

1 State of Arkansas

2 78th General Assembly

3 Regular Session, 1991

4 By: House Revenue and Taxation Committee

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For An Act To Be Entitled

8 "AN ACT TO REFLECT A NEW EFFECTIVE DATE FOR THE ARKANSAS
9 IMPLEMENTATION OF SECTIONS 162(1), 163, 280F, 72, 219, 401
10 THROUGH 416 INCLUSIVE, 457, 213, 167, 168, 179 AND 611
11 THROUGH 613 INCLUSIVE, 614, 616 AND 617 OF THE INTERNAL
12 REVENUE CODE OF 1986 AS IN EFFECT ON JANUARY 1, 1991; TO
13 REFLECT A NEW EFFECTIVE DATE FOR THE ARKANSAS
14 IMPLEMENTATION OF SUBCHAPTER S OF THE INTERNAL REVENUE
15 CODE OF 1986 AS IN EFFECT ON JANUARY 1, 1991; TO INCREASE
16 THE TIME PERIOD IN WHICH A LEVY MUST BE MADE OR A
17 PROCEEDING FILED TO TEN (10) YEARS AFTER THE DATE OF
18 ASSESSMENT OF THE TAX; TO AUTHORIZE THE DIRECTOR OF THE
19 DEPARTMENT OF FINANCE AND ADMINISTRATION TO PROMULGATE
20 REGULATIONS PROVIDING FOR THE EXTENSION OF TIME TO FILE
21 TAX RETURNS; TO IMPOSE A PENALTY FOR FAILURE TO TIMELY
22 FILE CORRECT RETURNS; TO CHANGE THE FAILURE TO PAY PENALTY
23 FOR INDIVIDUAL INCOME TAX RETURN FILERS; AND FOR OTHER
24 PURPOSES."

25

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

27

28 SECTION 1. Arkansas Code Annotated § 26-51-403(b) is hereby amended to
29 read as follows:

30 "(b) 'Adjusted gross income' means gross income minus the following
31 deductions and exemption:

32 (1) Deductions for alimony payments;

33 (2) Deductions for separate maintenance payments;

34 (3) Deductions for interest forfeited to a bank, savings

35 association, etc. on premature withdrawals from time savings accounts or

1 deposits;

2 (4) Deductions allowed for cash payments to individual retirement
3 accounts and deductions allowed for cash payments to retirement savings plans
4 of certain married individuals to cover a nonworking spouse;

5 (5) Deductions for contributions by self-employed persons to
6 pension, profit-sharing, and annuity plans;

7 (6) The border city exemption as provided by 26-52-602; and

8 (7) Deductions for the health insurance costs of self-employed
9 persons as computed in accordance with section 162(1) of the Internal Revenue
10 Code of 1986, as in effect on January 1, 1991, the same being 26 U.S.C. 162
11 (1) regarding the deduction of twenty-five percent (25%) of the health
12 insurance costs of self-employed persons."

13

14 SECTION 2. Arkansas Code Annotated § 26-51-409 is hereby amended to
15 read as follows:

16 "26-51-409. Federal Subchapter S adopted.

17 (a) Subchapter S of the federal Internal Revenue Code of 1986, as in
18 effect on January 1, 1991, regarding the small business corporations, is
19 hereby adopted for the purpose of computing Arkansas income tax liability.

20 (b) The corporate election and shareholder consents required to be
21 filed under Subchapter S of the federal Internal Revenue Code of 1986 for
22 Arkansas income tax purposes shall be filed with the Director of the
23 Department of Finance and Administration of the State of Arkansas in the same
24 manner and at the same time as required under Subchapter S.

25 (c) (1) However, all nonresident shareholders of corporations
26 receiving income in the form of distributions pursuant to the provisions of
27 this section must file a properly executed state income tax return with the
28 Director of the Department of Finance and Administration and remit the
29 applicable state income tax upon the amount distributed.

30 (2) Failure to so report and remit on the part of any shareholder
31 shall be grounds upon which the director shall be authorized to revoke the
32 corporation's Subchapter S election and collect the tax from the corporation
33 by any manner authorized by the Arkansas Income Tax Act of 1929, 26-51-101 et
34 seq."

35

1 SECTION 3. Arkansas Code 26-51-415 is hereby amended to read as
2 follows:

3 "26-51-415. Deductions - Interest.

4 Section 163 of the federal Internal Revenue Code of 1986, as in effect
5 on January 1, 1991, regarding the deductions for interest expenses, is hereby
6 adopted for the purpose of computing Arkansas income tax liability."

7

8 SECTION 4. Arkansas Code Annotated § 26-51-436(3) is hereby amended to
9 read as follows:

10 "(3) Subsections (a), (b), (c), and (d) of Section 280F of the federal
11 Internal Revenue Code of 1986, as in effect on January 1, 1991, regarding
12 investment tax credit and depreciation for luxury automobiles, is hereby
13 adopted for purposes of computing Arkansas income tax liability."

14

15 SECTION 5. Arkansas Code Annotated § 26-51-414 is hereby amended to
16 read as follows:

17 "26-51-414. Deferred compensation plans. Sections 72, 219, 401 through
18 416 inclusive and 457 of the federal Internal Revenue Code of 1986, as in
19 effect on January 1, 1991, relating to annuities, retirement savings and
20 employee benefit plans, respectively, are hereby adopted for the purpose of
21 computing Arkansas income tax liability, except Arkansas capital gains
22 treatment, and the Arkansas tax rates shall apply. The requirements for
23 filing a joint return under Section 219(c)(1)(A) of the Internal Revenue Code
24 of 1986 shall not apply. Any additional tax or penalty imposed by this
25 section shall be ten percent (10%) of the amount of any additional tax or
26 penalty provided in the federal income tax law adopted by this section."

27

28 SECTION 6. Arkansas Code Annotated § 26-51-423(a)(2) is hereby amended
29 to read as follows:

30 "(2) Medical and Dental Expenses. Section 213 of the federal Internal
31 Revenue Code of 1986, in effect on January 1, 1991, is adopted in computing
32 the medical and dental expense deduction under the state income tax law."

33

34 SECTION 7. Section 26-18-306(h) of the Arkansas Code of 1987 Annotated
35 is amended to read as follows:

1 "(h) Where the assessment of any tax imposed by any state law has been
2 made within the period of limitation properly applicable thereto, the tax may
3 be collected by levy or proceeding in court, but only if the levy is made or
4 the proceeding is begun within ten (10) years after the date of the assessment
5 of the tax."

6

7 SECTION 8. Arkansas Code Annotated § 26-51-428 is hereby amended to
8 read as follows:

9 "26-51-428. Depreciation - Deductions - Expensing of property.

10 (a) Section 167, 168, and 179 of the federal Internal Revenue Code of
11 1986, as in effect on January 1, 1991, regarding depreciation and expensing of
12 property, are hereby adopted for the purpose of computing Arkansas income tax
13 liability.

14 (b) The basis on which exhaustion, wear and tear, and
15 obsolescence are to be allowed in respect to any property shall be the
16 adjusted basis provided in 26-51-411 for the purpose of determining the gain
17 on the sale or other disposition of the property."

18

19 SECTION 9. Section 26-18-505(a) of the Arkansas Code of 1987 is hereby
20 amended to read as follows:

21 "(a) (1) Upon written request, the director may, for good cause,
22 grant a reasonable extension of time to file any return required under any
23 state tax law.

24 (2) The director shall keep a record of every extension granted
25 with the reason therefor.

26 (3) (A) The time for filing any return shall not extend more
27 than ninety (90) days.

28 (B) The director may, in extraordinary circumstances, grant
29 an additional ninety-day extension.

30 (4) The Director of the Department of Finance and Administration
31 is hereby authorized to promulgate regulations to grant automatic extensions
32 of time to file income tax returns and information returns without the
33 taxpayer being required to submit a written application for the extension of
34 time to file."

35

1 SECTION 10. Arkansas Code Annotated §26-51-807 is hereby amended by
2 adding a new subsection (d) to read as follows:

3 "(d) The Director is hereby authorized to promulgate regulations
4 granting automatic extensions of time to file income tax returns and
5 information returns without the taxpayer being required to submit a written
6 application, a copy of the federal request for extension or a copy of the
7 document granting the federal extension if the Director determines that such
8 requirements are unnecessary for the administration of the income tax laws."
9

10 SECTION 11. Section 26-51-429 of the Arkansas Code Annotated is hereby
11 amended to read as follows:

12 "26-51-429. Deductions - Depletion allowances.

13 (a) In the case of all natural resources for which a deduction for
14 depletion is allowed under 611 of the federal Internal Revenue Code, the
15 provisions of §§ 611-613 and §§ 614, 616, and 617 of the Internal Revenue
16 Code, as amended and in effect on January 1, 1991, are adopted in computing
17 the depletion allowance deduction under Arkansas income tax law.

18 (b) In computing the depletion allowance deduction allowed by this section
19 for oil and gas wells, the provisions of 613 of the Internal Revenue Code
20 shall not be in effect, but, instead, the computation of the amount of the
21 depletion deduction shall be controlled by the provisions of 613A of the
22 Internal Revenue Code, as amended and in effect on January 1, 1991, which are
23 adopted as part of the state income tax law."
24

25 SECTION 12. Arkansas Code 26-55-229(b) is hereby amended to read as
26 follows:

27 "(b) The reports shall be filed on forms prescribed by the director and
28 shall be filed with the director on or before the twenty-fifth day of each
29 calendar month following the reporting month in question. Once a distributor
30 has become liable to file a monthly report with the Director of the Department
31 of Finance and Administration, he must continue to file a monthly report, even
32 though no tax is due, until such time as he notifies the Director, in writing,
33 that he is no longer liable for monthly reports."
34

35 SECTION 13. Arkansas Code 26-52-501(a) is hereby amended to read as

1 follows:

2 "(a) The tax levied hereunder shall be due and payable on the first day
3 of each month, except as provided in this subchapter, by any person liable for
4 the payment of any tax due under this act, as amended. Once a taxpayer has
5 become liable to file a report with the Director of the Department of Finance
6 and Administration, he must continue to file a report, even though no tax is
7 due, until such time as he notifies the Director, in writing, that he is no
8 longer liable for those reports."

9

10 SECTION 14. Arkansas Code 26-53-125(a)(1) is hereby amended to read as
11 follows:

12 "(a)(1) The tax imposed by this subchapter shall be due and payable to
13 the director monthly on or before the twentieth day of each month. Once a
14 taxpayer has become liable to file a report with the Director of the
15 Department of Finance and Administration, he must continue to file a report,
16 even though no tax is due, until such time as he notifies the Director, in
17 writing, that he is no longer liable for those reports."

18

19 SECTION 15. Arkansas Code 26-56-106(a) is hereby amended to read as
20 follows:

21 "(a) Once a supplier, dealer, or user of distillate special fuel or
22 liquefied gas special fuel has become liable to file a report with the
23 Director of the Department of Finance and Administration, he must continue to
24 file a report, even though no tax is due, until such time as he notifies the
25 Director, in writing, that he is no longer liable for reports. Any supplier,
26 dealer, or user of distillate special fuel or liquefied gas special fuel who
27 fails, neglects, or refuses to make any report required by this chapter or to
28 pay any tax levied at the time and in the manner required in this chapter
29 shall, in addition to any other penalty provided in this chapter, be liable
30 for the amount of the tax due, plus any penalties allowed by law."

31

32 SECTION 16. If a taxpayer has been previously advised that he has
33 failed to comply with the provisions of the Arkansas Code or the rules and
34 regulations as promulgated by the Director of the Department of Finance and
35 Administration by his failure to include all of the information required to be

1 shown on the return or the inclusion of incorrect information and he continues
2 to disregard those provisions, there shall be assessed a penalty of fifty
3 dollars (\$50) per return, unless the failure is due to reasonable cause and
4 not due to wilful neglect.

5

6 SECTION 17. If a taxpayer has previously been advised that he has not
7 complied with the provisions of Arkansas Code sections 26-51-908(g)(2), 26-55-
8 229(b), 26-56-106(a), 26-52-501(a), or 26-53-125(a)(1) because he has not
9 filed a return or notified the Director of the Department of Finance and
10 Administration that he is no longer required to file a return, even though no
11 tax is due, and he continues to disregard those provisions, there shall be
12 assessed a penalty of fifty dollars (\$50) per return, unless the failure is
13 due to reasonable cause and not due to wilful neglect.

14

15 SECTION 18. Arkansas Code 26-18-208(2) is hereby amended to read as
16 follows:

17 "(2) (A) In case of a failure to pay the amount shown as tax on any
18 return required to be filed under any state tax law, except an individual
19 income tax return, on or before the date prescribed for payment of the tax,
20 unless it is shown that the failure to pay is due to reasonable cause and not
21 to wilful neglect, there shall be added to the amount shown as tax on the
22 return five percent (5%) of the amount of the tax if the failure is for not
23 more than one (1) month, with an additional five percent (5%) for each
24 additional month, or fraction thereof, during which the failure continues, not
25 to exceed thirty-five percent (35%) in the aggregate;

26 (B) In case of failure to pay the amount shown as tax on any
27 individual income tax return required to be filed, on or before the date
28 prescribed for payment of the tax, unless it is shown that the failure to pay
29 is due to reasonable cause and not to wilful neglect, there shall be added to
30 the amount shown as tax on the return one percent (1%) of the amount of the
31 tax if the failure is for not more than one (1) month, with an additional one
32 percent (1%) for each additional month, or fraction thereof, during which the
33 failure continues, not to exceed thirty-five percent (35%) in the aggregate;"

34

35 SECTION 19. Arkansas Code 26-18-208(3) is hereby amended to read as

1 follows:

2 "(3) (A) If any penalty is assessed under subdivision (1) of this
3 section, then no penalty shall be assessed under subdivision (2) (A). If any
4 penalty is assessed under subdivision (2) (A) of this section, then no penalty
5 shall be assessed under subdivision (1);

6 (B) With respect to any individual income tax return, the amount
7 of the addition under subdivision (1) of this section shall be increased by
8 the amount of the addition under subdivision (2) (B) of this section for any
9 month (or fraction thereof) to which an addition to tax applies under both
10 subdivision (1) and (2) (B), not to exceed thirty-five percent (35%) in the
11 aggregate."

12

13 SECTION 20. The provisions of this act shall be in full force and
14 effect for all income years beginning on and after January 1, 1991.

15

16 SECTION 21. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

19

20 SECTION 22. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25

26 SECTION 23. All laws or parts of laws in conflict with this act are
27 hereby repealed.

28

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