

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

# A Bill

HOUSE BILL 1431

4  
5 By: Representative Neal

## For An Act To Be Entitled

8 AN ACT TO AMEND 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 AMEND THE NET OPERATING LOSS CARRY-  
15 FORWARD PERIOD FOR CALCULATING ARKANSAS  
16 INCOME TAX; AND TO MAKE TECHNICAL  
17 CHANGES.

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19  
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; and

31 (b) For tax years beginning on and after  
 32 January 1, 2017, seven (7) years.

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

35 (D) As used in this section, "taxable income" or "net  
 36 income" ~~shall be deemed to be~~ means the net income computed without benefit

1 of the deduction for income taxes, personal exemptions, and credit for  
 2 dependents. The net income of the taxable period to which the net operating  
 3 loss deduction, as adjusted, is carried, ~~shall be~~ is the net income before  
 4 the deduction of federal income taxes, personal exemption, and credit for  
 5 dependents. ~~Such income~~ Income taxes, exemptions, and credits described in  
 6 this subdivision (1)(D) shall not be used to increase the net operating loss  
 7 ~~which that~~ may be carried to any other taxable period.

8 (E)(i) As used in this section, "qualified medical  
 9 company" means a corporation engaged in:

10 (a) Research and development in the medical  
 11 field; and

12 (b) Manufacture and distribution of medical  
 13 products, including therapeutic and diagnostic products.

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

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

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

25 (2) As used in this section, "net operating loss" ~~is defined as~~  
 26 means the excess of allowable deductions over gross income for the taxable  
 27 year, subject to the following adjustments:

28 (A) There shall be added to gross income all nontaxable  
 29 income, not required by law to be reported as gross income, ~~as provided by~~  
 30 ~~law,~~ less any expenses properly and reasonably incurred in earning nontaxable  
 31 income, which expenses would otherwise be nondeductible;

32 (B) In the case of a taxpayer other than a corporation,  
 33 deductions, not including federal income taxes, not attributable to the  
 34 operation of the trade or business ~~shall be~~ are eliminated from the  
 35 deductions otherwise allowable for the taxable year to the extent that they  
 36 exceed gross income not derived from trade or business. Personal exemptions

1 and credit for dependents ~~shall not be~~ are not a deduction for the purpose of  
2 computing a net operating loss;

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

5 (D) In the case of a taxpayer other than a "C  
6 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,  
7 1985:

8 (i) For income years beginning after December 31,  
9 1986, the amount deductible on account of losses from sales or exchanges of  
10 capital assets shall not exceed the amount includable on account of gains  
11 from sales or exchanges of capital assets; and

12 (ii) For income years beginning after December 31,  
13 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202  
14 [repealed], as in effect on January 1, 1985, shall not be allowed; and

15 (3) In the case of the acquisition of assets of one (1)  
16 corporation by another corporation, the acquiring corporation shall succeed  
17 to and take into account any net operating loss carryover apportionable to  
18 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-  
19 701 et seq., that the acquired corporation could have claimed had it not been  
20 acquired, subject to the following conditions:

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

25 (B) The net operating loss may not be carried forward to a  
26 taxable year ~~which that~~ ends more than five (5) years after the taxable year  
27 in which the net operating loss occurred if the net operating loss occurred  
28 in an income year beginning on or after January 1, 1987, but before January  
29 1, 2016; and

30 (C) The net operating loss may not be carried forward to a  
31 taxable year that ends more than the number of years stated in subdivision  
32 (1)(C) of this section after the taxable year in which the net operating loss  
33 occurred if the net operating loss occurred in an income year beginning on or  
34 after January 1, 2016; and

35 ~~(C)~~ (D) The net operating loss may be claimed only when  
36 the ownership of both the acquired and acquiring corporations is

1 substantially the same, ~~that is, where~~ in that not less than eighty percent  
 2 (80%) of the voting stock of each corporation is owned by the same person or,  
 3 ~~where prior to~~ before the acquisition, the acquiring corporation owned at  
 4 least eighty percent (80%) of the voting stock of the acquired corporation.  
 5 The carryover losses will be allowed only in those cases ~~where~~ in which the  
 6 assets of the corporation going out of existence earn sufficient profits  
 7 apportionable to Arkansas under the Uniform Division of Income for Tax  
 8 Purposes Act, § 26-51-701 et seq., in the ~~post-merger~~ postmerger period to  
 9 absorb the carryover losses claimed by the surviving corporation.

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