

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1430

4
5 By: Representative Neal

For An Act To Be Entitled

8 AN ACT TO EXTEND THE NET OPERATING LOSS CARRY-FORWARD
9 PERIOD FOR CALCULATING ARKANSAS INCOME TAX; TO MAKE
10 TECHNICAL CHANGES; AND FOR OTHER PURPOSES.

Subtitle

14 TO EXTEND THE NET OPERATING LOSS CARRY-
15 FORWARD PERIOD FOR CALCULATING ARKANSAS
16 INCOME TAX; AND TO MAKE TECHNICAL
17 CHANGES.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code § 26-51-427 is amended to read as follows:

23 26-51-427. Deductions – Net operating loss carryover.

24 In addition to other deductions allowed by this chapter, there ~~shall be~~
25 is allowed as a deduction from gross income a net operating loss carryover
26 under the following rules:

27 (1)(A) The net operating loss ~~as hereinbelow defined~~ for any
28 ~~year ending on or after the passage of the Income Tax Act of 1929 and for any~~
29 ~~succeeding~~ taxable year may be carried over to the next-succeeding taxable
30 year and annually thereafter for a total period of three (3) years next
31 succeeding the year of the net operating loss or until the net operating loss
32 has been exhausted or absorbed by the taxable income of any succeeding year,
33 whichever is earlier, if the net operating loss occurred in an income year
34 beginning before January 1, 1987. The net operating loss deduction must be
35 carried forward in the order ~~named above~~ stated in this subdivision (1)(A).

36 (B) The net operating loss ~~as hereinbelow defined~~ for any



1 year ending on or after the passage of the Income Tax Act of 1929, § 26-51-
 2 101 et seq., and for any succeeding taxable year before January 1, 2016, may
 3 be carried over to the next-succeeding taxable year and annually thereafter
 4 for a total period of five (5) years next succeeding the year of the net
 5 operating loss or until the net operating loss has been exhausted or absorbed
 6 by the taxable income of any succeeding year, whichever is earlier, if the
 7 net operating loss occurred in an income year beginning on or after January
 8 1, 1987, but before January 1, 2016. The net operating loss deduction must be
 9 carried forward in the order ~~named above~~ stated in this subdivision (1)(B).

10 (C)(i) ~~The net operating loss as hereinbelow defined which~~
 11 ~~resulted from farming operations, for income years beginning on or after~~
 12 ~~January 1, 1981, and expired in accordance with subdivision (1)(A) of this~~
 13 ~~section before being fully used, may be carried forward for an additional two~~
 14 ~~(2) years and any unused portions can be combined and either applied to tax~~
 15 ~~years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to~~
 16 ~~claim the additional two-year carry forward, taxpayers must attach copies of~~
 17 ~~both their federal tax returns and their state tax returns, showing the net~~
 18 ~~operating losses for income years beginning on or after January 1, 1981, to~~
 19 ~~their state tax returns. As used in this subdivision (1)(C), "farming~~
 20 ~~operations" means that at least sixty-six and two-thirds percent (66 2/3%) of~~
 21 ~~the total gross income, from all sources for the taxable year, must come from~~
 22 ~~farming as defined by 26 U.S.C. § 464(e)(1), in effect on January 1, 1989.~~
 23 For tax years beginning on and after January 1, 2016, the net operating loss
 24 for a taxable year may be carried over to the next succeeding taxable year
 25 and annually thereafter for the following period of years next succeeding the
 26 tax year of the net operating loss or until the net operating loss has been
 27 exhausted or absorbed by the taxable income of a succeeding year, whichever
 28 is earlier:

29 (a) For the tax year beginning January 1,
 30 2016, six (6) years;

31 (b) For the tax year beginning January 1,
 32 2017, seven (7) years;

33 (c) For the tax year beginning January 1,
 34 2018, eight (8) years;

35 (d) For the tax year beginning January 1,
 36 2019, nine (9) years; and

1 (e) For tax years beginning on and after
 2 January 1, 2020, ten (10) years.

3 (ii) The net operating loss deduction must be
 4 carried forward in the order stated in this subdivision (1)(C).

5 (D) As used in this section, “taxable income” or “net
 6 income” ~~shall be deemed to be~~ means the net income computed without benefit
 7 of the deduction for income taxes, personal exemptions, and credit for
 8 dependents. The net income of the taxable period to which the net operating
 9 loss deduction, as adjusted, is carried, ~~shall be~~ is the net income before
 10 the deduction of federal income taxes, personal exemption, and credit for
 11 dependents. ~~Such income~~ Income taxes, exemptions, and credits described in
 12 this subdivision (1)(D) shall not be used to increase the net operating loss
 13 ~~which that~~ may be carried to any other taxable period.

14 (E)(i) As used in this section, “qualified medical
 15 company” means a corporation engaged in:

16 (a) Research and development in the medical
 17 field; and

18 (b) Manufacture and distribution of medical
 19 products, including therapeutic and diagnostic products.

20 (ii) In the case of a qualified medical ~~companies,~~
 21 ~~as defined herein,~~ company, a net operating loss for ~~any a~~ a taxable year ~~shall~~
 22 ~~be~~ is a net operating loss carryover to each of the fifteen (15) taxable
 23 years following the taxable year of the loss.

24 (iii) If the qualified medical company is an “S”
 25 corporation, the pass-through provisions of § 26-51-409, as in effect for the
 26 taxable year of the net operating loss, ~~shall be~~ are applicable.

27 (iv) The net operating loss provisions ~~set forth~~
 28 ~~above~~ stated in this subdivision (1)(E), which resulted from the operation of
 29 a qualified medical company, ~~shall be~~ are effective for taxable years
 30 beginning on and after January 1, 1987;

31 (2) As used in this section, “net operating loss” ~~is defined as~~
 32 means the excess of allowable deductions over gross income for the taxable
 33 year, subject to the following adjustments:

34 (A) There shall be added to gross income all nontaxable
 35 income, not required by law to be reported as gross income, ~~as provided by~~
 36 ~~law~~, less any expenses properly and reasonably incurred in earning nontaxable

1 income, which expenses would otherwise be nondeductible;

2 (B) In the case of a taxpayer other than a corporation,
3 deductions, not including federal income taxes, not attributable to the
4 operation of the trade or business ~~shall be~~ are eliminated from the
5 deductions otherwise allowable for the taxable year to the extent that they
6 exceed gross income not derived from trade or business. Personal exemptions
7 and credit for dependents ~~shall not be~~ are not a deduction for the purpose of
8 computing a net operating loss;

9 (C) ~~No~~ A net operating loss deduction ~~shall be~~ is not
10 allowed; and

11 (D) In the case of a taxpayer other than a "C
12 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,
13 1985:

14 (i) For income years beginning after December 31,
15 1986, the amount deductible on account of losses from sales or exchanges of
16 capital assets shall not exceed the amount includable on account of gains
17 from sales or exchanges of capital assets; and

18 (ii) For income years beginning after December 31,
19 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202
20 [repealed], as in effect on January 1, 1985, shall not be allowed; and

21 (3) In the case of the acquisition of assets of one (1)
22 corporation by another corporation, the acquiring corporation shall succeed
23 to and take into account any net operating loss carryover apportionable to
24 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-
25 701 et seq., that the acquired corporation could have claimed had it not been
26 acquired, subject to the following conditions:

27 (A) The net operating loss may not be carried forward to a
28 taxable year ~~which~~ that ends more than three (3) years after the taxable year
29 in which the net operating loss occurred if the net operating loss occurred
30 in an income year beginning before January 1, 1987;

31 (B) The net operating loss may not be carried forward to a
32 taxable year ~~which~~ that ends more than five (5) years after the taxable year
33 in which the net operating loss occurred if the net operating loss occurred
34 in an income year beginning on or after January 1, 1987, but before January
35 1, 2016; and

36 (C) The net operating loss may not be carried forward to a

1 taxable year that ends more than the number of years stated in subdivision
 2 (1)(C) of this section after the taxable year in which the net operating loss
 3 occurred if the net operating loss occurred in an income year beginning on or
 4 after January 1, 2016; and

5 ~~(C)~~ (D) The net operating loss may be claimed only when
 6 the ownership of both the acquired and acquiring corporations is
 7 substantially the same, ~~that is, where~~ in that not less than eighty percent
 8 (80%) of the voting stock of each corporation is owned by the same person or,
 9 ~~where prior to~~ before the acquisition, the acquiring corporation owned at
 10 least eighty percent (80%) of the voting stock of the acquired corporation.
 11 The carryover losses will be allowed only in those cases ~~where~~ in which the
 12 assets of the corporation going out of existence earn sufficient profits
 13 apportionable to Arkansas under the Uniform Division of Income for Tax
 14 Purposes Act, § 26-51-701 et seq., in the ~~post-merger~~ postmerger period to
 15 absorb the carryover losses claimed by the surviving corporation.

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