

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1639

4
5 By: Representative Courtway

For An Act To Be Entitled

9 "AN ACT TO ADOPT TECHNICAL CORRECTIONS TO STATE INCOME,
10 GROSS RECEIPTS AND COMPENSATING USE TAXES; AND FOR OTHER
11 PURPOSES."

Subtitle

14 "STATE TAX TECHNICAL CORRECTIONS ACT."

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

18 SECTION 1. Ark. Code Ann. §26-51-502(b)(1) is amended to read as
19 follows:

20 "(b)(1) Section ~~44A~~ 21 of the Internal Revenue Code of ~~1954~~ 1986, as
21 amended and in effect on January 1, ~~1983~~ 1997, is adopted for purposes of
22 determining the allowable credit under the Arkansas Income Tax Act, as
23 amended, §26-51-101 et seq., for household and dependent care services
24 necessary for gainful employment."

26 SECTION 2. Ark. Code Ann. §26-51-414 is amended to read as follows:

27 "Sections 72, 219, 401-404, and 406-416 inclusive, and §457 of the
28 Internal Revenue Code of 1986, as in effect on January 1, ~~1995~~ 1997, relating
29 to annuities, retirement savings, and employee benefit plans, respectively,
30 are hereby adopted for the purpose of computing Arkansas income tax liability,
31 except Arkansas capital gains treatment, and the Arkansas tax rates shall
32 apply. The requirements for filing a joint return under §219(c)(1)(A) of the
33 Internal Revenue Code of 1986 shall not apply. Any additional tax or penalty
34 imposed by this section shall be ten percent (10%) of the amount of any
35 additional tax or penalty provided in the federal income tax law adopted by
36 this section."

1

2 SECTION 3. Ark. Code Ann. §26-51-404(b)(12) is amended to read as
3 follows:

4 "(12) Section 125 of the federal Internal Revenue Code of 1986, in
5 effect on January 1, ~~1987~~ 1997, is adopted in computing amounts excludible
6 from gross income under the Arkansas Income Tax Act, §26-51-101 et seq., for
7 payments received under a cafeteria plan;"

8

9 SECTION 4. Ark. Code Ann. §26-51-404(b)(13) is amended to read as
10 follows:

11 "(13) Section 129 of the federal Internal Revenue Code of 1986, as in
12 effect on January 1, ~~1989~~ 1997, regarding the exclusion from income for
13 dependent care assistance, is hereby adopted for the purpose of computing
14 Arkansas income tax liability. However, no amounts excluded from gross income
15 pursuant to this subdivision shall be taken into account in computing the
16 dependent care credit contained in §26-51-502;"

17

18 SECTION 5. Ark. Code Ann. §26-51-404(b)(15) is amended to read as
19 follows:

20 "(15) Sections 104-106 of the federal Internal Revenue Code of 1986, as
21 in effect on January 1, ~~1989~~ 1997, regarding the exclusion from income of
22 disability and health plan payments, are hereby adopted for the purpose of
23 computing Arkansas income tax liability;"

24

25 SECTION 6. Ark. Code Ann. §26-51-404(b)(17) is amended to read as
26 follows:

27 "(17) Section 119 of the Internal Revenue Code of 1986, as in effect on
28 January 1, ~~1995~~ 1997, regarding the exclusion from gross income of meals or
29 lodging furnished for the convenience of the employer, is adopted for the
30 purpose of computing Arkansas income tax liability;"

31

32 SECTION 7. Ark. Code Ann. §26-51-423(a)(1) is amended to read as
33 follows:

34 "(1) BUSINESS EXPENSES. All of §162, except subsection (n), of the
35 Internal Revenue Code of 1986, as in effect on January 1, ~~1995~~ 1997, regarding
36 trade or business expenses, is hereby adopted for the purpose of computing

1 Arkansas income tax liability;"

2

3

4 SECTION 8. Ark. Code Ann. §26-51-423(a)(2) is amended to read as
5 follows:

6 "(2) MEDICAL AND DENTAL EXPENSES. Section 213 of the Internal Revenue
7 Code of 1986, as in effect on January 1, ~~1995~~ 1997, is adopted in computing
8 the medical and dental expense deduction under the state income tax law;"

9

10 SECTION 9. Ark. Code Ann. §26-51-423(b) is amended to read as follows:

11 "(b) Section 274 of the Internal Revenue Code of 1986, as in effect on
12 January 1, ~~1995~~ 1997, regarding the deductions of expenses for entertainment,
13 amusement, recreation, business meals, travel, etc., is hereby adopted for the
14 purpose of computing Arkansas income tax liability ~~only for taxable years~~
15 ~~beginning during calendar years 1995 and 1996.~~"

16

17 SECTION 10. Ark. Code Ann. §26-51-423(c)(1) is amended to read as
18 follows:

19 "(c)(1) An individual who is self-employed shall be allowed a
20 deduction equal to ~~twenty-five percent (25%)~~ the applicable percentage, as
21 set forth in 26 U.S.C. §162 (1)(1)(B) as in effect on January 1, 1997, of the
22 amount paid during the taxable year for insurance which constitutes medical
23 care for the taxpayer, his spouse, and dependents."

24

25 SECTION 11. Ark. Code Ann. §26-51-415 is amended to read as follows:

26 "Section 163 of the Internal Revenue Code of 1986, as in effect on
27 January 1, ~~1995~~ 1997, regarding the deductions for interest expenses, is
28 hereby adopted for the purpose of computing Arkansas income tax liability."

29

30 SECTION 12. Ark. Code Ann. §26-51-428(a) is amended to read as follows:

31 "(a) Sections 167, 168, and 179 of the Internal Revenue Code of 1986,
32 as in effect on January 1, ~~1995~~ 1997, regarding depreciation and expensing of
33 property, are hereby adopted for the purpose of computing Arkansas income tax
34 liability."

35

36 SECTION 13. Ark. Code Ann. §26-51-419 is amended to read as follows:

1 "Section 170 of the Internal Revenue Code of 1986, as in effect on
 2 January 1, ~~1995~~ 1997, regarding deductions for charitable contributions, is
 3 hereby adopted for the purpose of computing Arkansas income tax liability.
 4 This adoption is for taxable years beginning on or after January 1, ~~1995~~ 1997,
 5 and will have no effect on years prior to its adoption."
 6

7 SECTION 14. Ark. Code Ann. §26-51-436(2) is amended to read as follows:

8 "(2) Section 469 of the Internal Revenue Code of 1986, as in effect on
 9 January 1, ~~1995~~ 1997, regarding the limitations on deductibility of passive
 10 activity losses and credits, is hereby adopted for the purpose of computing
 11 Arkansas income tax liability;"
 12

13 SECTION 15. Ark. Code Ann. §26-51-426 is amended to read as follows:

14 "Any bank, building and loan, savings and loan or any other savings
 15 institution chartered and supervised as a savings and loan, or similar
 16 associations under federal or state law shall be allowed a bad debt expense
 17 deduction computed in accordance with Internal Revenue Code §§582, 585, and
 18 593, as in effect on January 1, ~~1993~~ 1997."
 19

20 SECTION 16. Ark. Code Ann. §26-51-815(a) is amended to read as follows:

21 "(a) To the extent they apply to capital gains and losses, realized or
 22 incurred during income years beginning after December 31, ~~1990~~ 1996,
 23 §§1211-1237, and 1239-1257 of Title 26 of the United States Code as in effect
 24 on January 1, ~~1991~~ 1997, and the regulations of the Secretary of the Treasury
 25 promulgated thereunder and in effect on January 1, ~~1991~~ 1997, are adopted for
 26 the purpose of computing tax liability under the Arkansas Income Tax Act of
 27 1929, as amended, §26-51-101 et seq. However, the provisions of this section
 28 shall not apply to C corporations as defined in 26 U.S.C. §1361 as in effect
 29 on January 1, ~~1991~~ 1997. Furthermore, any other provisions of the federal
 30 income tax law and regulations necessary for interpreting and implementing 26
 31 U.S.C. §§1211-1237, and 1239-1257 are adopted to that extent and as in effect
 32 on January 1, ~~1991~~ 1997."
 33

34 SECTION 17. Ark. Code Ann. §26-51-409(a) is amended to read as follows:

35 "(a) Subchapter S of the federal Internal Revenue Code of 1986, as in
 36 effect on January 1, ~~1991~~ 1997, regarding small business corporations, is

1 hereby adopted for the purpose of computing Arkansas income tax liability."

2

3 SECTION 18. Ark. Code Ann. §26-51-443(b) is amended to read as follows:

4 "(b) Section 7872 of the Internal Revenue Code of 1986, as in effect on
5 January 1, ~~1993~~ 1997, regarding the taxation of foregone interest on a
6 below-market loan, is hereby adopted for the purpose of computing Arkansas
7 income tax liability."

8

9 SECTION 19. Ark. Code Ann. §26-51-306(a)(4) is amended to read as
10 follows:

11 "(4) Sections 112 and 692 of the Internal Revenue Code of 1986, as in
12 effect on January 1, ~~1991~~ 1997, regarding combat pay of members of the armed
13 forces and income taxes of members of the armed forces on death, are adopted.
14 The provisions contained in §112 of the Internal Revenue Code are in
15 addition to all other provisions contained in this section."

16

17 SECTION 20. Ark. Code Ann. §26-51-435(d) is amended to read as follows:

18 "(d) Nonresidents ~~and part-year residents~~ shall divide adjusted gross
19 income from Arkansas sources by the adjusted gross income from all sources to
20 arrive at the applicable percentage that Arkansas adjusted gross income
21 represents of all adjusted gross income received by the taxpayer in the income
22 year. Part-year residents shall divide adjusted gross income received while
23 an Arkansas resident by the adjusted gross income from all sources to arrive
24 at the applicable percentage that the adjusted gross income received while an
25 Arkansas resident represents of all adjusted gross income received by the
26 taxpayer in the income year."

27

28 SECTION 21. Ark. Code Ann. §26-51-436 is amended to add a new
29 subsection to read as follows:

30 "(5) Section 220 of the Internal Revenue Code of 1986, as in effect on
31 January 1, 1997, regarding the deductibility from income of contributions made
32 to a Medical Savings Account (MSA) by the taxpayer or the taxpayer's employer,
33 is hereby adopted for the purpose of computing Arkansas income tax liability."

34

35 SECTION 22. Ark. Code Ann. §26-51-404(b)(3) is amended to read as
36 follows:

1 "~~(3) The proceeds of life insurance policies and contracts paid upon~~
 2 ~~the death of the insured;~~ Section 101 of the Internal Revenue Code of 1986, as
 3 in effect on January 1, 1997, relating to the exclusion from gross income of
 4 proceeds or benefits paid upon the illness or death of the insured, is hereby
 5 adopted for the purpose of computing Arkansas income tax liability;"

6

7 SECTION 23. Ark. Code Ann. §26-51-404(b)(1) is amended to read as
 8 follows:

9 "~~(1) The gain, if any, resulting when property of a taxpayer, because~~
 10 ~~of its destruction in whole or part, or theft, seizure, or requisition or~~
 11 ~~condemnation or threat or imminence thereof, is compulsorily or involuntarily~~
 12 ~~converted into property similar or related in service or use to the property~~
 13 ~~so converted, or into money and such money is forthwith in good faith expended~~
 14 ~~in the acquisition of other property similar or related in service or use to~~
 15 ~~the property so converted, or in the acquisition or control of a corporation~~
 16 ~~owning such other property, or in the establishment of a replacement fund;~~
 17 Section 1033 of the Internal Revenue Code of 1986, as in effect on January 1,
 18 1997, relating to the exclusion from gross income of gain resulting from the
 19 involuntary conversion of a taxpayer's property, is hereby adopted for the
 20 purpose of computing Arkansas income tax liability;"

21

22 SECTION 24. Ark. Code Ann. §26-51-440 is amended to read as follows:

23 "(a) Subchapter M of the Internal Revenue Code of 1986, as in effect on
 24 January 1, ~~1995~~ 1997, relating to regulated investment companies, real estate
 25 investment trusts and financial asset securitization investment trusts
 26 (FASITs), is adopted as state income tax law for the purpose of computing
 27 Arkansas income tax liability and shall govern all corporations which are
 28 registered as investment companies under the Investment Company Act of 1940,
 29 as in effect on January 1, ~~1995~~ 1997. However, those provisions of Subchapter
 30 M addressing the tax rates applied to FASIT income are not adopted. Any FASIT
 31 income subject to Arkansas income tax shall be taxed at the rates set forth in
 32 Ark. Code Ann. §26-51-205.

33 (b) Any election made for federal income tax purposes under Subchapter
 34 M of the Internal Revenue Code of 1986, as in effect on January 1, ~~1995~~ 1997,
 35 shall be deemed made for state income tax purposes.

36 (c) This section shall take effect and be enforced for tax years

1 beginning on or after January 1, ~~1995~~ 1997."

2

3 SECTION 25. Ark. Code Ann. §26-51-908(c)(2) is amended to read as
4 follows:

5 "(2) Returns and payments to the director by employers engaged in
6 seasonal business shall be made on or before the last day of the month
7 following the month for which those amounts were deducted and withheld from
8 the wages of his employees. ~~However, any employer who files regular quarterly~~
9 ~~withholding returns shall not be required to file monthly returns as provided~~
10 ~~in this subsection."~~

11

12 SECTION 26. Ark. Code Ann. §26-51-908(g)(1) is amended to read as
13 follows:

14 "(g)(1) Once an employer has become liable to ~~a quarterly~~ an annual
15 return of withholding, he must continue to file ~~a quarterly~~ an annual report,
16 even though no tax has been withheld, until such time as he notifies the
17 director, in writing, that he no longer has employees or that he is no longer
18 liable for ~~quarterly returns~~ an annual return."

19

20 SECTION 27. Ark. Code Ann. §26-18-306(b) is amended to read as follows:

21 "(b)(1) Notwithstanding the provisions of subsection (a) of this
22 section, if the amount of taxable income or taxable estate for a taxpayer for
23 any year, as returned to the United States Treasury Department, is changed and
24 corrected by the Commissioner of Internal Revenue or any officer of the United
25 States of competent authority, the taxpayer, within thirty (30) days from the
26 receipt of the notice and demand for payment by the Internal Revenue Service,
27 must report to the director the corrected federal tax, taxable income, or
28 taxable estate for the taxable period covered by the change on an amended
29 Arkansas income tax return.

30 (2) If there is any additional state tax due from the taxpayer because
31 of the correction by the Internal Revenue Service, any additional state tax
32 must be assessed by the director within one (1) year of the filing of the
33 ~~notice~~ amended Arkansas income tax return by the taxpayer. However, in the
34 instance of a taxpayer who fails to notify the director of the correction as
35 required by this subsection, no assessment of additional state tax due from
36 the taxpayer because of the correction by the Internal Revenue Service shall

1 be made by the director after the expiration of eight (8) years from the date
 2 the return was required to be filed or the date the return was filed,
 3 whichever period expires later. If the assessment made by the Internal
 4 Revenue Service is appealed by the taxpayer, the director shall have three (3)
 5 years from the date of the final Internal Revenue Service assessment or date
 6 of payment of the federal assessment by the taxpayer, whichever of the two
 7 periods expires later, in which to make an assessment."

8

9 SECTION 28. Ark. Code Ann. §26-53-203(a)(1) is amended to read as
 10 follows:

11 "(a)(1) All tangible personal property which is procured from without
 12 this state for use, storage, distribution, or consumption including machinery,
 13 equipment, repair or replacement parts, materials, and supplies used, stored,
 14 distributed, or consumed by a contractor in the performance of a contract in
 15 this state shall be subject to the compensating tax of ~~three percent (3%)~~ four
 16 and one-half percent (4½%) of the purchase price as provided by the Arkansas
 17 Compensating Tax Act, §26-53-101 et seq., or ~~three percent (3%)~~ four and one-
 18 half percent (4½%) of its market or book value, whichever is greater, if the
 19 property has been subjected to prior use before coming to rest for use,
 20 storage, distribution, or consumption within this state. The four and one-
 21 half percent (4½%) compensating tax shall be in addition to any other
 22 compensating taxes levied by the State of Arkansas."

23

24 SECTION 29. Ark. Code Ann. §26-53-203(b) is amended to read as follows:

25 "(b) In the case of leases or rentals of tangible personal property by
 26 a contractor for use, storage, distribution, or consumption in this state, the
 27 contractor shall report and remit the compensating tax on the basis of rental
 28 or lease payments made to the lessor of the tangible personal property during
 29 the term of the lease or rental, which lease rentals shall be in accordance
 30 with written contracts between lessor and lessee furnished to the Director of
 31 the Department of Finance and Administration."

32

33 SECTION 30. Ark. Code Ann. §26-53-203(c)(1) is amended to read as
 34 follows:

35 "(c)(1) The provisions of this subchapter shall not apply in respect to
 36 the use, consumption, distribution, or storage of tangible personal property

1 as defined in this subchapter for use or consumption in this state upon which
 2 a like tax equal to or greater than the amount imposed by this subchapter has
 3 been paid in another state, the proof of payment of the tax to be according to
 4 rules and regulations made by the director."

5

6 SECTION 31. Ark. Code Ann. §26-53-124(a)(1) is amended to read as
 7 follows:

8 "(a)(1) Every vendor making a sale of tangible personal property
 9 directly or indirectly for the purpose of storage, use, distribution, or
 10 consumption in this state shall collect the tax from the purchaser and give a
 11 receipt therefor. This provision includes all out-of-state vendors who
 12 deliver merchandise into Arkansas in their own conveyance where such
 13 merchandise will be stored, used, distributed, or consumed within this state."

14

15 SECTION 32. Ark. Code Ann. §26-51-445 is amended to read as follows:

16 ~~———— "(a) For purposes of this section:~~

17 ~~———— (1) "Adoption expenses" means any amount expended by a claimant for~~
 18 ~~adoption fees, court costs, or legal fees relating to the adoption of a child,~~
 19 ~~whether or not the adoption process is completed;~~

20 ~~———— (2) "Claimant" means an adoptive parent or a prospective adoptive~~
 21 ~~parent; and~~

22 ~~———— (3) "Household" means a claimant and an individual related to the~~
 23 ~~claimant as husband or wife.~~

24 ~~———— (b)(1) Subject to the limitations provided in this section, there shall~~
 25 ~~be allowed a credit against the tax imposed by the Arkansas Income Tax Act of~~
 26 ~~1929, §26-51-101 et seq., in an amount equal to ten percent (10%) of all~~
 27 ~~adoption expenses incurred by a claimant which exceed twenty percent (20%) of~~
 28 ~~his or her Arkansas adjusted gross income.~~

29 ~~———— (2)(A) The maximum credit that may be claimed under this section by a~~
 30 ~~claimant may not exceed the lesser of the amount of individual income tax~~
 31 ~~otherwise due or eight hundred dollars (\$800) for each adoption process.~~

32 ~~———— (B) The maximum amount of adoption expenses for each adoption process~~
 33 ~~for which a credit is claimed under this section is twenty thousand dollars~~
 34 ~~(\$20,000).~~

35 ~~———— (3) Except as provided in subdivision (b)(4), of this section only one~~
 36 ~~(1) credit per household is allowed each taxable year.~~

1 ~~_____ (4) If a married couple files separately, each spouse may claim a~~
 2 ~~maximum credit of fifty percent (50%) of the amount allowed under this~~
 3 ~~section.~~

4 ~~_____ (c) The Department of Finance and Administration is authorized to~~
 5 ~~promulgate the rules and regulations necessary to administer this section.~~

6 ~~_____ (d) This section applies to taxable years beginning on and after January~~
 7 ~~1, 1995.~~

8 Section 23 of the Internal Revenue Code of 1986 (26 U.S.C. §23), as in
 9 effect on January 1, 1997 is adopted for purposes of determining the allowable
 10 credit for adoption related fees, costs and expenses paid or incurred by a
 11 taxpayer. The amount of credit allowed against Arkansas income tax due shall
 12 be twenty percent (20%) of the federal credit as calculated pursuant to 26
 13 U.S.C. §23."

14

15 SECTION 33. Ark. Code Ann. §26-51-413 is amended to read as follows:

16 "Sections 332, 334, 336, 337, and 338 of the federal Internal Revenue
 17 Code of 1986, as in effect on January 1, 1989, the same being 26 U.S.C. 332,
 18 334, 337, and 338 regarding the liquidations of corporations, are hereby
 19 adopted for the purpose of computing Arkansas income tax liability-; provided,
 20 however, that a corporation that (i) has made an election under subchapter S
 21 of the Internal Revenue Code of 1986 and (ii) has not made a corresponding
 22 election to be treated as an S Corporation for Arkansas income tax purposes
 23 pursuant to Section 26-51-409(b), will not be deemed to have made elections
 24 under Section 338 of the Internal Revenue Code of 1986 for Arkansas income tax
 25 purposes, unless it has filed a separate election with the Arkansas Director
 26 of the Department of Finance and Administration stating that it is making an
 27 election under Section 338 for Arkansas income tax purposes. For the purposes
 28 of the application of this section, the transition rule of sections 633(c) and
 29 (d) of the Tax Reform Act of 1986, Public Law 99-514, as amended by
 30 subsections (g)(2), (g)(3)(A)-(C), (g)(4), (g)(5)(A) and (B), and (g)(7) of
 31 section 1006 of the Technical and Miscellaneous Revenue Act of 1988, Public
 32 Law 100-647, shall also apply under the state income tax law."

33

34 SECTION 34. Sections 1 through 24, 32 and 33 shall be effective for tax
 35 years beginning on and after January 1, 1997. However, it is the intent of
 36 this Act that those portions of the Internal Revenue Code adopted by this Act

1 which for federal tax purposes do not become effective until some time after
 2 January 1, 1997, shall also not become effective for state tax purposes until
 3 the same time.

4
 5 SECTION 35. All provisions of this act of a general and permanent
 6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 7 Code Revision Commission shall incorporate the same in the Code.

8
 9 SECTION 36. If any provision of this act or the application thereof to
 10 any person or circumstance is held invalid, such invalidity shall not affect
 11 other provisions or applications of the act which can be given effect without
 12 the invalid provision or application, and to this end the provisions of this
 13 act are declared to be severable.

14
 15 SECTION 37. All laws and parts of laws in conflict with this act are
 16 hereby repealed.

17
 18 SECTION 38. EMERGENCY. It is hereby found and determined by the
 19 General Assembly that current state tax laws are unclear or confusing,
 20 creating difficulty for taxpayers seeking to comply with these tax laws; that
 21 the changes made by Sections 25 through 31 of this bill are necessary to
 22 provide adequate direction to those taxpayers and to maintain the efficient
 23 administration of the Arkansas tax laws; and that the provisions of Sections
 24 25 through 31 of this Act are necessary to effectuate that purpose.
 25 Therefore, an emergency is hereby declared to exist and the provisions of
 26 Sections 25 through 31 of this Act being necessary for the preservation of the
 27 public peace, health, and safety shall become effective on the date of its
 28 approval by the Governor. If the bill is neither approved nor vetoed by the
 29 Governor, Sections 25 through 31 shall become effective on the expiration of
 30 the period of time during which the Governor may veto the bill. If the bill
 31 is vetoed by the Governor and the veto is overridden, Sections 25 through 31
 32 shall become effective on the date the last house overrides the veto.

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