

1 State of Arkansas As Engrossed: H3/10/17 H3/17/17

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 1762

4

5 By: Representative Brown

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## For An Act To Be Entitled

8

AN ACT TO ALLOW AN EMPLOYER TO MAKE A MATCHING

9

CONTRIBUTION TO AN EMPLOYEE'S TAX-DEFERRED TUITION

10

SAVINGS PROGRAM AS AN EMPLOYEE BENEFIT; AND FOR OTHER

11

PURPOSES.

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## Subtitle

15

TO ALLOW AN EMPLOYER TO MAKE A MATCHING

16

CONTRIBUTION TO AN EMPLOYEE'S TAX-

17

DEFERRED TUITION SAVINGS PROGRAM AS AN

18

EMPLOYEE BENEFIT.

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

22

23 *SECTION 1. Arkansas Code § 6-84-102 is amended to read as follows:*

24 *6-84-102. Purpose.*

25 *It is the intent and purpose of this chapter to create and establish*

26 *the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §*

27 *529, as in effect on January 1, ~~2015~~ 2017, to be administered by the Section*

28 *529 Plan Review Committee through the adoption of rules and regulations for*

29 *the administration of the program.*

30

31 *SECTION 2. Arkansas Code § 6-84-103(5) and (6), concerning the*

32 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*

33 *Program, are amended to read as follows:*

34 *(5) "Committee" means the Section 529 Plan Review Committee,*

35 *provided for in § 6-84-105, that shall oversee the administration of the*

36 *Arkansas Tax-Deferred Tuition Savings Program and ensure that the program*



1 *complies with the provisions of this chapter and acts in accordance with 26*  
2 *U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;*

3 (6) *“Contribution” means:*

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

7 (B) *That portion of any rollover amount treated as a*  
8 *contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;*

9  
10 *SECTION 3. Arkansas Code § 6-84-103(9)-(12), concerning the*  
11 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*  
12 *Program, are amended to read as follows:*

13 (9) *“Higher education institution” means an eligible education*  
14 *institution as defined in 26 U.S.C. § 135(c)(3), as in effect on January 1,*  
15 *~~2015~~ 2017;*

16 (10) *“Member of the family” shall have the same meaning as is*  
17 *contained in 26 U.S.C. § 529(e), as in effect on January 1, ~~2015~~ 2017;*

18 (11) *“Nonqualified withdrawal” means a withdrawal from an*  
19 *account that is not:*

20 (A) *A qualified withdrawal;*

21 (B) *A withdrawal made as the result of the death or*  
22 *disability of the designated beneficiary;*

23 (C) *A withdrawal made as the result of a scholarship,*  
24 *allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (C), as in*  
25 *effect on January 1, ~~2015~~ 2017, received by the designated beneficiary but*  
26 *only to the extent of the amount of the scholarship, allowance, or payment;*  
27 *or*

28 (D) *A rollover or change in the designated beneficiary;*

29 (12) *“Person” means a person as defined in 26 U.S.C. § 529, as*  
30 *in effect on January 1, ~~2015~~ 2017;*

31  
32 *SECTION 4. Arkansas Code § 6-84-103(14) and (15), concerning the*  
33 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*  
34 *Program, is amended to read as follows:*

35 (14) *“Qualified higher education expenses” means tuition and*  
36 *other permitted expenses as set forth in 26 U.S.C. § 529(e), as in effect on*

1 January 1, ~~2015~~ 2017, for the enrollment or attendance of a designated  
2 beneficiary at a higher education institution;

3 (15) "Qualified tuition program" means a qualified tuition  
4 program as defined in 26 U.S.C. § 529(b), as in effect January 1, ~~2015~~ 2017;

5  
6 SECTION 5. Arkansas Code § 6-84-103(17), concerning the definitions  
7 used in relation to the Arkansas Tax-Deferred Tuition Savings Program, is  
8 amended to read as follows:

9 (17) "Rollover" means a disbursement or transfer from an account  
10 that is transferred to or deposited within sixty (60) calendar days of the  
11 transfer into an account of the same person for the benefit of the same  
12 designated beneficiary or another person as a designated beneficiary if the  
13 transferee account was created under this chapter or under another qualified  
14 tuition program maintained in accordance with 26 U.S.C. § 529(c), as in  
15 effect on January 1, ~~2015~~ 2017.

16  
17 SECTION 6. Arkansas Code § 6-84-105(b), concerning the administration,  
18 authority, and powers of the Section 529 Plan Review Committee, is amended to  
19 read as follows:

20 (b) The committee shall adopt such rules and regulations as it deems  
21 necessary and proper to administer this chapter and to ensure the compliance  
22 of the Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as  
23 in effect on January 1, ~~2015~~ 2017.

24  
25 SECTION 7. Arkansas Code § 6-84-105(c)(1), concerning the powers and  
26 duties of the Section 529 Plan Review Committee, is amended to read as  
27 follows:

28 (1) To establish, develop, implement, and maintain the program  
29 in a manner consistent with the provisions of this chapter and 26 U.S.C. §  
30 529, as in effect on January 1, ~~2015~~ 2017, and to obtain the benefits  
31 provided by 26 U.S.C. § 529 for the program, account owners, and designated  
32 beneficiaries;

33  
34 SECTION 8. Arkansas Code § 6-84-106 is amended to read as follows:

35 6-84-106. Investment direction.

36 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2015~~

1 2017, no person shall have the right to direct the investment of any  
2 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings  
3 Program.

4  
5 SECTION 9. Arkansas Code § 6-84-107(a), concerning accounts  
6 established under the Arkansas Tax-Deferred Tuition Savings Program, is  
7 amended to add an additional subdivision to read as follows:

8 (4)(A) An Arkansas employer of an employee with an account  
9 established under this chapter may make a matching contribution to the  
10 account of the employee offered as an employee fringe benefit.

11 (B) The maximum contribution amount allowed under  
12 subdivision (a)(4)(A) of this section is five hundred dollars (\$500) per  
13 contributing employee per year.

14  
15 SECTION 10. Arkansas Code § 6-84-108(b), concerning the naming of a  
16 designated beneficiary and transfers of accounts under the Arkansas Tax-  
17 Deferred Tuition Savings Program, is amended to read as follows:

18 (b) At the direction of an account owner, all or a portion of an  
19 account may be transferred to another account of which the designated  
20 beneficiary is a member of the family of the designated beneficiary of the  
21 transferee account if the transferee account was created by this chapter or  
22 under another qualified tuition program maintained in accordance with 26  
23 U.S.C. § 529, as in effect January 1, ~~2015~~ 2017.

24  
25 SECTION 11. Arkansas Code § 6-84-109(b), concerning account  
26 withdrawals under the Arkansas Tax-Deferred Tuition Savings Program, is  
27 amended to read as follows:

28 (b)(1) An account withdrawal paid to or for the benefit of any person  
29 during any calendar year shall be reported to the person and to the Internal  
30 Revenue Service.

31 (2) The report shall be made at the time required by the rules  
32 of the Internal Revenue Service as in effect on January 1, ~~2015~~ 2017, and  
33 contain such information as is required by law.

34  
35 SECTION 12. Arkansas Code § 6-84-110(a), concerning prohibitions under  
36 the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as

1 follows:

2 (a)(1) Total contributions to all accounts established on behalf of a  
3 particular designated beneficiary in excess of those reasonably necessary to  
4 meet the designated beneficiary's qualified higher education expenses are  
5 prohibited.

6 (2) An employer matching contribution to the account of an  
7 employee with an account established under this chapter shall not exceed five  
8 hundred dollars (\$500) per contributing employee per year.

9

10 SECTION 13. Arkansas Code § 6-84-111 is amended to read as follows:

11 6-84-111. Funds exempt from tax.

12 (a)(1) Except as otherwise indicated in this chapter, interest,  
13 dividends, and capital gains from funds invested in the Arkansas Tax-Deferred  
14 Tuition Savings Program or a tax-deferred tuition savings program established  
15 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017,  
16 shall be exempt from Arkansas income taxes.

17 (2) For purposes of this section:

18 (A) "Taxpayer employee" means an employee of an employer  
19 with an account established under this chapter; and

20 (B) "Taxpayer employer" means a person that employs an  
21 individual with an account established under this chapter.

22 (b)(1) For tax years beginning on or after January 1, 2005,  
23 contributions to a tuition savings account established under this program may  
24 be deducted from the taxpayer's adjusted gross income for the purpose of  
25 calculating Arkansas income tax under § 26-51-403(b).

26 (2)(A) The deductible contributions shall not exceed five  
27 thousand dollars (\$5,000) per taxpayer employee in any tax year.

28 (B) A taxpayer employer may make a matching contribution  
29 to the account of a taxpayer employee with an account established under this  
30 chapter that does not exceed five hundred dollars (\$500) per contributing  
31 employee per year.

32 (3) Contributions to this program that have been deducted from  
33 the ~~taxpayer's~~ taxpayer employee's adjusted gross income for prior tax years  
34 shall be subject to recapture from the taxpayer employee if the taxpayer  
35 employee:

36 (A) Makes a subsequent nonqualified withdrawal from the

1 account; or

2 (B) Rolls the account over to a tax-deferred tuition  
3 savings program established by another state or institution under 26 U.S.C. §  
4 529, as in effect on January 1, ~~2015~~ 2017.

5 (4)(A) The contribution shall be recaptured by adding the amount  
6 previously deducted, not to exceed the amount of the nonqualified withdrawal  
7 or rollover, to the ~~taxpayer's~~ taxpayer employee's adjusted gross income for  
8 the tax year in which the nonqualified withdrawal or rollover occurred.

9 (B) The nonqualified withdrawal or rollover shall be  
10 taxable to the taxpayer employee, party, account owner, or designated  
11 beneficiary who actually makes the nonqualified withdrawal or rollover.

12 (c)(1) Qualified withdrawals from a tuition savings account  
13 established under this program or a tax-deferred tuition savings program  
14 established by another state under 26 U.S.C. § 529, as in effect on January  
15 1, ~~2015~~ 2017, will be exempt from Arkansas income tax with respect to the  
16 designated beneficiary's income.

17 (2)(A) Nonqualified withdrawals from a tuition savings account  
18 established under this program or a tax-deferred tuition savings program  
19 established by another state under 26 U.S.C. § 529, as in effect on January  
20 1, ~~2015~~ 2017, will be subject to Arkansas income tax.

21 (B) The nonqualified withdrawal will be taxable to the  
22 party, account owner, or designated beneficiary who actually makes the  
23 withdrawal.

24 (d) Any earnings on the contribution that are included in the refund  
25 will be subject to Arkansas income tax if an account owner receives a refund  
26 of contributions to a tuition savings account established under this program  
27 or a tax-deferred tuition savings program established by another state under  
28 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, because of either:

29 (1) The death or disability of the designated beneficiary; or

30 (2) A scholarship, allowance, or payment described in 26 U.S.C.  
31 § 135(d)(1)(B) or (C), as in effect on January 1, ~~2015~~ 2017, received by the  
32 designated beneficiary.

33

34 SECTION 14. Arkansas Code § 6-84-113 is amended to read as follows:  
35 6-84-113. Liberal construction.

36 This chapter shall be liberally construed to comply with the

1 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017.

2  
3 SECTION 15. Arkansas Code § 26-51-404(b)(20), concerning exemptions  
4 from "gross income" under the Income Tax Act of 1929, is amended to read as  
5 follows:

6 (20) Title 26 U.S.C. § 127, as in effect on ~~January 2, 2013~~  
7 January 1, 2017, regarding the exclusion from gross income for employees  
8 whose education expenses were paid by an employer, is adopted for the purpose  
9 of computing Arkansas income tax liability;

10  
11 SECTION 16. Arkansas Code § 26-51-409(a), concerning the adoption of  
12 federal Subchapter S, is amended to read as follows:

13 (a) Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et  
14 seq., as in effect on January 1, ~~2015~~ 2017, regarding small business  
15 corporations, is adopted for the purpose of computing Arkansas income tax  
16 liability.

17  
18 SECTION 17. Arkansas Code § 26-51-414(a)(1), concerning deferred  
19 compensation plans, is amended to read as follows:

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

24 (A) Title 26 U.S.C. §§ 72, 219, 402-404, 406-416, and 457,  
25 as in effect on January 1, ~~2015~~ 2017; and

26 (B) Title 26 U.S.C. § 401, as in effect on March 30,  
27 2010.

28  
29 /s/Brown

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32 **APPROVED: 04/04/2017**