

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/28/01 H4/2/01

A Bill

HOUSE BILL 2277

5 By: Representative Milligan
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For An Act To Be Entitled

9 AN ACT TO EXEMPT THE SALE OR EXCHANGE OF LAND OR
10 EASEMENTS FOR OPEN-SPACE USE FROM THE INCOME TAX
11 ACT; TO ESTABLISH AN INCOME TAX CREDIT FOR THE
12 DONATION OF LAND OR EASEMENTS FOR OPEN-SPACE USE;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15 TO EXEMPT THE SALE OR EXCHANGE OF LAND
16 OR EASEMENTS FOR OPEN-SPACE USE FROM THE
17 INCOME TAX ACT AND TO ESTABLISH AN
18 INCOME TAX CREDIT FOR THE DONATION OF
19 LAND OR EASEMENTS FOR OPEN-SPACE USE.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code 26-51-815, concerning the computation of
26 capital gains and losses, is amended by adding an additional subsection to
27 read as follows:

28 (d)(1) For purposes of this subsection:

29 (A) "Land" means:

30 (i) Real property, with or without improvements;

31 (ii) Rights-of-way, water, and riparian rights;

32 (iii) Easements;

33 (iv) Privileges; and

34 (v) All other rights or interests of any land or
35 description in, relating to, or connected with real property;

36 (B) "Open-space use" means land which is used as, or

1 preserved for:

2 (i) Park or recreational purposes;

3 (ii) Conservation of land or other natural resources,

4 including but not limited to agricultural or forestal use;

5 (iii) Floodways;

6 (iv) Wetlands, as defined in § 26-51-1503(8);

7 (v) Riparian zones, as defined in § 26-51-1503(7);

8 (vi) Historic or scenic purposes;

9 (vii) Propagation or preservation of wild and aquatic

10 life; or

11 (viii) Any other purpose as provided in § 15-20-

12 310(b); and

13 (C) "Public or private conservation agency" means:

14 (i) Any Arkansas governmental body; and

15 (ii) Any private not-for-profit charitable

16 corporation or trust:

17 (a) Authorized to do business in the state and
18 organized and operated for natural resources, land conservation, or historic
19 preservation purposes;

20 (b) Having tax-exempt status as a public
21 charity under the United States Internal Revenue Code of 1986, as exists on
22 January 1, 2001; and

23 (c) Having the power to acquire, hold, and
24 maintain land or interests in land or both for these purposes.

25 (2) For taxable years beginning on or after January 1, 2001, the
26 gain derived from the sale or exchange of land or the sale or exchange of an
27 easement to land to a public or private conservation agency eligible to hold
28 the land and interests for conservation and preservation purposes and which
29 results in the land or the easement being devoted to open-space use for at
30 least thirty (30) years shall be exempt from state income tax.

31 (3) To the extent an exemption is claimed in accordance with this
32 subsection, no tax credit under Section 2 of this act for the donation of land
33 for its preservation shall be allowed for three (3) tax years after the year
34 in which the exemption is claimed.

35 (4)(A) Upon the initial transfer of land or interest in land for
36 the purpose of open-space use, language shall be included within the deed to

1 restrict its use for these purposes.

2 (B) The restrictions upon the use of the property shall
3 apply to all subsequent purchasers or assignees for the time period provided
4 within the deed.

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6 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5 is amended
7 by adding an additional section to read as follows:

8 26-51-511. Gift of land or easement for open-space use.

9 (a) The purpose of this section is to supplement existing land
10 conservation programs to further encourage the preservation and sustainability
11 of Arkansas' unique natural resources, wildlife habitats, open spaces, and
12 forested resources.

13 (b) For purposes of this section:

14 (1)(A) "Interest in real property" means:

15 (i) Any right in real property, including access or
16 improvements to the real property or water;

17 (ii) Partial interests in real property;

18 (iii) Mineral rights;

19 (iv) Remainder future interest;

20 (v) A fee simple easement, including conservation
21 easement; and

22 (vi) Other interest or rights in real property.

23 (B) However, the "interest in real property" shall comply
24 with the requirements of the U.S. Internal Revenue Code § 170(h), as it
25 existed on January 1, 2001;

26 (2) "Land" or "lands" means:

27 (A) Real property, with or without improvements;

28 (B) Rights-of-way;

29 (C) Water and riparian rights;

30 (D) Easements;

31 (E) Privileges; and

32 (F) All other rights or interests of any land or
33 description in, relating to, or connected with real property;

34 (3) "Open-space use" means land which is used as, or preserved
35 for:

36 (A) Park or recreational purposes;

1 (B) Conservation of land or other natural resources,
2 including but not limited to agricultural or forestal use;

3 (C) Floodways;

4 (D) Wetlands, as defined in § 26-51-1503(8);

5 (E) Riparian zones, as defined in § 26-51-1503(7);

6 (F) Historic or scenic purposes;

7 (G) Propagation or preservation of wild and aquatic life;

8 or

9 (H) Any other purpose as provided in § 15-20-310(b);

10 (4) "Public or Private Conservation Agency" or "agency" means:

11 (A) Any Arkansas governmental body; and

12 (B) Any private not-for-profit charitable corporation or

13 trust:

14 (i) Authorized to do business in the state and
15 organized and operated for natural resources, land conservation, or historic
16 preservation purposes;

17 (ii) Having tax-exempt status as a public charity
18 under the U.S. Internal Revenue Code of 1986, existing on January 1, 2001; and

19 (iii) Having the power to acquire, hold and maintain
20 land or interests in land or both for these purposes; and

21 (5)(A) "Qualified donations" means the conveyance in perpetuity of
22 a fee interest in real property or a less-than-fee interest in real property,
23 such as a conservation restriction, preservation restriction, agricultural
24 preservation restriction, or watershed preservation restriction, provided that
25 such less-than-fee interest qualifies as a charitable deduction under § 170(h)
26 of the U.S. Internal Revenue Code of 1986, as existing on January 1, 2001.

27 (B) "Qualified donations" does not mean dedications of land
28 for open-space use for the purpose of fulfilling density requirements to
29 obtain subdivision or building permits.

30 (c)(1) For tax years beginning on or after January 1, 2001, there shall
31 be allowed a credit against the tax liability imposed by the Arkansas Income
32 Tax Act, as amended, an amount equal to fifty percent (50%) of the fair market
33 value of any land or interest in land located in Arkansas which is conveyed
34 for the purpose of open-space use, as an unconditional donation in perpetuity
35 by the landowner or taxpayer to a public or private conservation agency
36 eligible to hold the land and interests for conservation and preservation

1 purposes.

2 (2)(A) The amount of the credit shall not exceed one hundred
3 thousand dollars (\$100,000) per year.

4 (B) In any one (1) tax year, the credit used may not exceed
5 the amount of the individual, fiduciary, or corporate income tax otherwise
6 due.

7 (C) Any portion of the credit which is unused in any one
8 (1) tax year may be carried over for a maximum of five (5) consecutive tax
9 years following the tax year in which the credit originated until fully
10 expended.

11 (3) To support the credit allowed by this section, the landowner
12 or taxpayer shall file with their tax return, for the first taxable year in
13 which the credit is claimed a:

14 (A) Certification from the public or private conservation
15 agency to whom the conveyance was made stating that the property conveyed is
16 suitable for open-space use; and

17 (B) Qualified appraisal prepared by a qualified appraiser,
18 as those terms are defined under applicable federal law and regulations
19 governing charitable contributions, supporting the fair market value of any
20 qualified donation made under this section.

21 (d)(1) Any taxpayer claiming a tax credit under this section shall not
22 claim a credit under any similar Arkansas law for costs related to the same
23 project.

24 (2) To the extent a credit is taken in accordance with this
25 section, no credit claimed for the gain on the sale of land dedicated to open-
26 space use or an easement dedicated to open-space use under section 1 of this
27 act, shall be allowed for three (3) tax years following the year in which the
28 credit is claimed.

29 (3) Any tax credits which arise under this section from the
30 donation of land or an interest in land made by a pass-through tax entity such
31 as a trust, estate, partnership, limited liability corporation or partnership,
32 limited partnership, subchapter S corporation, or other fiduciary may be
33 claimed by the entity or by the member, manager, partner, shareholder, or
34 beneficiary in proportion to their interest in the entity:

35 (A) If the income, deductions and tax liability pass
36 through the entity to such member, manager, partner, shareholder or

1 beneficiary; or

2 (B) As set forth in the agreement of the entity.

3 (4) The tax credits shall not be claimed by both the entity and
4 the member, manager, partner, shareholder or beneficiary for the same
5 donation.

6 (e) Qualified donations shall be eligible for the tax credit provided
7 in this section if the donations are made to the State of Arkansas, an
8 instrumentality of the state, or a charitable organization described in §
9 501(c)(3) of the U.S. Internal Revenue Code of 1986, as exists on January 1,
10 2001, and controlled by an organization described in § 509(a)(2) of the U.S.
11 Internal Revenue Code of 1986, as exists on January 1, 2001 if the charitable
12 organization:

13 (1) Meets the requirements of § 509(a)(2) of the U.S. Internal
14 Revenue Code of 1986, as exists on January 1, 2001; or

15 (2) Meets the requirements of § 509(a)(3) as it existed on
16 January 1, 2001.

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18 (f)(1) Upon the initial transfer of land or interest in land for the
19 purpose of open-space use, language shall be included within the deed to
20 restrict its use for these purposes.

21 (2) The restrictions upon the use of the property shall apply to
22 all subsequent purchasers or assignees for the time period provided within the
23 deed.

24 */s/ Milligan*

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