

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 372 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H2/20/09

A Bill

HOUSE BILL 1480

5 By: Representative Maloch
6
7

8 **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
14

15 **Subtitle**

16 TO MAKE TECHNICAL CORRECTIONS TO THE
17 ARKANSAS INCOME TAX LAWS BY ADOPTING
18 CURRENT INTERNAL REVENUE CODE
19 PROVISIONS.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 26-51-303(a), concerning organizations
25 exempt from income tax, is amended to add the following new subdivision:

26 (10) A political organization that does not have political
27 organization taxable income for the tax year under 26 U.S.C. § 527, as in
28 effect on January 1, 2009.
29

30 SECTION 2. Arkansas Code § 26-51-307(c)(1), concerning retirement
31 benefits, is amended to read as follows:

32 (c)(1) Section 72 of the Internal Revenue Code of 1986, as in effect
33 on January 1, ~~2007~~ 2009, ~~shall provide~~ is the sole method by which a
34 recipient of benefits from an individual retirement account or from public or
35 private employment-related retirement systems, plans, or programs may deduct



1 or recover his or her cost of contribution to the plan when computing his or
2 her income for state income tax purposes.

3
4 SECTION 3. Arkansas Code § 26-51-308 is amended to read as follows:

5 26-51-308. Trusts for qualified deferred compensation plans exempt.

6 An organization or trust described in section 401(a) of the Internal
7 Revenue Code, as in effect on January 1, ~~2007~~ 2009, ~~shall be~~ is exempt from
8 income taxation under the ~~provisions of the~~ Income Tax Act of 1929, § 26-51-
9 101 et seq.

10
11 SECTION 4. Arkansas Code § 26-51-404(b)(1), concerning exclusions from
12 gross income, is amended to read as follows:

13 (1) Section 1033 of the Internal Revenue Code of 1986, as in
14 effect on January 1, ~~2007~~ 2009, relating to the exclusion from gross income
15 of gain resulting from the involuntary conversion of a taxpayer's property,
16 is adopted for the purpose of computing Arkansas income tax liability;

17
18 SECTION 5. Arkansas Code § 26-51-404(b)(2), concerning exclusions from
19 gross income, is amended to read as follows:

20 (2) Section 121 of the Internal Revenue Code of 1986, as in
21 effect on January 1, ~~2007~~ 2009, relating to the exclusion from gross income
22 of gain from the sale or exchange of property owned and used as the
23 taxpayer's principal residence, is adopted for the purpose of computing
24 Arkansas income tax liability.

25
26 SECTION 6. Arkansas Code § 26-51-404(b)(10), concerning income from the
27 discharge of indebtedness, is amended to read as follows:

28 (10) Sections 108 and 1017 of the Internal Revenue Code of 1986,
29 as in effect on January 1, ~~1999~~ 2009, regarding income from the discharge of
30 indebtedness, are adopted for the purpose of computing Arkansas income tax
31 liability;

32
33 SECTION 7. Arkansas Code § 26-51-404(b)(11), concerning amounts
34 excludable from gross income, is amended to read as follows:

35 (11) Section 125 of the Internal Revenue Code of 1986, in effect
36 on January 1, ~~1997~~ 2009, is adopted in computing amounts excludible from

1 gross income under the Income Tax Act of 1929, § 26-51-101 et seq., for
2 payments received under a cafeteria plan;

3
4 SECTION 8. Arkansas Code § 26-51-404(b)(19), concerning the exclusion
5 from income of certain fringe benefits, is amended to read as follows:

6 (19) Section 132 of the Internal Revenue Code of 1986, as in
7 effect on January 1, ~~2003~~ 2009, regarding the exclusion from income of
8 certain fringe benefits, is adopted for the purpose of computing Arkansas
9 income tax liability;

10
11 SECTION 9. Arkansas Code § 26-51-404(b)(27), concerning the exclusion
12 from income of certain benefits provided to members of the United States
13 military, is amended to read as follows:

14 (27) Section 134 of the Internal Revenue Code of 1986, as in
15 effect on January 1, ~~2005~~ 2009, regarding the exclusion from income of ~~child~~
16 ~~care benefits~~ qualified military benefits provided to members of the United
17 States military, is adopted for the purpose of computing Arkansas income tax
18 liability; and

19
20 SECTION 10. Arkansas Code § 26-51-409(a), concerning small business
21 corporations, is amended to read as follows:

22 (a) Subchapter S of the Internal Revenue Code of 1986, as in effect on
23 January 1, ~~2007~~ 2009, regarding small business corporations, is adopted for
24 the purpose of computing Arkansas income tax liability.

25
26 SECTION 11. Arkansas Code § 26-51-412(d), concerning recognition of
27 gain from a corporate organization or reorganization, is amended to read as
28 follows:

29 (d) Sections 351, 354 – 358, 361, 362, 367, and 368 of the Internal
30 Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009, regarding
31 corporate organization, reorganization, and recognition of gain, are adopted
32 for the purpose of computing Arkansas income tax liability.

33
34 SECTION 12. Arkansas Code § 26-51-414(a)(1), concerning annuities,
35 retirement savings, and income, is amended to read as follows:

36 (a)(1) Sections 72, 219, 401-404, 406-416, and 457 of the Internal

1 Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009, relating to
2 annuities, retirement savings, and employee benefit plans, respectively, are
3 adopted for the purpose of computing Arkansas income tax liability, except
4 Arkansas capital gains treatment and the Arkansas tax rates shall apply.
5

6 SECTION 13. Arkansas Code § 26-51-415 is amended to read as follows:
7 26-51-415. Deductions – Interest.

8 Section 163 of the Internal Revenue Code of 1986, as in effect on
9 January 1, ~~2007~~ 2009, regarding deductions for interest expenses, is adopted
10 for the purpose of computing Arkansas income tax liability.
11

12 SECTION 14. Arkansas Code § 26-51-419(a)(1), concerning deductions for
13 charitable contributions, is amended to read as follows:

14 (a)(1)(A) Section 170 of the Internal Revenue Code of 1986, as in
15 effect on January 1, ~~2007~~ 2009, regarding deductions for charitable
16 contributions, is adopted for the purpose of computing Arkansas income tax
17 liability.

18 (B) This adoption is for taxable years beginning on or
19 after January 1, ~~2007~~ 2009, and will have no effect on years ~~prior to~~ before
20 its adoption.
21

22 SECTION 15. Arkansas Code § 26-51-423(a)(1) concerning business
23 expenses, is amended to read as follows:

24 (1) Business expenses. All of § 162, except subsection (n), of
25 the Internal Revenue Code of 1986, as in effect on January 1, ~~2005~~ 2009,
26 regarding trade or business expenses, is adopted for the purpose of computing
27 Arkansas income tax liability;
28

29 SECTION 16. Arkansas Code § 26-51-423(e), concerning deduction of
30 costs paid or incurred for the cleanup of certain hazardous substances, is
31 amended to read as follows:

32 (e) Section 198 of the Internal Revenue Code of 1986, as in effect on
33 January 1, ~~2005~~ 2009, regarding the deduction of costs paid or incurred for
34 the cleanup of certain hazardous substances, is adopted for the purpose of
35 computing Arkansas income tax liability.
36

1 SECTION 17. Arkansas Code § 26-51-424 is amended to read as follows:
2 26-51-424. Deductions – Losses.

3 (a)(1) In computing net income there shall be allowed as a deduction
4 any loss sustained during the income year and not compensated for by
5 insurance or otherwise.

6 (2) In the case of an individual, the deduction under
7 subdivision (a)(1) of this section shall be limited to:

8 (A) Losses incurred in a trade or business; or

9 (B) Losses incurred in any transaction entered into for
10 profit, though not connected with the trade or business; ~~or~~ .

11 ~~(C) Losses of property not connected with a trade or~~
12 ~~business if these losses arise from fires, storms, shipwrecks, other~~
13 ~~casualty, or theft, only to the extent that the amount of the loss from each~~
14 ~~casualty or theft shall exceed one hundred dollars (\$100) and if the~~
15 ~~aggregate amount of all such losses sustained by an individual during any one~~
16 ~~(1) income year exceeds ten percent (10%) of the net income of the individual~~
17 ~~for that income year.~~

18 ~~(b)(1) Notwithstanding the provisions of subdivision (a)(1) of this~~
19 ~~section, any loss attributable to a disaster occurring in an area~~
20 ~~subsequently determined by the President of the United States to warrant~~
21 ~~assistance by the United States Government under the Disaster Relief Act of~~
22 ~~1974 may, at the election of the taxpayer, be deducted for the taxable year~~
23 ~~immediately preceding the taxable year in which the disaster occurred.~~

24 ~~(2) The deduction shall not be in excess of so much of the loss~~
25 ~~as would have been deductible in the taxable year in which the casualty~~
26 ~~occurred, based on facts existing at the date the taxpayer claims the loss.~~

27 ~~(3) If an election is made under this subsection, the casualty~~
28 ~~resulting in the loss will be deemed to have occurred in the taxable year for~~
29 ~~which the deduction is claimed.~~

30 (b) Sections 165(h) and 165(i) of the Internal Revenue Code of 1986, as
31 in effect on January 1, 2009, regarding losses arising from a casualty or a
32 disaster, are adopted for the purpose of computing Arkansas income tax
33 liability.

34 (c) Section 183 of the Internal Revenue Code of 1986, as in effect on
35 January 1, 1999, regarding hobby losses, is adopted for the purpose of
36 computing Arkansas income tax liability.

1
2 SECTION 18. Arkansas Code § 26-51-428(a), concerning the deduction for
3 depreciation and expensing of property, is amended to read as follows:

4 (a) Sections 167, 168, (a) through (j), and 179A of the Internal
5 Revenue Code of 1986, as in effect on January 1, ~~1999~~ 2009, and section 179
6 of the Internal Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009,
7 regarding depreciation and expensing of property, are adopted for the purpose
8 of computing Arkansas income tax liability for property purchased in tax
9 years beginning on or after January 1, 2009.

10
11 SECTION 19. Arkansas Code § 26-51-429(b), concerning the deduction for
12 depletion for oil and gas wells, is amended to read as follows:

13 (b) In computing the depletion allowance deduction allowed by this
14 section for oil and gas wells, the provisions of § 613 of the Internal
15 Revenue Code of 1986 shall not be in effect, but instead the computation of
16 the amount of the depletion deduction shall be controlled by the provisions
17 of § 613A of the Internal Revenue Code of 1986, as in effect on January 1,
18 ~~2007~~ 2009, which are adopted as part of the state income tax law.

19
20 SECTION 20. Arkansas Code § 26-51-436(4), concerning limits on
21 itemized deductions, is amended to read as follows:

22 (4) Section 68 of the Internal Revenue Code of 1986, as in
23 effect on January 1, ~~1995~~ 2009, is adopted to limit itemized deductions;
24

25 SECTION 21. Arkansas Code § 26-51-436(7), concerning the deduction of
26 certain leasing transactions, is amended to read as follows:

27 (7) Section 470 of the Internal Revenue Code of 1986, as in
28 effect on January 1, ~~2007~~ 2009, regarding leasing transactions between
29 taxpayers, is adopted for the purpose of computing Arkansas income tax
30 liability.

31
32 SECTION 22. Arkansas Code § 26-51-440 is amended to read as follows:
33 26-51-440. Federal Subchapter M adopted.

34 (a)(1) Subchapter M of the Internal Revenue Code of 1986, as in effect
35 on January 1, ~~2007~~ 2009, relating to regulated investment companies, real
36 estate investment trusts, and financial asset securitization investment

1 trusts, is adopted for the purpose of computing Arkansas income tax liability
2 and shall govern all corporations which are registered as investment
3 companies under the Investment Company Act of 1940, as in effect on January
4 1, ~~2007~~ 2009.

5 (2)(A) However, those provisions of Subchapter M addressing the
6 tax rates applied to financial asset securitization investment trust income
7 are not adopted.

8 (B) Any financial asset securitization investment trust
9 income subject to Arkansas income tax shall be taxed at the rates set forth
10 in § 26-51-205.

11 (b) As used in this section:

12 (1)(A) “Captive real estate investment trust” means a real
13 estate investment trust the shares or beneficial interests of which are not
14 regularly traded on an established securities market and more than fifty
15 percent (50%) of the voting power or value of the beneficial interests or
16 shares of which are owned or controlled, directly or indirectly, or
17 constructively, by a single entity that is:

18 (i) Treated as an association taxable as a
19 corporation under the Internal Revenue Code of 1986, as in effect on January
20 1, 2009; and

21 (ii) Not exempt from federal income tax under 26
22 U.S.C. § 501(a), as in effect on January 1, 2009.

23 (B) “Captive real estate investment trust” does not
24 include a real estate investment trust that is intended to be regularly
25 traded on an established securities market, and that satisfies the
26 requirements of 26 U.S.C. § 856(a)(5) and (6), as in effect on January 1,
27 2009, by reason of 26 U.S.C. § 856(h)(2), as in effect on January 1, 2009;
28 and

29 (2) “Real estate investment trust” means the same as defined in
30 26 U.S.C. § 856, as in effect on January 1, 2009.

31 (c) For purposes of applying subsection (b)(1)(A)(i) of this section,
32 the following entities are not considered an association taxable as a
33 corporation under the Internal Revenue Code of 1986, a:

34 (1) A real estate investment trust other than a captive real
35 estate investment trust;

36 (2) A qualified real estate investment trust subsidiary under 26

1 U.S.C. § 856(i), as in effect on January 1, 2009, other than a qualified real
2 estate investment trust subsidiary of a captive real estate investment trust;

3 (3) A listed Australian Property Trust, meaning an Australian
4 unit trust registered as a Managed Investment Scheme under the Australian
5 Corporations Act in which the principal class of units is listed on a
6 recognized stock exchange in Australia and is regularly traded on an
7 established securities market, or an entity organized as a trust, provided
8 that a Listed Australian Property Trust owns or controls, directly or
9 indirectly, seventy-five percent (75%) or more of the voting power or value
10 of the beneficial interests or shares of such trust; or

11 (4) A qualified Foreign Entity, meaning a corporation, trust,
12 association or partnership organized outside the laws of the United States
13 and which satisfies the following criteria:

14 (A) At least seventy-five percent (75%) of the entity's
15 total asset value at the close of its taxable year is represented by real
16 estate assets, as defined in 26 U.S.C. § 856(c)(5)(B), as in effect on
17 January 1, 2009, including shares or certificates of beneficial interest in
18 any real estate investment trust, cash and cash equivalents, and United
19 States Government securities;

20 (B) The entity is not subject to tax on amounts
21 distributed to its beneficial owners or is exempt from entity-level taxation;

22 (C) The entity distributes at least eighty-five percent
23 (85%) of its taxable income, as computed in the jurisdiction in which it is
24 organized, to the holders of its shares or certificates of beneficial
25 interest on an annual basis;

26 (D) More than ten percent (10%) of the voting power or
27 value in the entity is not held directly, indirectly, or constructively by a
28 single entity or individual, or the shares or beneficial interests of the
29 entity are regularly traded on an established securities market; and

30 (E) The entity is organized in a country that has a tax
31 treaty with the United States.

32 (d) The dividends-paid deduction otherwise allowed by federal law in
33 computing net income of a real estate investment trust that is subject to
34 federal income tax shall be added back in computing the tax imposed by § 26-
35 51-101 et seq. if the real estate investment trust is a captive real estate
36 investment trust.

1 (e)(1) A real estate investment trust that does not become regularly
2 traded on an established securities market within one (1) year of the date on
3 which it first became a real estate investment trust shall not be considered
4 to have been regularly traded on an established securities market,
5 retroactive to the date it first became a real estate investment trust, and
6 the owner of the real estate investment trust shall file an amended return
7 reflecting the retroactive designation for any tax year or part year
8 occurring during its initial year of status as a real estate investment
9 trust.

10 (2) Under this section, a real estate investment trust becomes a
11 real estate investment trust on the first day that it has:

12 (A) Met the requirements of 26 U.S.C § 856 as in effect on
13 January 1, 2009; and

14 (B) Elected to be treated as a real estate investment
15 trust under 26 U.S.C. § 856(c)(1), as in effect on January 1, 2009, by the
16 owner of the real estate investment trust.

17 (f) Under this section, the constructive ownership rules of 26 U.S.C.
18 § 318(a), as in effect on January 1, 2009, as modified by 26 U.S.C. §
19 856(d)(5), as in effect on January 1, 2009, shall apply in determining the
20 ownership of stock, assets, or net profits of a person.

21 (g) ~~Any~~ An election made for federal income tax purposes under
22 Subchapter M of the Internal Revenue Code of 1986, as in effect on January 1,
23 ~~2007~~ 2009, shall be deemed made for state income tax purposes.

24 ~~(e)-(h)~~ This section shall take effect and be enforced for tax years
25 beginning on or after January 1, ~~2007~~ 2009.

26
27 SECTION 23. Arkansas Code § 26-51-448(a) relating to educational
28 individual retirement accounts, is amended to read as follows:

29 (a) Section 530 of the Internal Revenue Code of 1986, as in effect on
30 January 1, ~~2005~~ 2009, relating to educational individual retirement accounts,
31 is adopted for the purposes of computing Arkansas income tax liability.

32
33 SECTION 24. Arkansas Code § 26-51-919(b)(3), concerning the filing
34 date for pass-through entities to report distributions, is amended to read as
35 follows:

36 (3) A pass-through entity shall annually furnish a nonresident

1 member of the pass-through entity with a record of the amount of tax withheld
2 on behalf of the nonresident member no later than the fifteenth day of the
3 ~~third~~ fourth month following the end of the pass-through entity's tax year.

4
5 SECTION 25. EFFECTIVE DATE. This act is effective for tax years
6 beginning on and after January 1, 2009.

7
8 */s/ Maloch*

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10 **APPROVED: 3/10/2009**

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