

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

74

By: Senator Scott

For An Act To Be Entitled

"AN ACT TO AMEND SUBCHAPTER 3 OF CHAPTER 51 OF TITLE 26 OF THE ARKANSAS CODE OF 1987 ANNOTATED, BY ADDING THERETO A NEW SECTION TO ALLOW THE EXCLUSION FROM GROSS INCOME FOREIGN EARNED INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-419, TO ALLOW CHARITABLE DEDUCTIONS; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-423(a), TO ALLOW MOVING EXPENSES AS AN ITEMIZED DEDUCTION IN COMPUTING ARKANSAS TAXABLE INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-436, TO LIMIT INVESTMENT TAX CREDIT AND DEPRECIATION FOR LUXURY AUTOMOBILES IN COMPUTING ARKANSAS TAXABLE INCOME; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-504(c), CONCERNING CREDIT AGAINST INCOME TAX; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-806(a) TO CHANGE THE FILING DATE FOR INCOME TAX RETURNS; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-51-806, TO REQUIRE A COPY OF THE UNITED STATES CORPORATION INCOME TAX RETURN BE ATTACHED TO THE ARKANSAS CORPORATE INCOME TAX RETURN; TO AMEND §26-51-807(b)(2) TO CHANGE THE STARTING DATE FOR COMPUTATION OF INTEREST FOR PERSONS GRANTED AN EXTENSION FOR FILING STATE INCOME TAX RETURNS; TO AMEND SUBCHAPTER 4 OF CHAPTER 51 OF TITLE 26 OF THE ARKANSAS CODE OF 1987 ANNOTATED, BY ADDING THERETO A NEW SECTION TO PROVIDE FOR THE CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES; TO AMEND THE ARKANSAS CODE OF 1987 ANNOTATED, SECTIONS 26-51-404 AND 26-51-428, TO CORRECT THE COMPILATION ERROR CONCERNING THE TAX BENEFIT RULE; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-512-908(a) TO ALLOW EMPLOYERS TO FILE WITHHOLDING REPORTS ON AN ANNUAL BASIS IF THE AMOUNT OF WITHHOLDING IS LESS THAN TWO HUNDRED DOLLARS (\$200.00) PER YEAR; TO ALLOW EMPLOYERS TO FILE WITHHOLDING

REPORTS ON A MONTHLY BASIS IF THE AMOUNT OF WITHHOLDING IS TWO HUNDRED DOLLARS (\$200.00) OR MORE PER YEAR; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §§26-51-911 AND 26-51-913 TO DELETE THE FILING EXCEPTION FOR ESTATES AND TRUSTS; AND TO INCREASE THE MINIMUM ESTIMATED TAX PAYMENT AMOUNT FROM \$100.00 to \$250.00; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-18-208(6) TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A PENALTY WILL BE ASSESSED FOR FAILURE TO FILE ESTIMATED INCOME TAX PAYMENT; TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §26-18-306(2), TO CHANGE THE PERIOD FOR THE START OF THE STATUTE OF LIMITATIONS PERIOD WHEN TAXPAYERS FAIL TO NOTIFY THE COMMISSIONER OF INTERNAL REVENUE SERVICE CHANGES; AND FOR OTHER PURPOSES."

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

SECTION 1. This act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989."

SECTION 2. Subchapter 3 of Chapter 51 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new section to read as follows:

"26-51-310. Foreign Income Exclusion. Sections 911 and 912 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 911 regarding citizens or residents of the United States living abroad, and 26 U.S.C. 912 regarding certain allowances for citizens or residents of the United States living abroad, are hereby adopted for the purpose of computing Arkansas income tax liability."

SECTION 3. Section 26-51-419 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-419. Section 170 of the federal Internal Revenue Code of 1986 as amended and in effect on January 1, 1989, is adopted in computing the charitable deduction for individuals and corporations under the state income tax law."

SECTION 4. Section 26-51-423(a) of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (4) to read as follows:

"(4) Section 217 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 217 regarding the deduction of moving expenses, is hereby adopted for purposes of computing Arkansas income tax liability."

SECTION 5. Section 26-51-436 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (3) to read as follows:

"(3) Subsections (a), (b), (c), and (d) of Section 280F of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 208F(a), (b), (c), and (d) regarding investment tax credit and depreciation for luxury automobiles, is hereby adopted for purposes of computing Arkansas income tax liability."

SECTION 6. Section 26-51-504(c) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(c) The credit against Arkansas income tax afforded individual residents of Arkansas under this section shall also be available to fiduciaries, partnerships, and corporations residing or domiciled in Arkansas which are subject to Arkansas income tax or which have to report income for purposes of Arkansas income tax."

SECTION 7. Section 26-51-806(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a) Returns shall be in such form as the Commissioner of Revenues, from time to time, may prescribe and shall be filed with the Commissioner's office at Little Rock, Arkansas on or before April 15, if covering the preceding calendar year and, if covering a fiscal year, on or before the expiration of three and one-half (3½) months from the closing date of the period covered."

SECTION 8. Section 26-51-806 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (d) to read as follows:

"(d) Every corporation filing a return under this act shall attach thereto a completed copy of its Federal Tax Return for the same income year, including all schedules and attachments."

SECTION 9. Section 26-51-807(b)(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(b)(2) The interest may be computed from April 16 if the return covers the preceding calendar year; and, if the return covers a fiscal year, interest shall be computed from the day following the expiration of three and one-half (3½) months after the closing date of the period covered."

SECTION 10. Subchapter 4 of Chapter 51 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new section to read as follows:

"26-51-439. Capitalization of certain expenses. Section 263A, subsections (a), (b), (c), (d), (e), (f), (g), and (h) of the Internal Revenue Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 263A (a) through (h) regarding capitalization and inclusion in inventory costs of certain expenses, is hereby adopted for the purpose of computing Arkansas corporate income tax liability."

SECTION 11. Section 26-51-404(a)(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(2) The amount of all such items shall be included in the gross income of the taxable year in which received by the taxpayer. However, when property is sold upon what is known as the installment plan, the income may be included for taxation in that portion of any installment payment representing gain or profit in the year in which payment is received unless, under the methods of accounting permitted under this chapter, any such amounts are to be properly accounted for as of a different period."

SECTION 12. Section 26-51-428 of the Arkansas Code of 1987 Annotated is hereby amended by adding a new subsection (i) to read as follows:

"(i) Any recovery of an amount which was deducted from gross income in a prior year must be treated as taxable income in the year recovered to the extent that the deduction resulted in a reduction in income tax liability."

SECTION 13. Section 26-51-908(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a) (1) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on an annual basis as prescribed by the Commissioner and annually pay over to the Commissioner the full amount required to be deducted and withheld from the wages of the employee if said amount is less than two hundred dollars (\$200.00) per year.

(2) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on a monthly basis as prescribed by the Commissioner and pay over on a monthly basis to the Commissioner the full amount required to be deducted and withheld from the wages of the employee if said amount is two hundred dollars (\$200.00) or more per year.

(3) However, the Commissioner may, by regulation, provide that every such employer shall on or before the fifteenth day of each month pay over to the Commissioner or a depository designated by the Commissioner the amount required to be deducted and withheld by the employer for the preceding month if the amount is one hundred dollars (\$100.00) or more."

SECTION 14. Section 26-51-911 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"26-51-911. (a) Every taxpayer subject to the tax levied by the Arkansas Income Tax Act, as amended, §26-51-101 et seq., shall make and file with the Commissioner, a declaration of the estimated tax for the income year if the taxpayer can reasonably expect the estimated tax to be more than two hundred fifty dollars (\$250.00).

(b) The declaration of estimated tax shall be made on such forms and shall include such information as the Commissioner shall prescribe.

(c) The declaration shall be filed with the Commissioner on or before the fifteenth day of the fourth month of the income year of the taxpayer. However, taxpayers whose income from farming for the income year can reasonably be expected to amount to at least two-thirds (2/3) of the total gross income from all sources for the income year may file the declaration and pay the estimated tax on or before the fifteenth day of the second month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth day of the third month after the close of the income year.

(d) A taxpayer who, due to a change of circumstances, first meets the

requirements for filing a declaration after the fifteenth day of the fourth month of the income year, shall make and file the declaration on or before the next regular quarterly tax payment date.

(e) (1) A single declaration may be filed jointly by a husband and wife having the same income year.

(2) If a joint declaration is filed by a husband and wife and they do not file a joint return for the income year, the estimated tax paid under the joint declaration may be treated as the estimated tax of either the husband or wife or may be divided between them.

(f) A taxpayer may file amendments to a declaration at such times, under such rules and regulations, and in such form as the Commissioner shall prescribe."

SECTION 15. Arkansas Code of 1987 Annotated §26-51-913 is hereby amended to read as follows:

"26-51-913. (a) The estimated tax as shown on the declaration filed with the Commissioner shall be paid as follows:

(1) If the estimated tax is not more than two hundred fifty dollars (\$250.00) payment may be made at the time the declaration is filed or at the time the return for the income year is filed.

(2) If the estimated tax is in excess of two hundred fifty dollars (\$250.00), it may be paid in full at the time of filing the declaration of estimated tax, or it may, at the election of the taxpayer, be paid in equal installments of one-fourth (\) at the time prescribed for filing the declaration, one-fourth (\) on or before the fifteenth day of the sixth month of the income year, one-fourth (\) on or before the fifteenth day of the ninth month of the income year, and one-fourth (\) on or before the fifteenth day of the first month after the close of the income year.

(3) In the case of a taxpayer who files an amendment to the declaration, the quarterly tax payments coming due after the amendment shall be adjusted either up or down to conform to the amended declaration of estimated tax.

(4) (A) In the case of a taxpayer who first meets the requirements and files a declaration subsequent to the fifteenth day of the fourth month of the income year, and not later than the fifteenth day of the ninth month of the income year, if the estimated tax is in excess of two hundred fifty

dollars (\$250.00), the taxpayer may pay the estimated tax in equal installments with the first installment being due at the time of filing the declaration and an installment being due on each subsequent regular quarterly tax payment date for the income year as prescribed in subsection (a)(2) of this section.

(B) If the declaration is filed subsequent to the fifteenth day of the ninth month of the income year and on or before the fifteenth day of the first month after the close of the income year, the estimated tax shall be paid in full at the time of filing the declaration.

(b) Any tax payment due under the provisions of this subchapter may be paid by the taxpayer in advance of the date prescribed in this section for the payment thereof."

SECTION 16. Section 26-18-208(6) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(6) If a taxpayer fails to make a declaration of estimated tax and pay on any quarterly due date the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) per annum to the amount of the underestimate. The ten percent (10%) per annum penalty shall be applied on a quarterly basis. A taxpayer who has an uneven income may compute the ten percent (10%) penalty on an annualized basis.

The penalty provided herein for failure to make correct payments of estimated income tax shall not be applied to the following exceptions:

(a) No penalty shall be imposed for a tax year if the tax shown on the return for such tax year is \$250.00 or less.

(b) Taxpayers whose income from farming for the income year can reasonably be expected to amount to at least two-thirds (2/3) of the total gross income from all sources for the income year, may file such declaration and pay the estimated tax on or before the fifteenth (15th) day of the second (2nd) month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth (15th) day of the third (3rd) month after the close of the income year.

(c) The penalty herein provided shall not be applicable where the original amount of estimated tax is the same amount shown to be due by the

return of the taxpayer for the preceding income year where such return showing a liability for tax was filed by the taxpayer for the preceding income year of twelve (12) months.

(d) In lieu of filing the fourth (4th) quarter installment the taxpayer may file an income tax return and pay the tax on or before January 31st or on the last day of the first month after the close of the income year.

(e) No penalty shall be imposed for a tax year if:

(1) the preceding tax year was a tax year of 12 months, and
(2) the taxpayer did not have a tax liability for the preceding tax year, and,

(3) the taxpayer was a resident of Arkansas throughout the preceding tax year.

(f) No penalty shall be imposed with respect to any underpayment to the extent that the Commissioner of Revenues determines that by reasons of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience.

(g) No penalty shall be imposed with respect to any underestimate or underpayment if the Commissioner determines that:

(1) the taxpayer

(i) retired after having attained age 62, or

(ii) became disabled,

in the year for which such estimated payment was required to be made or in the tax year preceding such tax year, and

(2) such underpayment was due to reasonable cause and not to willful neglect."

SECTION 17. Section 26-18-306(2) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(2) If there is any additional state tax due from the taxpayer because of the correction by the Internal Revenue Service, any additional state tax must be assessed by the Commissioner within one (1) year of the filing of the notice by the taxpayer. However, in the instance of a taxpayer who fails to notify the Commissioner of the correction as required by this subsection, no assessment of additional state tax due from the taxpayer because of the correction of the Internal Revenue Service shall be made by the Commissioner after the expiration of eight (8) years from receiving notice of such

correction from the Internal Revenue Service or, if the Internal Revenue Service assessment is appealed by the taxpayer, eight (8) years from the date of the final Internal Revenue Service assessment or payment by the taxpayer, whichever period expires later."

SECTION 18. The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1990.

SECTION 19. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 20. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.