

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1390

5 By: Representative Jett  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING INCOME TAX LAWS; TO ADOPT RECENT  
9 CHANGES TO THE INTERNAL REVENUE CODE; TO CLARIFY THAT  
10 CHILD SUPPORT PAYMENTS ARE NOT INCLUDED IN THE GROSS  
11 INCOME OF THE RECIPIENT; TO CLARIFY THAT GAMBLING  
12 LOSSES ARE DEDUCTIBLE TO THE EXTENT OF GAMBLING  
13 WINNINGS; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO ADOPT RECENT CHANGES TO THE INTERNAL  
17 REVENUE CODE; AND TO CLARIFY PROVISIONS  
18 CONCERNING CHILD SUPPORT PAYMENTS AND  
19 GAMBLING LOSSES.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code §§ 6-84-102 and 6-84-103 are amended to read  
26 as follows:

27 6-84-102. Purpose.

28 It is the intent and purpose of this chapter to create and establish  
29 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §  
30 529, as in effect on January 1, ~~2015~~ 2017, to be administered by the Section  
31 529 Plan Review Committee through the adoption of rules and regulations for  
32 the administration of the program.  
33

34 6-84-103. Definitions.

35 As used in this chapter:

36 (1) "Account" means an account established in accordance with



1 this chapter;

2 (2) "Account owner" means the person who, under this chapter or  
3 the rules promulgated by the Section 529 Plan Review Committee, is entitled  
4 to select or change the designated beneficiary of an account, to designate  
5 any person other than the designated beneficiary to whom funds may be paid  
6 from the account, or to receive distributions from the account if no other  
7 person is designated;

8 (3) "Act" means the Arkansas Tax-Deferred Tuition Savings  
9 Program Act, § 6-84-104 et seq.;

10 (4)(A) "Arkansas Tax-Deferred Tuition Savings Program Trust" or  
11 "trust" means the trust created under § 6-84-104.

12 (B) Participation in the trust shall be open to Arkansas  
13 residents and nonresidents alike;

14 (5) "Committee" means the Section 529 Plan Review Committee,  
15 provided for in § 6-84-105, that shall oversee the administration of the  
16 Arkansas Tax-Deferred Tuition Savings Program and ensure that the program  
17 complies with the provisions of this chapter and acts in accordance with 26  
18 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;

19 (6) "Contribution" means:

20 (A) Any payment directly allocated to an account for the  
21 benefit of a designated beneficiary or used to pay administrative fees  
22 associated with an account; and

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

25 (7) "Contributor" means any person making a contribution to an  
26 account;

27 (8) "Designated beneficiary" means, except as provided in § 6-  
28 84-108, the individual designated at the time the account is opened as having  
29 the right to receive a qualified withdrawal for the payment of qualified  
30 higher education expenses or, if the designated beneficiary is replaced in  
31 accordance with § 6-84-108, the replacement;

32 (9) "Higher education institution" means an eligible education  
33 institution as defined in 26 U.S.C. § 135(c)(3), as in effect on January 1,  
34 ~~2015~~ 2017;

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

1           (11) “Nonqualified withdrawal” means a withdrawal from an  
2 account that is not:

3                   (A) A qualified withdrawal;

4                   (B) A withdrawal made as the result of the death or  
5 disability of the designated beneficiary;

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

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

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

14           (13) “Program” means the Arkansas Tax-Deferred Tuition Savings  
15 Program established by this chapter;

16           (14) “Qualified higher education expenses” means tuition and  
17 other permitted expenses as set forth in 26 U.S.C. § 529(e), as in effect on  
18 January 1, ~~2015~~ 2017, for the enrollment or attendance of a designated  
19 beneficiary at a higher education institution;

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

22           (16) “Qualified withdrawal” means a withdrawal from an account  
23 to pay the qualified higher education expenses of the designated beneficiary  
24 but only if the withdrawal is made in accordance with the requirements of the  
25 program; and

26           (17) “Rollover” means a disbursement or transfer from an account  
27 that is transferred to or deposited within sixty (60) calendar days of the  
28 transfer into an account of the same person for the benefit of the same  
29 designated beneficiary or another person as a designated beneficiary if the  
30 transferee account was created under this chapter or under another qualified  
31 tuition program maintained in accordance with 26 U.S.C. § 529(c), as in  
32 effect on January 1, ~~2015~~ 2017.

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34           SECTION 2. Arkansas Code § 6-84-105(b), concerning the administration  
35 and powers of the Section 529 Plan Review Committee, is amended to read as  
36 follows:

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

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6 SECTION 3. Arkansas Code § 6-84-105(c)(1), concerning the  
7 administration and powers of the Section 529 Plan Review Committee, is  
8 amended to read as follows:

9 (1) To establish, develop, implement, and maintain the program  
10 in a manner consistent with the provisions of this chapter and 26 U.S.C. §  
11 529, as in effect on January 1, ~~2015~~ 2017, and to obtain the benefits  
12 provided by 26 U.S.C. § 529 for the program, account owners, and designated  
13 beneficiaries;

14  
15 SECTION 4. Arkansas Code § 6-84-106 is amended to read as follows:  
16 6-84-106. Investment direction.

17 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2015~~  
18 2017, no person shall have the right to direct the investment of any  
19 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings  
20 Program.

21  
22 SECTION 5. Arkansas Code § 6-84-108(b), concerning the naming of  
23 designated beneficiary and transfers of accounts under the Arkansas Tax-  
24 Deferred Tuition Savings Program Act, is amended to read as follows:

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

31  
32 SECTION 6. Arkansas Code § 6-84-109(b), concerning account withdrawals  
33 under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to  
34 read as follows:

35 (b)(1) An account withdrawal paid to or for the benefit of any person  
36 during any calendar year shall be reported to the person and to the Internal

1 Revenue Service.

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

5

6 SECTION 7. Arkansas Code § 6-84-111 is amended to read as follows:

7 6-84-111. Funds exempt from tax.

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

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

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

19 (3) Contributions to this program that have been deducted from  
20 the taxpayer's adjusted gross income for prior tax years shall be subject to  
21 recapture if the taxpayer:

22 (A) Makes a subsequent nonqualified withdrawal from the  
23 account; or

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

27 (4) The contribution shall be recaptured by adding the amount  
28 previously deducted, not to exceed the amount of the nonqualified withdrawal  
29 or rollover, to the taxpayer's adjusted gross income for the tax year in  
30 which the nonqualified withdrawal or rollover occurred.

31 (c)(1) Qualified withdrawals from a tuition savings account  
32 established under this program or a tax-deferred tuition savings program  
33 established by another state under 26 U.S.C. § 529, as in effect on January  
34 1, ~~2015~~ 2017, will be exempt from Arkansas income tax with respect to the  
35 designated beneficiary's income.

36 (2)(A) Nonqualified withdrawals from a tuition savings account

1 established under this program or a tax-deferred tuition savings program  
2 established by another state under 26 U.S.C. § 529, as in effect on January  
3 1, ~~2015~~ 2017, will be subject to Arkansas income tax.

4 (B) The nonqualified withdrawal will be taxable to the  
5 party, account owner, or designated beneficiary who actually makes the  
6 withdrawal.

7 (d) Any earnings on the contribution that are included in the refund  
8 will be subject to Arkansas income tax if an account owner receives a refund  
9 of contributions to a tuition savings account established under this program  
10 or a tax-deferred tuition savings program established by another state under  
11 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, because of either:

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

13 (2) A scholarship, allowance, or payment described in 26 U.S.C.  
14 § 135(d)(1)(B) or (C), as in effect on January 1, ~~2015~~ 2017, received by the  
15 designated beneficiary.

16  
17 SECTION 8. Arkansas Code § 6-84-113 is amended to read as follows:

18 6-84-113. Liberal construction.

19 This chapter shall be liberally construed to comply with the  
20 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017.

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22 SECTION 9. Arkansas Code § 26-51-309 is amended to read as follows:

23 26-51-309. Charitable remainder trusts.

24 (a) Title 26 U.S.C. § 664, as in effect on January 1, ~~2007~~ 2017, and  
25 the regulations of the Secretary of the Treasury promulgated under 26 U.S.C.  
26 § 664 and in effect on January 1, ~~2007~~ 2017, are adopted for the purpose of  
27 computing the tax liability of charitable remainder trusts and their  
28 beneficiaries under the Income Tax Act of 1929, § 26-51-101 et seq.

29 (b) Furthermore, any other provision of the federal income tax law and  
30 regulations which are necessary for interpreting and implementing 26 U.S.C. §  
31 664 are adopted to the extent as in effect on January 1, ~~2007~~ 2017.

32  
33 SECTION 10. Arkansas Code § 26-51-404(a)(4), concerning the definition  
34 of "gross income" under the Income Tax Act of 1929, is amended to read as  
35 follows:

36 (4) Title 26 U.S.C. § 117, as in effect on January 2, ~~2013~~ 2017,

1 regarding the taxability of scholarships, fellowships, grants, and stipends,  
2 is adopted for the purpose of clarifying and calculating Arkansas income tax  
3 liability.

4  
5 SECTION 11. Arkansas Code § 26-51-404(b)(10), concerning exclusions  
6 from the definition of "gross income" under the Income Tax Act of 1929, is  
7 amended to read as follows:

8 (10) Title 26 U.S.C. §§ 108 and 1017, as in effect on January 1,  
9 ~~2015~~ 2017, regarding income from the discharge of indebtedness, are adopted  
10 for the purpose of computing Arkansas income tax liability;

11  
12 SECTION 12. Arkansas Code § 26-51-404(b)(14), concerning exclusions  
13 from the definition of "gross income" under the Income Tax Act of 1929, is  
14 amended to read as follows:

15 (14) The following sections of the Internal Revenue Code, 26  
16 U.S.C. § 1 et seq., regarding the exclusion from income of disability and  
17 health plan payments, are adopted for the purpose of computing Arkansas  
18 income tax liability:

19 (A) Title 26 U.S.C. §§ 104 and 106, as in effect on  
20 January 1, 2011; and

21 (B) Title 26 U.S.C. § 105, as in effect on ~~March 30, 2010~~  
22 January 1, 2017;

23  
24 SECTION 13. Arkansas Code § 26-51-404(b)(19), concerning exclusions  
25 from the definition of "gross income" under the Income Tax Act of 1929, is  
26 amended to read as follows:

27 (19) Title 26 U.S.C. § 132, as in effect on January 1, ~~2015~~  
28 2017, regarding the exclusion from income of certain fringe benefits, is  
29 adopted for the purpose of computing Arkansas income tax liability;

30  
31 SECTION 14. Arkansas Code § 26-51-404(b), concerning exclusions from  
32 the definition of "gross income" under the Income Tax Act of 1929, is amended  
33 to add an additional subdivision to read as follows:

34 (29) Child support payments shall not be included in the gross  
35 income of the recipient.

36

1 SECTION 15. Arkansas Code § 26-51-409(a), concerning the adoption of  
2 Subchapter S of the Internal Revenue Code for income tax purposes, is  
3 amended to read as follows:

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

8  
9 SECTION 16. Arkansas Code § 26-51-411(h), concerning gains or losses  
10 on sales of property for purposes of computing income tax, is amended to read  
11 as follows:

12 (h) Title 26 U.S.C. § 267, as in effect on January 1, ~~2004~~ 2017,  
13 regarding losses, expenses, and interest arising from transactions between  
14 related taxpayers, is adopted for the purpose of computing Arkansas income  
15 tax liability.

16  
17 SECTION 17. Arkansas Code § 26-51-412(d), concerning gains or losses  
18 on exchanges of property for purposes of computing income tax, is amended to  
19 read as follows:

20 (d) Title 26 U.S.C. §§ 351, 354-358, 361, 362, 367, and 368, as in  
21 effect on January 1, ~~2009~~ 2017, regarding corporate organization,  
22 reorganization, and recognition of gain, are adopted for the purpose of  
23 computing Arkansas income tax liability.

24  
25 SECTION 18. Arkansas Code § 26-51-414(a)(1), concerning deferred  
26 compensation plans in computing income tax, is amended to read as follows:

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

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

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

34 (2) The requirements for filing a joint return under 26 U.S.C. §  
35 219(c)(1)(A) shall not apply.

36



1 SECTION 19. Arkansas Code § 26-51-415 is amended to read as follows:  
 2 26-51-415. Deductions – Interest.

3 Title 26 U.S.C. § 163, as in effect on January 1, ~~2015~~ 2017, regarding  
 4 deductions for interest expenses, is adopted for the purpose of computing  
 5 Arkansas income tax liability.

6  
 7 SECTION 20. Arkansas Code § 26-51-419 is amended to read as follows:  
 8 26-51-419. Deductions – Charitable contributions.

9 (a)(1) Title 26 U.S.C. § 170, as in effect on January 1, ~~2015~~ 2017,  
 10 regarding deductions for charitable contributions, is adopted for the purpose  
 11 of computing Arkansas income tax liability.

12  
 13 SECTION 21. Arkansas Code § 26-51-424(a), concerning the income tax  
 14 deduction for losses, is amended to read as follows:

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

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

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

21 (B) Losses incurred in any transaction entered into for  
 22 profit, though not connected with the trade or business, including without  
 23 limitation gambling losses, which are:

24 (i) Deductible to the extent of gambling winnings;

25 and

26 (ii) Not subject to the two percent (2%) limitation  
 27 on miscellaneous itemized deductions.

28  
 29 SECTION 22. Arkansas Code § 26-51-428(a), concerning the income tax  
 30 deduction for depreciation and the expensing of property, is amended to read  
 31 as follows:

32 (a) Title 26 U.S.C. §§ 167 and 168(a)-(j), as in effect on January 1,  
 33 ~~2015~~ 2017, and 26 U.S.C. § 179, as in effect on January 1, 2009, regarding  
 34 depreciation and expensing of property, are adopted for the purpose of  
 35 computing Arkansas income tax liability for property purchased in tax years  
 36 beginning on or after January 1, 2014.

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SECTION 23. Arkansas Code § 26-51-440(a)(1), concerning the adoption of Subchapter M of the Internal Revenue Code for income tax purposes, is amended to read as follows:

(a)(1) Subchapter M of the Internal Revenue Code, 26 U.S.C. § 851 et seq., as in effect on January 1, ~~2015~~ 2017, relating to regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, and financial asset securitization investment trusts, is adopted for the purpose of computing Arkansas income tax liability and shall govern all corporations that are registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as in effect on January 1, ~~2015~~ 2017.

SECTION 24. Arkansas Code § 26-51-815(c), concerning computing capital gains and losses for purposes of income tax, is amended to read as follows:

(c) Title 26 U.S.C. § 1202, as in effect on January 1, ~~1995~~ 2017, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 25. EFFECTIVE DATE. Sections 1 through 24 of this act are effective for tax years beginning on and after January 1, 2015.