

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H3/18/21

A Bill

HOUSE BILL 1035

5 *By: Representatives Beaty Jr., Jett*
6

For An Act To Be Entitled

8 AN ACT TO ADOPT RECENT CHANGES TO THE INTERNAL
9 REVENUE CODE; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ADOPT RECENT CHANGES TO THE INTERNAL
12 REVENUE CODE.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 6-84-102 is amended to read as follows:
20 6-84-102. Purpose.

21 It is the intent and purpose of this chapter to create and establish
22 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §
23 529, as in effect on January 1, ~~2018~~ 2020, to be administered by the Section
24 529 Plan Review Committee through the adoption of rules for the
25 administration of the program.
26

27 SECTION 2. Arkansas Code § 6-84-103(5) and (6), concerning the
28 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,
29 are amended to read as follows:

30 (5) "Committee" means the Section 529 Plan Review Committee,
31 provided for in § 6-84-105, which shall oversee the administration of the
32 Arkansas Tax-Deferred Tuition Savings Program and ensure that the program
33 complies with the provisions of this chapter and acts in accordance with 26
34 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

35 (6) "Contribution" means:

36 (A) Any payment directly allocated to an account for the



1 benefit of a designated beneficiary or used to pay administrative fees
2 associated with an account; and

3 (B) That portion of any rollover amount treated as a
4 contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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6 SECTION 3. Arkansas Code § 6-84-103(10), concerning the definitions
7 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
8 to read as follows:

9 (10) "Member of the family" shall have the same meaning as is
10 contained in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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12 SECTION 4. Arkansas Code § 6-84-103(12), concerning the definitions
13 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
14 to read as follows:

15 (12) "Person" means a person as defined in 26 U.S.C. § 529, as
16 in effect on January 1, ~~2018~~ 2020;

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18 SECTION 5. Arkansas Code § 6-84-103(14) and (15), concerning the
19 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,
20 are amended to read as follows:

21 (14) "Qualified higher education expenses" means tuition and
22 other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on
23 January 1, ~~2018~~ 2020, for the enrollment or attendance of a designated
24 beneficiary;

25 (15) "Qualified tuition program" means a qualified tuition
26 program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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28 SECTION 6. Arkansas Code § 6-84-103(17), concerning the definitions
29 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
30 to read as follows:

31 (17) "Rollover" means a disbursement or transfer from an account
32 that is transferred to or deposited within sixty (60) calendar days of the
33 transfer:

34 (A) Into an account of the same person for the benefit of
35 the same designated beneficiary;

36 (B) To the credit of another person as a designated

1 beneficiary if the transferee account was created under this chapter or under
2 another qualified tuition program maintained in accordance with 26 U.S.C. §
3 529, as in effect on January 1, ~~2018~~ 2020; or

4 (C)(i) Before January 1, 2026, into an ABLE account under
5 26 U.S.C. § 529A(e)(6), as in effect on January 1, ~~2018~~ 2020, of the
6 designated beneficiary or a member of the family of the designated
7 beneficiary.

8 (ii) Subdivision (17)(C)(i) of this section does not
9 apply to so much of a distribution which, when added to all other
10 contributions made to the ABLE account for the taxable year, exceeds the
11 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
12 ~~2018~~ 2020.

13
14 SECTION 7. Arkansas Code § 6-84-105(b) and (c), concerning the
15 administration of the Arkansas Tax-Deferred Tuition Savings Program Act and
16 the authority and powers of the Section 529 Plan Review Committee, are
17 amended to read as follows:

18 (b) The committee shall adopt such rules as it deems necessary and
19 proper to administer this chapter and to ensure the compliance of the
20 Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as in
21 effect on January 1, ~~2018~~ 2020.

22 (c) The committee shall have the following powers, duties, and
23 functions:

24 (1) To establish, develop, implement, and maintain the program
25 in a manner consistent with the provisions of this chapter and 26 U.S.C. §
26 529, as in effect on January 1, ~~2018~~ 2020, and to obtain the benefits
27 provided by 26 U.S.C. § 529 for the program, account owners, and designated
28 beneficiaries;

29 (2) To adopt rules for the general administration of the
30 program;

31 (3) To maintain, invest, and reinvest the funds contributed into
32 the program consistent with the investment restrictions established by the
33 committee and the standard of care described in the prudent investor rule
34 under § 24-2-610; and

35 (4)(A) To make and enter into any and all contracts, agreements,
36 or arrangements and to retain, employ, and contract for the services of

1 financial institutions, depositories, consultants, broker dealers, investment
2 advisors or managers, third-party plan administrators, and research,
3 technical, and other services necessary or desirable for carrying out the
4 purposes of this chapter.

5 (B) Contracts entered into by the committee may be for a
6 term of from one (1) to ten (10) years.

7
8 SECTION 8. Arkansas Code § 6-84-106 is amended to read as follows:
9 6-84-106. Investment direction.

10 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~
11 2020, no person shall have the right to direct the investment of any
12 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings
13 Program.

14
15 SECTION 9. 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 Act, 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 on January 1, ~~2018~~ 2020.

24
25 SECTION 10. Arkansas Code § 6-84-109(b)(2), concerning the reporting
26 of account withdrawals under the Arkansas Tax-Deferred Tuition Savings
27 Program Act, is amended to read as follows:

28 (2) The report shall be made at the time required by the rules
29 of the Internal Revenue Service as in effect on January 1, ~~2018~~ 2020, and
30 contain such information as is required by law.

31
32 SECTION 11. Arkansas Code § 6-84-111(a)(1), concerning funds exempt
33 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
34 amended to read as follows:

35 (a)(1) Except as otherwise indicated in this chapter, interest,
36 dividends, and capital gains from funds invested in the Arkansas Tax-Deferred

1 Tuition Savings Program or a tax-deferred tuition savings program established
2 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020,
3 shall be exempt from Arkansas income taxes.

4
5 SECTION 12. Arkansas Code § 6-84-111(b)(3), concerning funds exempt
6 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
7 amended to read as follows:

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

11 (A) Makes a subsequent nonqualified withdrawal from the
12 account; or

13 (B) Rolls the account over to a tax-deferred tuition
14 savings program established by another state or institution under 26 U.S.C. §
15 529, as in effect on January 1, ~~2018~~ 2020.

16
17 SECTION 13. Arkansas Code § 6-84-111(e) and (f), concerning funds
18 exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act,
19 are amended to read as follows:

20 (e)(1)(A) Contributions to a tuition savings account established under
21 the program or a tax-deferred tuition savings program established by another
22 state under 26 U.S.C. § 529, as in effect on January 1, 2020, may be deducted
23 from the taxpayer's adjusted gross income for the purpose of calculating
24 Arkansas income tax under § 26-51-403(b).

25 (B) A taxpayer may not deduct from the taxpayer's adjusted
26 gross income a contribution to a tax-deferred tuition savings program
27 established by another state if the taxpayer deducted the contribution in
28 another state or on another state's income taxes.

29 (2)(A) The deductible contributions for a tuition savings
30 account established under this chapter shall not exceed five thousand dollars
31 (\$5,000) per taxpayer in any tax year.

32 (B) If the aggregate amount of contributions by a taxpayer
33 during a tax year exceeds the limitation under subdivision (e)(2)(A) of this
34 section, the unused aggregate amount may be carried forward to the next
35 succeeding four (4) tax years.

36 (C) The deductible contributions for a tax-deferred

1 tuition savings program established by another state under 26 U.S.C. § 529,
2 as in effect on January 1, 2020, shall not exceed three thousand dollars
3 (\$3,000) per taxpayer in any tax year.

4 (D) The deductible contributions for a tax-deferred
5 tuition savings program established by another state under 26 U.S.C. § 529,
6 as in effect on January 1, 2020, that are rolled over into a tuition savings
7 account established under this chapter shall not exceed seven thousand five
8 hundred dollars (\$7,500) per taxpayer in the tax year in which they were
9 rolled.

10 (f)(1) Qualified withdrawals from a tuition savings account
11 established under this program or a tax-deferred tuition savings program
12 established by another state under 26 U.S.C. § 529, as in effect on January
13 1, ~~2018~~ 2020, will be exempt from Arkansas income tax with respect to the
14 designated beneficiary's income.

15 (2)(A) Nonqualified withdrawals from a tuition savings account
16 established under this program or a tax-deferred tuition savings program
17 established by another state under 26 U.S.C. § 529, as in effect on January
18 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

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

22 ~~(f)~~(g) Any earnings on the contribution that are included in the
23 refund will be subject to Arkansas income tax if an account owner receives a
24 refund of contributions to a tuition savings account established under this
25 program or a tax-deferred tuition savings program established by another
26 state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, because of
27 either:

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

29 (2) A scholarship, allowance, or payment described in 26 U.S.C.
30 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the
31 designated beneficiary.

32
33 SECTION 14. Arkansas Code § 6-84-113 is amended to read as follows:

34 6-84-113. Liberal construction.

35 This chapter shall be liberally construed to comply with the
36 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

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SECTION 15. Arkansas Code § 26-51-404(b)(10), concerning items excluded from the meaning of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(10) Title 26 U.S.C. §§ 108 and 1017, as in effect on January 1, ~~2019~~ 2020, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

SECTION 16. Arkansas Code § 26-51-404(b)(20), concerning items excluded from the meaning of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(20) Title 26 U.S.C. § 127, as in effect on ~~January 1, 2017~~ April 1, 2020, regarding the exclusion from gross income for employees whose education expenses were paid by an employer, is adopted for the purpose of computing Arkansas income tax liability;

SECTION 17. Arkansas Code § 26-51-414(a)(1), concerning the treatment of deferred compensation plans under the Income Tax Act of 1929, is amended to read as follows:

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

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

(B) Title 26 U.S.C. § 401, as in effect on ~~March 30, 2010~~ April 1, 2020.

SECTION 18. Arkansas Code § 26-51-423(d), concerning deductions for certain expenses under the Income Tax Act of 1929, is amended to read as follows:

(d) Title 26 U.S.C. § 221, as in effect on ~~January 2, 2013~~ April 1, 2020, regarding the deduction of interest paid on qualified education loans, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 19. Arkansas Code § 26-51-428(a), concerning deductions for

1 the depreciation of assets under the Income Tax Act of 1929, is amended to
2 read as follows:

3 (a) Title 26 U.S.C. §§ 167 and 168(a)-(j), as in effect on ~~January 1,~~
4 ~~2019~~ April 1, 2020, and 26 U.S.C. § 179, as in effect on January 1, 2009,
5 regarding depreciation and expensing of property, are adopted for the purpose
6 of computing Arkansas income tax liability for property purchased in tax
7 years beginning on or after January 1, 2014.

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9 SECTION 20. Arkansas Code § 26-51-453(a), concerning the deduction for
10 amounts deposited into health savings accounts under the Income Tax Act of
11 1929, is amended to read as follows:

12 (a) Title 26 U.S.C. § 223(a)-(d), (e)(2), (f), and (g), as in effect
13 on ~~January 1, 2011~~ April 1, 2020, regarding a deduction from income for
14 amounts deposited to health savings accounts, is adopted for purposes of
15 computing Arkansas income tax liability.

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17 SECTION 21. EFFECTIVE DATE. Sections 1-20 of this act are effective
18 for tax years beginning on or after January 1, 2021.

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/s/Jett

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