

1 INTERIM STUDY PROPOSAL 2021-014

2 State of Arkansas

As Engrossed: H3/18/21

3 93rd General Assembly

A Bill

4 Regular Session, 2021

HOUSE BILL 1035

5
6 *By: Representatives Beaty Jr., Jett*

7 Filed with: House Committee on Revenue and Taxation
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9 AN ACT TO ADOPT RECENT CHANGES TO THE INTERNAL
10 REVENUE CODE; AND FOR OTHER PURPOSES.
11

Subtitle

12 TO ADOPT RECENT CHANGES TO THE INTERNAL
13 REVENUE CODE.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code § 6-84-102 is amended to read as follows:
22 6-84-102. Purpose.

23 It is the intent and purpose of this chapter to create and establish
24 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §
25 529, as in effect on January 1, ~~2018~~ 2020, to be administered by the Section
26 529 Plan Review Committee through the adoption of rules for the
27 administration of the program.
28

29 SECTION 2. Arkansas Code § 6-84-103(5) and (6), concerning the
30 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,
31 are amended to read as follows:

32 (5) "Committee" means the Section 529 Plan Review Committee,
33 provided for in § 6-84-105, which shall oversee the administration of the
34 Arkansas Tax-Deferred Tuition Savings Program and ensure that the program
35 complies with the provisions of this chapter and acts in accordance with 26
36 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

1 (6) "Contribution" means:

2 (A) Any payment directly allocated to an account for the
3 benefit of a designated beneficiary or used to pay administrative fees
4 associated with an account; and

5 (B) That portion of any rollover amount treated as a
6 contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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8 SECTION 3. Arkansas Code § 6-84-103(10), concerning the definitions
9 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
10 to read as follows:

11 (10) "Member of the family" shall have the same meaning as is
12 contained in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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14 SECTION 4. Arkansas Code § 6-84-103(12), concerning the definitions
15 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
16 to read as follows:

17 (12) "Person" means a person as defined in 26 U.S.C. § 529, as
18 in effect on January 1, ~~2018~~ 2020;

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20 SECTION 5. Arkansas Code § 6-84-103(14) and (15), concerning the
21 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,
22 are amended to read as follows:

23 (14) "Qualified higher education expenses" means tuition and
24 other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on
25 January 1, ~~2018~~ 2020, for the enrollment or attendance of a designated
26 beneficiary;

27 (15) "Qualified tuition program" means a qualified tuition
28 program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

29
30 SECTION 6. Arkansas Code § 6-84-103(17), concerning the definitions
31 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
32 to read as follows:

33 (17) "Rollover" means a disbursement or transfer from an account
34 that is transferred to or deposited within sixty (60) calendar days of the
35 transfer:

1 (A) Into an account of the same person for the benefit of
2 the same designated beneficiary;

3 (B) To the credit of another person as a designated
4 beneficiary if the transferee account was created under this chapter or under
5 another qualified tuition program maintained in accordance with 26 U.S.C. §
6 529, as in effect on January 1, ~~2018~~ 2020; or

7 (C)(i) Before January 1, 2026, into an ABLE account under
8 26 U.S.C. § 529A(e)(6), as in effect on January 1, ~~2018~~ 2020, of the
9 designated beneficiary or a member of the family of the designated
10 beneficiary.

11 (ii) Subdivision (17)(C)(i) of this section does not
12 apply to so much of a distribution which, when added to all other
13 contributions made to the ABLE account for the taxable year, exceeds the
14 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
15 ~~2018~~ 2020.

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17 SECTION 7. Arkansas Code § 6-84-105(b) and (c), concerning the
18 administration of the Arkansas Tax-Deferred Tuition Savings Program Act and
19 the authority and powers of the Section 529 Plan Review Committee, are
20 amended to read as follows:

21 (b) The committee shall adopt such rules as it deems necessary and
22 proper to administer this chapter and to ensure the compliance of the
23 Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as in
24 effect on January 1, ~~2018~~ 2020.

25 (c) The committee shall have the following powers, duties, and
26 functions:

27 (1) To establish, develop, implement, and maintain the program
28 in a manner consistent with the provisions of this chapter and 26 U.S.C. §
29 529, as in effect on January 1, ~~2018~~ 2020, and to obtain the benefits
30 provided by 26 U.S.C. § 529 for the program, account owners, and designated
31 beneficiaries;

32 (2) To adopt rules for the general administration of the
33 program;

34 (3) To maintain, invest, and reinvest the funds contributed into
35 the program consistent with the investment restrictions established by the

1 committee and the standard of care described in the prudent investor rule
2 under § 24-2-610; and

3 (4)(A) To make and enter into any and all contracts, agreements,
4 or arrangements and to retain, employ, and contract for the services of
5 financial institutions, depositories, consultants, broker dealers, investment
6 advisors or managers, third-party plan administrators, and research,
7 technical, and other services necessary or desirable for carrying out the
8 purposes of this chapter.

9 (B) Contracts entered into by the committee may be for a
10 term of from one (1) to ten (10) years.

11
12 SECTION 8. Arkansas Code § 6-84-106 is amended to read as follows:
13 6-84-106. Investment direction.

14 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~
15 2020, no person shall have the right to direct the investment of any
16 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings
17 Program.

18
19 SECTION 9. Arkansas Code § 6-84-108(b), concerning the naming of a
20 designated beneficiary and transfers of accounts under the Arkansas Tax-
21 Deferred Tuition Savings Program Act, is amended to read as follows:

22 (b) At the direction of an account owner, all or a portion of an
23 account may be transferred to another account of which the designated
24 beneficiary is a member of the family of the designated beneficiary of the
25 transferee account if the transferee account was created by this chapter or
26 under another qualified tuition program maintained in accordance with 26
27 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

28
29 SECTION 10. Arkansas Code § 6-84-109(b)(2), concerning the reporting
30 of account withdrawals under the Arkansas Tax-Deferred Tuition Savings
31 Program Act, is amended to read as follows:

32 (2) The report shall be made at the time required by the rules
33 of the Internal Revenue Service as in effect on January 1, ~~2018~~ 2020, and
34 contain such information as is required by law.

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1 SECTION 11. Arkansas Code § 6-84-111(a)(1), concerning funds exempt
2 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
3 amended to read as follows:

4 (a)(1) Except as otherwise indicated in this chapter, interest,
5 dividends, and capital gains from funds invested in the Arkansas Tax-Deferred
6 Tuition Savings Program or a tax-deferred tuition savings program established
7 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020,
8 shall be exempt from Arkansas income taxes.

9
10 SECTION 12. Arkansas Code § 6-84-111(b)(3), concerning funds exempt
11 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
12 amended to read as follows:

13 (3) Contributions to this program that have been deducted from
14 the taxpayer employee's adjusted gross income for prior tax years shall be
15 subject to recapture from the taxpayer employee if the taxpayer employee:

16 (A) Makes a subsequent nonqualified withdrawal from the
17 account; or

18 (B) Rolls the account over to a tax-deferred tuition
19 savings program established by another state or institution under 26 U.S.C. §
20 529, as in effect on January 1, ~~2018~~ 2020.

21
22 SECTION 13. Arkansas Code § 6-84-111(e) and (f), concerning funds
23 exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act,
24 are amended to read as follows:

25 (e)(1)(A) Contributions to a tuition savings account established under
26 the program or a tax-deferred tuition savings program established by another
27 state under 26 U.S.C. § 529, as in effect on January 1, 2020, may be deducted
28 from the taxpayer's adjusted gross income for the purpose of calculating
29 Arkansas income tax under § 26-51-403(b).

30 (B) A taxpayer may not deduct from the taxpayer's adjusted
31 gross income a contribution to a tax-deferred tuition savings program
32 established by another state if the taxpayer deducted the contribution in
33 another state or on another state's income taxes.

34 (2)(A) The deductible contributions for a tuition savings
35 account established under this chapter shall not exceed five thousand dollars
36 (\$5,000) per taxpayer in any tax year.

1 (B) If the aggregate amount of contributions by a taxpayer
2 during a tax year exceeds the limitation under subdivision (e)(2)(A) of this
3 section, the unused aggregate amount may be carried forward to the next
4 succeeding four (4) tax years.

5 (C) The deductible contributions for a tax-deferred
6 tuition savings program established by another state under 26 U.S.C. § 529,
7 as in effect on January 1, 2020, shall not exceed three thousand dollars
8 (\$3,000) per taxpayer in any tax year.

9 (D) The deductible contributions for a tax-deferred
10 tuition savings program established by another state under 26 U.S.C. § 529,
11 as in effect on January 1, 2020, that are rolled over into a tuition savings
12 account established under this chapter shall not exceed seven thousand five
13 hundred dollars (\$7,500) per taxpayer in the tax year in which they were
14 rolled.

15 (f)(1) Qualified withdrawals from a tuition savings account
16 established under this program or a tax-deferred tuition savings program
17 established by another state under 26 U.S.C. § 529, as in effect on January
18 1, ~~2018~~ 2020, will be exempt from Arkansas income tax with respect to the
19 designated beneficiary's income.

20 (2)(A) Nonqualified withdrawals from a tuition savings account
21 established under this program or a tax-deferred tuition savings program
22 established by another state under 26 U.S.C. § 529, as in effect on January
23 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

24 (B) The nonqualified withdrawal will be taxable to the
25 party, account owner, or designated beneficiary who actually makes the
26 withdrawal.

27 ~~(f)~~(g) Any earnings on the contribution that are included in the
28 refund will be subject to Arkansas income tax if an account owner receives a
29 refund of contributions to a tuition savings account established under this
30 program or a tax-deferred tuition savings program established by another
31 state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, because of
32 either:

33 (1) The death or disability of the designated beneficiary; or
34 (2) A scholarship, allowance, or payment described in 26 U.S.C.
35 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the
36 designated beneficiary.

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SECTION 14. Arkansas Code § 6-84-113 is amended to read as follows:
6-84-113. Liberal construction.

This chapter shall be liberally construed to comply with the requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

SECTION 15. Arkansas Code § 26-51-404(b)(10), concerning items excluded from the meaning of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(10) Title 26 U.S.C. §§ 108 and 1017, as in effect on January 1, ~~2019~~ 2020, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

SECTION 16. Arkansas Code § 26-51-404(b)(20), concerning items excluded from the meaning of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(20) Title 26 U.S.C. § 127, as in effect on ~~January 1, 2017~~ April 1, 2020, regarding the exclusion from gross income for employees whose education expenses were paid by an employer, is adopted for the purpose of computing Arkansas income tax liability;

SECTION 17. Arkansas Code § 26-51-414(a)(1), concerning the treatment of deferred compensation plans under the Income Tax Act of 1929, is amended to read as follows:

(a)(1) The following sections relating to annuities, retirement savings, and employee benefit plans are adopted for the purpose of computing Arkansas income tax liability, except Arkansas capital gains treatment and the Arkansas tax rates shall apply:

(A) Title 26 U.S.C. §§ 72, 219, 402 - 404, 406 - 416, and 457, as in effect on January 1, 2017; and

(B) Title 26 U.S.C. § 401, as in effect on ~~March 30, 2010~~ April 1, 2020.

SECTION 18. Arkansas Code § 26-51-423(d), concerning deductions for certain expenses under the Income Tax Act of 1929, is amended to read as follows:

1 (d) Title 26 U.S.C. § 221, as in effect on ~~January 2, 2013~~ April 1,
2 2020, regarding the deduction of interest paid on qualified education loans,
3 is adopted for the purpose of computing Arkansas income tax liability.
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5 SECTION 19. Arkansas Code § 26-51-428(a), concerning deductions for
6 the depreciation of assets under the Income Tax Act of 1929, is amended to
7 read as follows:

8 (a) Title 26 U.S.C. §§ 167 and 168(a)-(j), as in effect on ~~January 1,~~
9 ~~2019~~ April 1, 2020, and 26 U.S.C. § 179, as in effect on January 1, 2009,
10 regarding depreciation and expensing of property, are adopted for the purpose
11 of computing Arkansas income tax liability for property purchased in tax
12 years beginning on or after January 1, 2014.
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14 SECTION 20. Arkansas Code § 26-51-453(a), concerning the deduction for
15 amounts deposited into health savings accounts under the Income Tax Act of
16 1929, is amended to read as follows:

17 (a) Title 26 U.S.C. § 223(a)-(d), (e)(2), (f), and (g), as in effect
18 on ~~January 1, 2011~~ April 1, 2020, regarding a deduction from income for
19 amounts deposited to health savings accounts, is adopted for purposes of
20 computing Arkansas income tax liability.
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22 SECTION 21. EFFECTIVE DATE. Sections 1-20 of this act are effective
23 for tax years beginning on or after January 1, 2021.
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26 /s/Jett
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29 Referred requested by the Arkansas House of Representatives

30 Prepared by: MBM/KFW
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