4. Arkansas Code § 26-51-805 is repealed.

~~26-51-805. Consolidated corporate returns.~~

(a)(1) ~~All corporations which are eligible members of an affiliated group as that term is defined in 26 U.S.C. § 1504(a) and (b) as of January 1, 1989, which affiliated group files a federal consolidated corporate income tax return pursuant to 26 U.S.C. §§ 1501-1505 as of January 1, 1989, may elect to file a consolidated Arkansas corporate income tax return.~~

(2) ~~However, only corporations in the affiliated group that have gross income from sources within the State of Arkansas that is subject to taxation under the provisions of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., shall be eligible to file consolidated corporate income tax returns in Arkansas.~~

(b)(1) ~~All corporations in the affiliated group which are eligible to file an Arkansas consolidated income tax return must consent to, and join in, the filing of the consolidated return prior to the last day for filing the return, as may be extended.~~

(2) ~~The making of the consolidated income tax return shall be deemed as consent of each eligible corporation in the affiliated group.~~

(c) ~~When filing an Arkansas consolidated corporate income tax return, a complete copy of the federal consolidated corporate income tax return filed with the federal Internal Revenue Service for that taxable year must be attached to the Arkansas return.~~

(d)(1) ~~The election to file an Arkansas consolidated corporate income tax return for any income year shall require the filing of consolidated corporate income tax returns for all subsequent income years so long as the individual corporations remain members of the affiliated group unless the Director of the Department of Finance and Administration consents to the filing of separate returns by any members of the affiliated group.~~

(2) ~~However, in the event that the General Assembly amends or supplements the Arkansas Income Tax Act, § 26-51-101 et seq., in a manner which would substantially alter the method of allocating or apportioning net income or loss subject to the Arkansas Income Tax Act, § 26-51-101 et seq., or in computing the tax due from the affiliated group, then the affiliated~~

~~group may revoke the election to file an Arkansas consolidated corporate income tax return effective for the income year to which any such change to the Arkansas Income Tax Act, § 26-51-101 et seq., is effective.~~

~~(e) In any case of two (2) or more corporations, whether or not affiliated, owned, or controlled directly or indirectly by the same interests, the director may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such corporations if he determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income to any such corporation. This subsection is based upon the concept of 26 U.S.C. § 482 as of January 1, 1989, as that section applies to corporations.~~

~~(f) In computing Arkansas consolidated taxable income or loss to which the tax rate is applied, the separate net income or loss of each corporation which is entitled to be included in the affiliated group shall be included in the consolidated net income or loss to the extent that its net income or loss is separately apportioned or allocated to the State of Arkansas in accordance with the provisions of § 26-51-701 et seq.~~

~~(g) This section is specifically designed to clarify the filing of consolidated corporate income tax returns with the Revenue Division of the Department of Finance and Administration and is to amend the Arkansas Income Tax Act, § 26-51-101 et seq. This section is based upon the concept of filing federal consolidated income tax returns."~~

AND

Page 14, line 35, delete "SECTION 4" and substitute "SECTION 5"

AND

Appropriately number the sections of the bill

The Amendment was read

By: Representative Nickels
JLL/JLL - 03/05/11 11:01
JLL148

Chief Clerk