INTERIM STUDY PROPOSAL 2017-053

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A Bill

HOUSE BILL 1788

By: Representative Dotson

Filed with: House Committee on Revenue and Taxation
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO PHASE IN AN EXTENSION OF THE NET OPERATING LOSS CARRY-FORWARD PERIOD FOR CALCULATING ARKANSAS INCOME TAX; TO MAKE TECHNICAL CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO PHASE IN AN EXTENSION OF THE NET OPERATING LOSS CARRY-FORWARD PERIOD FOR CALCULATING ARKANSAS INCOME TAX; AND TO MAKE TECHNICAL CHANGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-51-427 is amended to read as follows:

26-51-427. Deductions — Net operating loss carryover.

In addition to other deductions allowed by this chapter, there ~~shall be~~ is allowed as a deduction from gross income a net operating loss carryover under the following rules:

(1)(A) The net operating loss ~~as hereinbelow defined~~ for any ~~year ending on or after the passage of the Income Tax Act of 1929 and for any succeeding~~ taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of three (3) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the net operating loss occurred in an income year beginning before January 1, 1987. The net operating loss deduction ~~must~~ shall be carried forward in the order ~~named above~~ stated in this subdivision (1)(A).

(B) The net operating loss ~~as hereinbelow defined~~ for any year ending on or after the passage of the Income Tax Act of 1929, § 26-51-101 et seq., and for any succeeding taxable year before January 1, 2017, may be carried over to the next-succeeding taxable year and annually thereafter for a total period of five (5) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the net operating loss occurred in an income year beginning on or after January 1, 1987, but before January 1, 2017. The net operating loss deduction ~~must~~ shall be carried forward in the order ~~named above~~ stated in this subdivision (1)(B).

(C)(i) ~~The net operating loss as hereinbelow defined which resulted from farming operations, for income years beginning on or after January 1, 1981, and expired in accordance with subdivision (1)(A) of this section before being fully used, may be carried forward for an additional two (2) years and any unused portions can be combined and either applied to tax years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to claim the additional two-year carry forward, taxpayers must attach copies of both their federal tax returns and their state tax returns, showing the net operating losses for income years beginning on or after January 1, 1981, to their state tax returns. As used in this subdivision (1)(C), "farming operations" means that at least sixty-six and two-thirds percent (66 2/3%) of the total gross income, from all sources for the taxable year, must come from farming as defined by 26 U.S.C. § 464(e)(1) in effect on January 1, 1989.~~ The net operating loss for a taxable year may be carried over to the next succeeding taxable year and annually thereafter for the following number of years next succeeding the tax year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of a succeeding year, whichever is earlier, if the net operating loss occurred in an income year:

(a) Beginning on or after January 1, 2017, for a total period of six (6) years;

(b) Beginning on or after January 1, 2018, for a total period of seven (7) years;

(c) Beginning on or after January 1, 2019, for a total period of eight (8) years;

(d) Beginning on or after January 1, 2020, for a total period of nine (9) years; and

(e) Beginning on or after January 1, 2021, for a total period of ten (10) years.

(ii) The net operating loss deduction shall be carried forward in the order stated in this subdivision (1)(C).

(D) As used in this section, "taxable income" or "net income" ~~shall be deemed to be~~ means the net income computed without benefit of the deduction for income taxes, personal exemptions, and credit for dependents. The net income of the taxable period to which the net operating loss deduction, as adjusted, is carried~~, shall be~~ is the net income before the deduction of federal income taxes, personal exemption, and credit for dependents. ~~Such income~~ Income taxes, exemptions, and credits described in this subdivision (1)(D) shall not be used to increase the net operating loss ~~which~~ that may be carried to any other taxable period.

(E)(i) As used in this section, "qualified medical company" means a corporation engaged in:

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

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

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

(iii) If the qualified medical company is an "S" corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year of the net operating loss, ~~shall be~~ are applicable.

(iv) The net operating loss provisions ~~set forth above~~ stated in this subdivision (1)(E), which resulted from the operation of a qualified medical company, ~~shall be~~ are effective for taxable years beginning on and after January 1, 1987;

(2) As used in this section, “net operating loss” is defined as the excess of allowable deductions over gross income for the taxable year, subject to the following adjustments:

(A) There shall be added to gross income all nontaxable income, not required by law to be reported as gross income~~, as provided by law,~~ less any expenses properly and reasonably incurred in earning nontaxable income, which expenses would otherwise be nondeductible;

(B) In the case of a taxpayer other than a corporation, deductions, not including federal income taxes, not attributable to the operation of the trade or business ~~shall be~~ are eliminated from the deductions otherwise allowable for the taxable year to the extent that they exceed gross income not derived from trade or business. Personal exemptions and credit for dependents ~~shall not be~~ are not a deduction for the purpose of computing a net operating loss;

(C) ~~No~~ A net operating loss deduction shall not be allowed; and

(D) In the case of a taxpayer other than a “C corporation,” as defined in 26 U.S.C. § 1361, as in effect on January 1, 1985:

(i) For income years beginning after December 31, 1986, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(ii) For income years beginning after December 31, 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202 [repealed], as in effect on January 1, 1985, shall not be allowed; and

(3) In the case of the acquisition of assets of one (1) corporation by another corporation, the acquiring corporation shall succeed to and take into account any net operating loss carryover apportionable to Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq., that the acquired corporation could have claimed had it not been acquired, subject to the following conditions:

(A) The net operating loss may not be carried forward to a taxable year ~~which~~ that ends more than three (3) years after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning before January 1, 1987;

(B) The net operating loss may not be carried forward to a taxable year ~~which~~ that ends more than five (5) years after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning on or after January 1, 1987, but before January 1, 2017; ~~and~~

(C) The net operating loss may not be carried forward to a taxable year that ends more than the number of years stated in subdivisions (1)(B) and (C) of this section after the taxable year in which the net operating loss occurred if the net operating loss occurred in an income year beginning on or after January 1, 2017; and

~~(C)~~ (D) The net operating loss may be claimed only when the ownership of both the acquired and acquiring corporations is substantially the same~~, that is, where~~ in that not less than eighty percent (80%) of the voting stock of each corporation is owned by the same person or, ~~where prior to~~ before the acquisition, the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation. The carryover losses will be allowed only in those cases ~~where~~ in which the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas under the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq., in the post-merger period to absorb the carryover losses claimed by the surviving corporation.

SECTION 2. EFFECTIVE DATE. This act is effective for tax years beginning on or after January 1, 2017.

Referred by the Arkansas House of Representatives
Prepared by: VJF