

**Hall of the House of Representatives**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

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**Subtitle of House Bill No. 1526**

"TO ADOPT THE FEDERAL INCOME TAX DEDUCTION FOR QUALIFIED TUITION  
PROGRAMS."

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**Amendment No. 1 to House Bill No. 1526.**

Amend House Bill No. 1526 as originally introduced:

Page 1, delete lines 9 through 11, and substitute the following:  
"AN ACT TO ENHANCE AND UPDATE THE ARKANSAS TAX-DEFERRED TUITION SAVINGS  
PROGRAM; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 14 through 16 and substitute the following:  
"TO ENHANCE AND UPDATE THE ARKANSAS TAX-DEFERRED TUITION SAVINGS PROGRAM"

Page 1, delete Section 1 and substitute the following additional sections:  
"SECTION 1. Arkansas Code § 6-84-102, concerning the purpose of the  
Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:  
6-84-102. Purpose.

It is the intent and purpose of this chapter to create and establish  
the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. § 529  
as in effect on January 1, ~~1999~~ 2003, to be administered by the Arkansas  
Teacher Retirement System through the adoption of rules and regulations for  
the administration of the program.

SECTION 2. Arkansas Code § 6-84-103, concerning definitions for the  
Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:  
6-84-103. Definitions.

For purposes of this chapter:

- (1) "Account" means an individual trust account or savings account  
established in accordance with this chapter;
- (2) "Account owner" means the individual or individuals other than the  
designated beneficiary identified at the time the account is opened as having  
the right to withdraw funds from the account;
- (3) "Act" means the "Arkansas Tax-Deferred Tuition Savings Program Act  
of 1999";
- (4) "Arkansas Tax-Deferred Tuition Savings Program Trust" or "trust"  
means the trust created under § 6-84-104. Participation in the trust shall



be open to Arkansas residents and nonresidents alike;

(5) "Committee" means the investment committee provided for in § 6-84-105, which shall oversee the administration of the Arkansas Tax-Deferred Tuition Savings Program and ensure that the program complies with the provisions of this chapter and acts in accordance with 26 U.S.C. § 529;

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

(7) "Higher education institution" means an eligible education institution as defined in 26 U.S.C. § ~~135(e)(3)~~ 529(e) as in effect on January 1, ~~1999~~ 2003;

(8) "Member of the family" shall have the same meaning as is contained in 26 U.S.C. § 529(e) as in effect on January 1, ~~1999~~ 2003;

(9) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(A) A qualified withdrawal;

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

(C) A withdrawal made as the result of a scholarship, or allowance or payment described in 26 U.S.C. § 135(d)(1)~~(B) or (C)~~ as in effect on January 1, ~~1999~~ 2003, received by the designated beneficiary but only to the extent of the amount of such scholarship, allowance, or payment; or

(D) A rollover or change in the designated beneficiary described in § 6-84-108;

(10) "Program" means the Arkansas Tax-Deferred Tuition Savings Program established by this chapter;

(11) "Qualified higher education expenses" means tuition and other permitted expenses as presently set forth in 26 U.S.C. § 529(e) as in effect on January 1, ~~1999~~ 2003, for the enrollment or attendance of a designated beneficiary at a higher education institution;

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary but only if the withdrawal is made in accordance with the requirements of the program; ~~and~~

(13) "System" means the Arkansas Teacher Retirement System, which is organized and governed pursuant to § 24-7-101 et seq.; and

(14) "Qualified tuition program" means a program established and administered by a state or agency or instrumentality thereof or an eligible education institution as set forth in 26 U.S.C. § 529(b) as in effect on January 1, 2003.

SECTION 3. Arkansas Code § 6-84-105, concerning administration of the Arkansas Tax-Deferred Savings Program, is amended to read as follows:

6-84-105. Administration - Authority - Powers.

(a) This chapter shall be administered by the Arkansas Tax-Deferred Tuition Savings Program Investment Committee, which shall be composed of:

(1) The Arkansas Teacher Retirement System's investment committee; and

(2) The Director of the Department of Higher Education.

(b) The Arkansas Tax-Deferred Tuition Savings Program Investment Committee shall adopt such rules and regulations as it deems necessary and proper to administer this subchapter and to ensure the program's compliance with 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003.

(c) The Arkansas Tax-Deferred Tuition Savings Program Investment Committee shall have the following powers, duties, and functions:

(1) To establish, develop, implement, and maintain the program in a manner consistent with the provisions of this subchapter and 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003, to obtain the benefits provided by such section for the program and its participants;

(2) To adopt rules and regulations for the general administration of the program;

(3) To maintain, invest, and reinvest the funds contributed into the program consistent with the investment restrictions established by the committee and the standard of care described in the prudent investor rule presently codified as § 24-3-417; and

(4)(A) To make and enter into any and all contracts, agreements, or arrangements and to retain, employ, and contract for the services of financial institutions, depositories, consultants, broker dealers, investment advisors or managers, third party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of this subchapter.

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

SECTION 4. Arkansas Code § 6-84-106, concerning the investment of funds held in the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:

6-84-106. Investment direction.

Except as permitted in 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003, and regulations thereunder as in effect on January 1, ~~1999~~ 2003, no person shall have the right to direct the investment of any contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings Program.

SECTION 5. Arkansas Code § 6-84-109, concerning the penalty provisions of the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:

6-84-109. Account withdrawals - Penalties.

(a) Withdrawal from an account may be made on thirty (30) days' written notice to the Arkansas Tax-Deferred Tuition Savings Program Investment Committee or on such shorter notice as the committee may by regulation provide.

(b) A withdrawal shall be designated as a qualified withdrawal or a nonqualified withdrawal, and the application shall provide such information and be made on such forms as the committee shall find are necessary to enable the committee to determine the nature of the withdrawal.

(c) ~~The committee shall establish a more than de minimis penalty, at the minimum amount necessary to satisfy the requirements of~~ The penalty imposed by this section upon withdrawals not used for qualified higher education expenses shall be equal to ten percent (10%) of the amount of the additional tax provided in 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003, for a nonqualified withdrawal on the portion of the withdrawal that

~~constitutes~~ is includible in gross income under 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003.

(d) An account withdrawal paid to or for the benefit of any person during any calendar year shall be reported to the person and the Internal Revenue Service. The report shall be made at the time and contain such information as is required by law.

(e) Penalties collected under this section may be used to defray the costs of the Arkansas Tax-Deferred Tuition Savings Program.

SECTION 6. Arkansas Code § 6-84-111, concerning the taxation of all Tuition Savings Program contributions, earnings and distributions, is amended to read as follows:

6-84-111. Funds exempt from tax.

(a) Except as otherwise indicated in this chapter, interest, dividends, and capital gains from funds invested in ~~the Arkansas Tax-Deferred Tuition Savings Program~~ a qualified tuition program shall be exempt from Arkansas income taxes.

(b) Contributions to a ~~tuition savings account established under this program~~ qualified tuition program may not be excluded or deducted from the contributor's income for the purpose of calculating Arkansas income tax.

(c)(1) Qualified withdrawals from a ~~tuition savings account established under this program~~ qualified tuition program will be exempt from Arkansas income tax with respect to the designated beneficiary's income as follows:

(A) Distributions from qualified tuition programs established and administered by a state or agency or instrumentality thereof made on or after January 1, 2003; and

(B) Distributions from qualified tuition programs established and administered by eligible educational institutions as defined under 26 U.S.C. § 529(e) made on or after January 1, 2004.

(2)(A) Nonqualified withdrawals from a ~~tuition savings account established under this program~~ qualified tuition program will be subject to Arkansas income tax.

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

(d) If an account owner receives a refund of contributions to a ~~tuition savings account established under this program~~ qualified tuition program because of either:

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

(2) A scholarship, or allowance or payment described in 26 U.S.C. § 135 (d)(1)(B) or (C) as in effect on January 1, ~~1999~~ 2003, received by the designated beneficiary then any earnings on the contribution that are included in the refund will be subject to Arkansas income tax.

SECTION 7. Arkansas Code § 6-84-113, concerning the construction of the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:

6-84-113. Liberal construction.

This chapter shall be liberally construed to comply with the requirement of 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003."

AND

Appropriately renumber the remaining section of the bill.

The Amendment was read \_\_\_\_\_  
By: Representative C. Taylor  
LDH/MHF - 022620031609  
MHF168

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Chief Clerk