

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/11/09

A Bill

HOUSE BILL 1911

5 By: Representative Ingram
6 By: *Senator Teague*
7

For An Act To Be Entitled

10 AN ACT TO EXTEND THE NET OPERATING LOSS
11 CARRYFORWARD PERIOD FOR CALCULATING ARKANSAS
12 INCOME TAX; TO MAKE CONFORMING CHANGES TO RELATED
13 SECTIONS OF LAW; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO EXTEND THE NET OPERATING LOSS
16 CARRYFORWARD PERIOD FOR CALCULATING
17 ARKANSAS INCOME TAX AND TO MAKE
18 CONFORMING CHANGES TO RELATED SECTIONS
19 OF LAW.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 26-51-427(1), concerning net operating loss
26 carryover, is amended to read as follows:

27 (1)(A) The net operating loss ~~as hereinbelow defined~~ for any
28 ~~year ending on or after the passage of this act and for any succeeding~~
29 taxable year may be carried over to the next-succeeding taxable year and
30 annually thereafter for a total period of three (3) years next succeeding the
31 year of the net operating loss or until the net operating loss has been
32 exhausted or absorbed by the taxable income of any succeeding year, whichever
33 is earlier, if the loss occurred in an income year beginning before January
34 1, 1987. The net operating loss deduction must be carried forward in the
35 order named above;

36 (B) The net operating loss ~~as hereinbelow defined~~ for any



1 year ending on or after the passage of this act and for any succeeding
2 taxable year may be carried over to the next-succeeding taxable year and
3 annually thereafter for a total period of five (5) years next succeeding the
4 year of the net operating loss or until the net operating loss has been
5 exhausted or absorbed by the taxable income of any succeeding year, whichever
6 is earlier, if the loss occurred in an income year beginning on or after
7 January 1, 1987, but before January 1, 2009. The net operating loss deduction
8 must be carried forward in the order named above;

9 (C) The net operating loss for a taxable year may be
10 carried over to the next-succeeding taxable year and annually thereafter for
11 a total period of fifteen (15) tax years next succeeding the tax year of the
12 net operating loss or until the net operating loss has been exhausted or
13 absorbed by the taxable income of a succeeding tax year, whichever is
14 earlier, if the loss occurred in an income year beginning on or after January
15 1, 2009. The net operating loss deduction must be carried forward in the
16 order named in this subdivision (1)(C); ~~The net operating loss as~~
17 ~~hereinbelow defined which resulted from farming operations, for income years~~
18 ~~beginning on or after January 1, 1981, and expired in accordance with~~
19 ~~subdivision (1)(A) before being fully used, may be carried forward for an~~
20 ~~additional two (2) years and any unused portions can be combined and either~~
21 ~~applied to tax years 1987 and 1988, respectively, or to tax years 1989 and~~
22 ~~1990. In order to claim the additional two year carry forward, taxpayers must~~
23 ~~attach copies of both their federal tax returns and their state tax returns,~~
24 ~~showing the net operating losses for income years beginning on or after~~
25 ~~January 1, 1981, to their state tax returns. As used in this subdivision,~~
26 ~~“farming operations” means that at least sixty-six and two thirds percent~~
27 ~~(66 2/3%) of the total gross income, from all sources for the taxable year,~~
28 ~~must come from farming as defined by Internal Revenue Code Section 464(e)(1)~~
29 ~~in effect on January 1, 1989;~~

30 (D) As used in this section, ~~the term~~ “taxable income” or
31 ~~“net income” shall be deemed to be~~ means the net income computed without
32 benefit of the deduction for income taxes, personal exemptions, and credit
33 for dependents. The net income of the taxable period to which the net
34 operating loss deduction, as adjusted, is carried, shall be the net income
35 before the deduction of federal income taxes, personal exemption, and credit
36 for dependents. Such income taxes, exemptions, and credits shall not be used

1 to increase the net operating loss which may be carried to any other taxable
2 period; and

3 (E)(i) As used in this section, ~~the term~~ “qualified
4 medical company” means a corporation engaged in:

5 (a) Research and development in the medical
6 field; and

7 (b) Manufacture and distribution of medical
8 products, including therapeutic and diagnostic products.

9 (ii) In the case of qualified medical companies, as
10 defined herein, a net operating loss for any taxable year shall be a net
11 operating loss carryover to each of the fifteen (15) taxable years following
12 the taxable year of the loss.

13 (iii) If the qualified medical company is an “S”
14 corporation, the pass-through provisions of § 26-51-409, as in effect for the
15 taxable year of the loss, shall be applicable.

16 (iv) The net operating loss provisions set forth
17 above, which resulted from the operation of a qualified medical company,
18 shall be effective for taxable years beginning on and after January 1, 1987.
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20 SECTION 2. Arkansas Code § 26-51-427(3)(B) and (C), concerning net
21 operating loss carryover, is amended to read as follows:

22 (B) The net operating loss may not be carried forward to a
23 taxable year which ends more than five (5) years after the taxable year in
24 which the net operating loss occurred if the net operating loss occurred in
25 an income year beginning on or after January 1, 1987, but before January 1,
26 2009;

27 (C) The net operating loss may not be carried forward to a
28 taxable year that ends more than fifteen (15) years after the taxable year in
29 which the net operating loss occurred if the net operating loss occurred in
30 an income year beginning on or after January 1, 2009; and

31 (D) The net operating loss may be claimed only when the
32 ownership of both the acquired and acquiring corporations is substantially
33 the same, that is, where not less than eighty percent (80%) of the voting
34 stock of each corporation is owned by the same person or where prior to the
35 acquisition the acquiring corporation owned at least eighty percent (80%) of
36 the voting stock of the acquired corporation. The carryover losses will be

1 allowed only in those cases where the assets of the corporation going out of
2 existence earn sufficient profits apportionable to Arkansas under § 26-51-701
3 et seq. in the post-merger period to absorb the carryover losses claimed by
4 the surviving corporation.

5
6 SECTION 3. Arkansas Code Section 26-51-1203 is amended to read as
7 follows:

8 26-51-1203. Net operating loss deduction – Carry forward.

9 (a) Taxpayers qualified under § 26-51-1202(a) and (b), entitled to a
10 net operating loss deduction as provided in § 26-51-427, may carry forward
11 that deduction to the next succeeding taxable year following the tax year of
12 the net operating loss and annually thereafter for a total period of ten (10)
13 tax years or until the net operating loss has been exhausted, whichever is
14 earlier, if the net operating loss occurred in an income year before January
15 1, 2009.

16 (b) A taxpayer qualified under § 26-51-1202(a) and (b) and entitled to
17 a net operating loss deduction as provided in § 26-51-427 may carry forward
18 that deduction to the next succeeding taxable year following the tax year of
19 the net operating loss and annually thereafter for a total period of fifteen
20 (15) tax years or until the net operating loss has been exhausted, whichever
21 is earlier, if the net operating loss occurred in an income year beginning on
22 or after January 1, 2009.

23 ~~(b)(c)~~ The net operating loss deduction must be carried forward in the
24 order named above.

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26 SECTION 4. Arkansas Code Section 26-51-1213 is amended to read as
27 follows:

28 26-51-1213. Net operating loss deduction – Carry forward.

29 (a) Taxpayers qualified under § 26-51-1212(2) and entitled to a net
30 operating loss deduction as provided in § 26-51-427 may carry forward that
31 deduction to the next-succeeding taxable year following the tax year of such
32 net operating loss and annually thereafter for a total period of ten (10) tax
33 years or until such net operating loss has been exhausted, whichever is
34 earlier, if the net operating loss occurred in an income year beginning
35 before January 1, 2009.

36 (b) A taxpayer qualified under § 26-51-1212(2) and entitled to a net

1 operating loss deduction as provided in § 26-51-427 may carry forward that
2 deduction to the next-succeeding taxable year following the tax year of the
3 net operating loss and annually thereafter for a total period of fifteen (15)
4 tax years or until the net operating loss has been exhausted, whichever is
5 earlier, if the net operating loss occurred in an income year beginning on or
6 after January 1, 2009.

7 ~~(b)~~(c) The net operating loss deduction must be carried forward in the
8 order named above.

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10 SECTION 5. Arkansas Code Section 26-52-913 is amended to read as
11 follows:

12 26-52-913. Net operating loss deduction – Carry forward.

13 (a) Taxpayers qualified under § 26-52-912(b) and entitled to a net
14 operating loss deduction as provided in § 26-51-427 may carry forward that
15 deduction to the next-succeeding taxable year following the tax year of such
16 net operating loss and annually thereafter for a total period of ten (10) tax
17 years or until such net operating loss has been exhausted, whichever is
18 earlier, if the net operating loss occurred in an income year beginning
19 before January 1, 2009.

20 (b) A taxpayer qualified under § 26-52-912(b) and entitled to a net
21 operating loss deduction as provided in § 26-51-427 may carry forward that
22 deduction to the next-succeeding taxable year following the tax year of the
23 net operating loss and annually thereafter for a total period of fifteen (15)
24 tax years or until the net operating loss has been exhausted, whichever is
25 earlier, if the net operating loss occurred in an income year beginning on or
26 after January 1, 2009.

27 (c) The net operating loss deduction must be carried forward in the
28 order named above.

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30 SECTION 6. Effective Date. This act is effective for tax years
31 beginning on or after January 1, 2009.

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33 /s/ Ingram
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