

Act 826 of the 1989 Regular Session.

Act 826

SB74

By: Senator Scott

"AN ACT TO AMEND SUBCHAPTER 3 OF CHAPTER 51 OF TITLE 26 OF THE ARKANSAS CODE OF 1987 ANNOTATED, BY ADDING THERETO A NEW SECTION TO ALLOW THE EXCLUSION FROM GROSS INCOME FOREIGN EARNED INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-419, TO ALLOW CHARITABLE DEDUCTIONS; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-423(a), TO ALLOW MOVING EXPENSES AS AN ITEMIZED DEDUCTION IN COMPUTING ARKANSAS TAXABLE INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-436, TO LIMIT INVESTMENT TAX CREDIT AND DEPRECIATION FOR LUXURY AUTOMOBILES IN COMPUTING ARKANSAS TAXABLE INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-504(c), CONCERNING CREDIT AGAINST INCOME TAX; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-806, TO REQUIRE A COPY OF THE UNITED STATES CORPORATION INCOME TAX RETURN BE ATTACHED TO THE ARKANSAS CORPORATE INCOME TAX RETURN; TO AMEND SUBCHAPTER 4 OF CHAPTER 51 OF TITLE 26 OF THE ARKANSAS CODE OF 1987 ANNOTATED, BY ADDING THERETO A NEW SECTION TO PROVIDE FOR THE CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES; TO AMEND THE ARKANSAS CODE OF 1987 ANNOTATED, SECTIONS 26-51-404 AND 26-51-428, TO CORRECT THE COMPILATION ERROR CONCERNING THE TAX BENEFIT RULE; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-908(a) TO ALLOW EMPLOYERS TO FILE WITHHOLDING REPORTS ON AN ANNUAL BASIS IF THE AMOUNT OF WITHHOLDING IS LESS THAN TWO HUNDRED DOLLARS (\$200.00) PER YEAR; TO ALLOW EMPLOYERS TO FILE WITHHOLDING REPORTS ON A MONTHLY BASIS IF THE AMOUNT OF WITHHOLDING IS TWO HUNDRED DOLLARS (\$200.00) OR MORE PER YEAR; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-911 AND 26-51-913 TO INCREASE THE MINIMUM ESTIMATED TAX PAYMENT AMOUNT FROM \$100.00 to \$250.00; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-18-208(6) TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A PENALTY WILL BE ASSESSED FOR FAILURE TO FILE ESTIMATED INCOME TAX PAYMENT; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-18-306(b)(2), TO ESTABLISH A NEW STATUTE OF LIMITATIONS PERIOD WHEN TAXPAYERS APPEAL AN ASSESSMENT BY THE INTERNAL REVENUE SERVICE; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-305(d), TO ALLOW DISABLED RESIDENTS MOVING TO NURSING HOMES TO STILL QUALIFY FOR THE \$125,000 SALE OF HOME EXCLUSION; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-403(b) TO ALLOW HEALTH INSURANCE COST OF SELF-EMPLOYED PERSONS BE A DEDUCTION FROM GROSS INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-404(b)(11) TO EXCLUDE FROM GROSS INCOME DISCHARGE OF FARM INDEBTEDNESS; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-423(a)(1), TO ADOPT THE FEDERAL TRADE OR BUSINESS EXPENSE DEDUCTION; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-423(a)(3), TO AUTHORIZE THE COMMISSIONER OF REVENUES TO ESTABLISH THE BUSINESS MILEAGE ALLOWANCE; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED 26-51-428(a), TO ADOPT THE FEDERAL DEPRECIATION DEDUCTION; TO AMEND THOSE SECTIONS OF

THE ARKANSAS CODE OF 1987 ANNOTATED WHICH HAVE ADOPTED SECTIONS OF THE INTERNAL REVENUE CODE TO REFLECT NEW EFFECTIVE DATE FOR THE INTERNAL REVENUE CODE OF 1986 AS IN EFFECT ON JANUARY 1, 1989; AND FOR OTHER PURPOSES."

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

SECTION 1. This act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989."

SECTION 2. Subchapter 3 of Chapter 51 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new section to read as follows:

"26-51-310. Foreign Income Exclusion. Sections 911 and 912 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 911 regarding citizens or residents of the United States living abroad, and 26 U.S.C. 912 regarding certain allowances for citizens or residents of the United States living abroad, are hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 3. Section 26-51-419 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-419. Deductions - Charitable contributions. Section 170 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 170 regarding deductions for charitable contributions, is hereby adopted for the purpose of computing Arkansas income tax liability. This adoption is for income tax years beginning on or after January 1, 1989, and will have no effect on years prior to its adoptions.

SECTION 4. Section 26-51-423(a) of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (4) to read as follows:

"(4) Section 217 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 217 regarding the deduction of moving expenses, is hereby adopted for purposes of computing Arkansas income tax liability."

SECTION 5. Section 26-51-436 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (3) to read as follows:

"(3) Subsections (a), (b), (c), and (d) of Section 280F of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 280F(a), (b), (c), and (d) regarding investment tax credit and depreciation for luxury automobiles, is hereby adopted for purposes of computing Arkansas income tax liability."

SECTION 6. Section 26-51-504(c) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(c) The credit against Arkansas income tax afforded individual residents of Arkansas under this section shall also be available to fiduciaries, partnerships, and corporations residing or domiciled in Arkansas which are subject to Arkansas income tax or which have to report income for purposes of Arkansas income tax."

SECTION 7. Section 26-51-806 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (d) to read as follows:

"(d) Every corporation filing a return under this act shall attach thereto a completed copy of its Federal Tax Return for the same income year

including all schedules and attachments. As used in this subsection, 'corporation' means Subchapter C corporations as defined in Section 1361(a) of the Federal Internal Revenue Code of 1986, in effect January 1, 1989."

SECTION 8. Subchapter 4 of Chapter 51 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new section to read as follows:

"26-51-439. Capitalization of certain expenses. Section 263A, subsections (a), (b), (c), (d), (e), (f), (g), and (h) of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 263A (a) through (h) regarding capitalization and inclusion in inventory costs of certain expenses, is hereby adopted for the purpose of computing Arkansas corporate income tax liability."

SECTION 9. Section 26-51-404(a)(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(2) The amount of all such items shall be included in the gross income of the taxable year in which received by the taxpayer. However, when property is sold upon what is known as the installment plan, the income may be included for taxation in that portion of any installment payment representing gain or profit in the year in which payment is received unless, under the methods of accounting permitted under this chapter, any such amounts are to be properly accounted for as of a different period."

SECTION 10. Section 26-51-404(a) of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (3) to read as follows:

"(3) Any recovery of an amount which was deducted from gross income in a prior year must be treated as taxable income in the year recovered to the extent that the deduction resulted in a reduction in income tax liability."

SECTION 11. Section 26-51-908(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a)(1) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on an annual basis as prescribed by the Commissioner and annually pay over to the Commissioner the full amount required to be deducted and withheld from the wages of the employees if said amount is less than two hundred dollars (\$200.00) per year.

(2) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on a monthly basis as prescribed by the Commissioner and pay over on a monthly basis to the Commissioner the full amount required to be deducted and withheld from the wages of the employees if said amount is two hundred dollars (\$200.00) or more per year.

(3) However, the Commissioner may, by regulation, provide that every such employer shall on or before the fifteenth day of each month pay over to the Commissioner or a depository designated by the Commissioner the amount required to be deducted and withheld by the employer for the preceding month if the amount is one hundred dollars (\$100.00) or more."

SECTION 12. Section 26-51-911(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-911. (a) Every taxpayer subject to the tax levied by the Arkansas Income Tax Act, as amended, 26-51-101 et seq., shall make and file with the Commissioner, a declaration of the estimated tax for the income year if the taxpayer can reasonably expect the estimated tax to be more than two hundred fifty dollars (\$250.00)."

SECTION 13. Arkansas Code of 1987 Annotated 26-51-913 is hereby amended to read as follows:

"26-51-913. (a) The estimated tax as shown on the declaration filed with the Commissioner shall be paid as follows:

(1) If the estimated tax is not more than two hundred fifty dollars (\$250.00) payment may be made at the time the declaration is filed or at the time the return for the income year is filed.

(2) If the estimated tax is in excess of two hundred fifty dollars (\$250.00), it may be paid in full at the time of filing the declaration of estimated tax, or it may, at the election of the taxpayer, be paid in equal installments of one-fourth (\) at the time prescribed for filing the declaration, one-fourth (\) on or before the fifteenth day of the sixth month of the income year, one-fourth (\) on or before the fifteenth day of the ninth month of the income year, and one-fourth (\) on or before the fifteenth day of the first month after the close of the income year.

(3) In the case of a taxpayer who files an amendment to the declaration, the quarterly tax payments coming due after the amendment shall be adjusted either up or down to conform to the amended declaration of estimated tax.

(4) (A) In the case of a taxpayer who first meets the requirements and files a declaration subsequent to the fifteenth day of the fourth month of the income year, and not later than the fifteenth day of the ninth month of the income year, if the estimated tax is in excess of two hundred fifty dollars (\$250.00), the taxpayer may pay the estimated tax in equal installments with the first installment being due at the time of filing the declaration and an installment being due on each subsequent regular quarterly tax payment date for the income year as prescribed in subsection (a)(2) of this section.

(B) If the declaration is filed subsequent to the fifteenth day of the ninth month of the income year and on or before the fifteenth day of the first month after the close of the income year, the estimated tax shall be paid in full at the time of filing the declaration.

(b) Any tax payment due under the provisions of this subchapter may be paid by the taxpayer in advance of the date prescribed in this section for the payment thereof."

SECTION 14. Section 26-18-208(6) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(6) If a taxpayer fails to make a declaration of estimated tax and pay on any quarterly due date the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) per annum to the amount of the underestimate. The ten percent (10%) per annum penalty shall be applied on a quarterly basis. A taxpayer who has an uneven income may compute the ten percent (10%) penalty on an annualized basis.

The penalty provided herein for failure to make correct payments of estimated income tax shall not be applied to the following exceptions:

(a) No penalty shall be imposed for a tax year if the tax shown on the return for such tax year is \$250.00 or less.

(b) Taxpayers whose income from farming for the income year can reasonably be expected to amount to at least two-thirds (2/3) of the total gross income from all sources for the income year, may file such declaration and pay the estimated tax on or before the fifteenth (15th) day of the second (2nd) month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth (15th) day of the third (3rd) month after the close of the income year.

(c) The penalty herein provided shall not be applicable where the original amount of estimated tax is the same amount shown to be due by the return of the taxpayer for the preceding income year where such return showing a liability for tax was filed by the taxpayer for the preceding income year of twelve (12) months.

(d) In lieu of filing the fourth (4th) quarter installment the taxpayer may file an income tax return and pay the tax on or before January 31st or on the last day of the first month after the close of the income year.

(e) No penalty shall be imposed for a tax year if:

(1) the preceding tax year was a tax year of 12 months, and

(2) the taxpayer did not have a tax liability for the preceding tax year, and,

(3) the taxpayer was a resident of Arkansas throughout the preceding tax year.

(f) No penalty shall be imposed with respect to any underpayment to the extent that the Commissioner of Revenues determines that by reasons of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience.

(g) No penalty shall be imposed with respect to any underestimate or underpayment if the Commissioner determines that:

(1) the taxpayer

(i) retired after having attained age 62, or

(ii) became disabled,

in the year for which such estimated payment was required to be made or in the tax year preceding such tax year, and

(2) such underpayment was due to reasonable cause and not to willful neglect."

SECTION 15. Section 26-18-306b(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(2) If there is any additional state tax due from the taxpayer because of the correction by the Internal Revenue Service, any additional state tax must be assessed by the Commissioner within one (1) year of the filing of the notice by the taxpayer. However, in the instance of a taxpayer who fails to notify the Commissioner of the correction as required by this subsection, no assessment of additional state tax due from the taxpayer because of the correction by the Internal Revenue Service shall be made by the Commissioner after the expiration of eight (8) years from the date the return was required to be filed or the date of the return was filed, whichever period expires later. If the assessment made by the Internal Revenue Service is appealed by the taxpayer, the Commissioner shall have three (3) years from the date of the final Internal Revenue Service assessment or date of payment of the federal assessment by the taxpayer, whichever of the two periods expires later, in which to make an assessment.

SECTION 16. Section 26-51-305(d) of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (9) to read as follows:

(9) In the case of a taxpayer who:

(a) becomes physically or mentally incapable of self-care, and

(b) who owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a)(2) for periods aggregating at least 1 year, then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or

political subdivision to care for an individual in the taxpayer's condition.

SECTION 17. Section 26-51-403(b) of the Arkansas Code of 1987 Annotated is hereby amended by deleting the word "and" at the end of subsection (5), by deleting the period, adding a semicolon and adding the word "and" at the end of subsection (6), and by adding a new subsection (7) to read as follows:

"(7) Deductions for the health insurance costs of self-employed persons as computed in accordance with section 162(1) of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 162 (1) regarding the deduction of 25% of the health insurance costs of self-employed persons."

SECTION 18. Section 26-51-404(b)(11) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(11)(A) Gross income shall not include any amount which, but for this subparagraph, would be includible in gross income by reason of the discharge, in whole or in part, or indebtedness of the taxpayer if:

(i) The discharge occurs in a case filed under Title 11 of the United States Code; or
(ii) the discharge occurs when the taxpayer is insolvent; or
(iii) the indebtedness discharged is qualified form indebtedness.

(B) Subparagraphs (ii) and (iii) of subparagraph (b)(11)(A) shall not apply to a discharge which occurs in a Title 11 case.

(C) Subparagraph (iii) of subparagraph (b)(11)(A) shall not apply to a discharge to the extent the taxpayer is insolvent.

(D) (i) the amount excluded from gross income under subparagraph (b)(11)(A)(i), (ii), or (iii) shall be applied to reduce the tax attributes of the taxpayer as provided in subparagraph (b)(11)(D)(ii).

(ii) The reduction referred to in subparagraph (b)(11)(D)(i) shall be made in the following order:

(a) Any net operating loss for the taxable year of the discharge and any net operating loss carryover to the taxable year;

(b) Any net capital loss for the taxable year of the discharge and any capital loss carryover to the taxable year;

(c) The basis of the property of the taxpayer.

(E) The reductions described in subparagraph (b)(11)(D)(i) shall be one dollar (\$1.00) for each one dollar (\$1.00) excluded by this subparagraph (b)(11).

(F) (i) Subparagraph (b)(11)(A)(iii) shall apply only if the discharge is by a qualified person.

(ii) For the purposes of the subparagraph (b)(11)(F)(i), the term "qualified person" has the meaning given the term by section 46(c)(8)(D)(iv) of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 46(c)(8)(D)(iv), except that such term shall include any federal, state, or local government or agency or instrumentality thereof.

(G) (i) For purpose of subparagraph (b)(11)(A)(iii), indebtedness of a taxpayer shall be treated as qualified farm indebtedness if

(a) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming; and

(b) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(H) (i) The amount excluded under subparagraph (b)(11)(A)(iii) shall

not exceed the sum of

(a) the adjusted tax attributes of the taxpayer; and

(b) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(ii) For the purposes of subparagraph (b)(11)(H)(i)(a), the term "adjusted tax attributes" means the sum of the tax attributes described in subparagraph (B)(11)(D)(ii).

(iii) For the purposes of subparagraph (b)(11)(H)(i)(b), the term "qualified property" means any property which is used or is held for use in a trade or business or for the production of income.

(I) For the purposes of subparagraph (b)(11)(H), the adjusted basis of any qualified property and the amount of adjusted tax attributes shall be determined after any reduction under subsection (b)(11)(D) by reason of amounts excluded from gross income under subparagraph (b)(11)(A)(ii).

SECTION 19. Section 26-51-404(b)(13) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(13) Section 129 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 129 regarding the exclusion from income for dependent care assistance, is hereby adopted for the purpose of computing Arkansas income tax liability. However, no amounts excluded from gross income pursuant to this subdivision shall be taken into account in computing the dependent care credit contained in 26-51-502;"

SECTION 20. Section 26-51-404(b)(14) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(14) Section 79 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 79 regarding the exclusion from income for group-term life insurance is hereby adopted for the purpose of computing Arkansas income tax liability;"

SECTION 21. Section 26-51-404(b)(15) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(15) Sections 104-106 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 104-106 regarding the exclusion from income of disability and health plan payments, are hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 22. Section 26-51-409(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a) Subchapter S of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 1361-1379 regarding the small business corporations, is hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 23. Section 26-51-413 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-413. Corporate liquidations. Sections 332, 334, 336, 337, and 338 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 332, 334, 336, 337, and 338 regarding the liquidations of corporations, is hereby adopted for the purpose of computing Arkansas income tax liability. For the purposes of the application of this section, the transition rule of sections 633(c) and (d) of the Tax Reform Act of 1986, Public Law 99-514, as amended by subsections (g)(2), (g)(3)(A)-(C), (g)(4), (g)(5)(A) and (B), and (g)(7) of section 1006 of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, shall

also apply under the state income tax law."

SECTION 24. Section 26-51-414 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-414. Deferred Compensation Plans. Sections 72, 219, and 401 through 416 inclusive of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 72, 219, and 401 through 416 inclusive relating to annuities, retirement savings and employee benefit plans, respectively, are hereby adopted for the purpose of computing Arkansas income tax liability, except Arkansas capital gains treatment and the Arkansas tax rates shall apply. The requirements for filing a joint return under Section 219(c)(1)(A) of the Internal Revenue code of 1986 shall not apply. Any additional tax or penalty imposed by this section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this section."

SECTION 25. Section 26-51-415 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-415. Deductions - Interest. Section 163 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 163 regarding the deductions for interest expenses, is hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 26. Section 26-51-423(a)(1) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(1) BUSINESS EXPENSES. Section 162 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 162 regarding trade or business expenses, is hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 27. Section 26-51-423(a)(3) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(3) TRAVEL EXPENSES. In determining travel expenses deductible as a business expense in computing net income as provided under subdivision (1) of this subsection, the deduction for vehicle miles shall be determined by the Commissioner under his regulatory authority in 26-18-301."

SECTION 28. Section 26-51-423(b) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(b) Section 274 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 274 regarding the deductions of expenses for entertainment, amusement, recreation, business meals, travel, etc. is hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 29. Section 26-51-428(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a) Section 167, 168, and 179 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 167, 168 and 179 regarding depreciation and expensing of property, are hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 30. Section 26-51-428(b) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(b) The taxpayer shall adjust the basis of depreciable assets to that basis used for federal income tax purposes. Such assets shall thereafter be depreciated in accordance with depreciation

claimed for federal income tax purposes.

- (1) This adjustment shall be made for the first income year beginning on or after January 1, 1987.
- (2) Twenty-five percent (25%) of the difference which results from this adjustment shall be taken into income or allowed as a deduction in each of four (4) successive income years, the first such year being the first income year beginning on or after January 1, 1987."

SECTION 31. Sections 26-51-429 of the Arkansas Code of 1987 Annotated is hereby recommended to read as follows:

"26-51-429. Deductions. Depletion allowance.

(a) In the case of all natural resources for which a deduction for depletion is allowed under 611 of the Internal Revenue Code, the provisions of 611-613 and 614, 616, and 617 of the Internal Revenue Code, as amended and in effect on January 1, 1989, are adopted in computing the depletion allowance deduction under Arkansas income tax law.

(b) In computing the depletion allowance deduction allowed by this section for oil and gas wells, the provisions of 613 of the Internal Revenue Code shall not be in effect, but, instead, the computation of the amount of the depletion deduction shall be controlled by the provisions of 613A of the Internal Revenue Code, as amended and in effect on January 1, 1989, which are adopted as part of the state income tax law."

SECTION 32. Section 26-51-436(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(2) Section 469 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 469 regarding the limitations on deductibility of passive activity losses and credits, is hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 33. Section 26-51-805(a)(1) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a)(1) All corporations which are eligible members of an affiliated group as that term is defined in 26 U.S.C. 1504(a) and (b) as of January 1, 1989, which affiliated group files a federal consolidated corporate income tax return pursuant to 26 U.S.C. 1501-1505 as of January 1, 1989, may elect to file a consolidated Arkansas corporate income tax return."

SECTION 34. Section 26-51-805(e) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(e) In any case of two (2) or more corporations, whether or not affiliated, owned, or controlled directly or indirectly by the same interests, the director may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such corporations if he determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income to any such corporation. This subsection is based upon the concept of 26 U.S.C. 482 as of January 1, 1989, as that section applies to corporations."

SECTION 35. Section 26-51-902(1) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(1) "Agricultural labor" means agricultural labor as defined in 26 U.S.C. 3121(g), on January 1, 1989."

SECTION 36. The provisions of this Act shall be in full force and

effect for all income years beginning on and after January 1, 1989, except for Section 11 which shall be effective for income years beginning on and after January 1, 1990.

SECTION 37. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 38. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 22, 1989
