Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
83rd General Assembly
Regular Session, 2001

A Bill

HOUSE BILL 1608

By: Representative R. Smith

For An Act To Be Entitled

AN ACT TO PROVIDE AN EXEMPTION FROM INCOME TAX FOR A PORTION OF CAPITAL GAINS DERIVED FROM THE SALE OF CLOSELY HELD BUSINESSES AND CERTAIN STOCK; TO AMEND THE DEFINITIONS OF “RESIDENT” AND “NONRESIDENT” FOR INCOME TAX PURPOSES; AND FOR OTHER PURPOSES.

Subtitle

PROVIDES AN EXEMPTION FROM INCOME TAX FOR A PORTION OF CAPITAL GAINS DERIVED FROM THE SALE OF CLOSELY HELD BUSINESSES AND CERTAIN STOCK AND AMENDS THE DEFINITION OF RESIDENT AND NONRESIDENT.

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

SECTION 1. Arkansas Code 26-51-815 is amended to read as follows:

26-51-815. Computing capital gains and losses.

(a) To the extent they apply to capital gains and losses realized or incurred during income years beginning after December 31, 1996, 26 U.S.C. §§ 1211-1237 and 1239-1257 as in effect on January 1, 1999, and the regulations of the Secretary of the Treasury promulgated thereunder and in effect on January 1, 1999, are adopted for the purpose of computing tax liability under the Income Tax Act of 1929, as amended, § 26-51-101 et seq. However, the provisions of this ~~section~~ <u>subsection</u> shall not apply to C corporations as defined in 26 U.S.C. § 1361, as in effect on January 1, 1997. Furthermore, any other provisions of the federal income tax law and regulations necessary for interpreting and implementing 26 U.S.C. §§ 1211-1237 and 1239-1257 are adopted to that extent and as in effect on January 1, 1999.

(b) If a taxpayer, other than a C corporation, has a net capital gain for tax years beginning on and after January 1, 1999, thirty percent (30%) of the gain shall be exempt from state income tax.

(c) Section 1202 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

(d)(1) Beginning on and after January 1, 2001, if a taxpayer, other than a C corporation, has a capital gain from the sale of a qualified asset held for the specified holding period, the stated percentage of gain shall be excluded from income:

Holding Period	Stated Percentage of Gain
Five years	40%
More than 5 years but not exceeding 6 years	50%
More than 6 years but not exceeding 7 years	60%
More than 7 years but not exceeding 8 years	70%
More than 8 years but not exceeding 9 years	80%
More than 9 years but not exceeding 10 years	90%
More than 10 years	100%

(2) “Qualified asset” means:

(A) Assets of a closely held farm or business;

(B) Stock in a corporation in which the taxpayer had a controlling interest or materially participated in the activity of the business; or

(C) Stock acquired by an employee of a corporation through an employee stock option program that was not part of a 401(k) plan or other retirement program.

(3) A taxpayer may exclude from income the stated percentage of gain from a qualified asset only one time in the taxpayer’s lifetime. If a taxpayer has gain from more than one (1) category of qualified assets in a calendar year, only the stated percentage of gain from one (1) category may be excluded from income. Gain from the other qualified assets shall be computed in accordance with § 26-51-815(a).

(4) If a taxpayer has gain from stock as defined in § 26-51-815(d)(2)(B) and that gain also qualifies for the fifty percent (50%) income exclusion provided in § 26-51-815(c), the taxpayer must elect either to

exclude the stated percentage of gain from income as provided in § 26-51-815(d)(1), or the fifty percent (50%) income exclusion of § 26-51-815(c).

(e) Gain computed pursuant to § 26-51-815(d)(1) shall not be offset by any capital losses and shall not be reduced by § 26-51-815(b).

SECTION 2. Arkansas Code 26-51-102(9), pertaining to definitions used for income tax purposes, is amended to read as follows:

(9) "Resident" means natural persons and includes, for the purpose of determining liability for the tax imposed by this act upon or with reference to the income of any taxable year, any person domiciled in the State of Arkansas ~~and any other person who maintains a permanent place of abode within this state and spends in the aggregate more than six (6) months of the taxable year within this state;~~ during all of a taxable year. A person's domicile is the place established as the person’s true, fixed, and permanent home, and to which place, whenever the person is absent, he or she has the intention of returning. A domicile, once established, remains until a new one is established and the old domicile is conclusively abandoned. No person shall be deemed to have established or abandoned a domicile solely because of the person’s presence or absence in compliance with military or naval orders of the United States;

SECTION 3. Arkansas Code 26-51-102(10), pertaining to definitions used for income tax purposes, is amended to read as follows:

(10) "Nonresident," when used in connection with this act, ~~shall apply to any natural person whose domicile is without the State of Arkansas and who maintains a place of abode without this state and spends in the aggregate more than six (6) months of the taxable year without this state~~ means any individual not a resident or part-year resident of this state;

SECTION 4. Arkansas Code 26-51-102, pertaining to definitions used for income tax purposes, is amended to add a new subsection to read as follows:

(19) “Part-year resident” means an individual who is a resident for less than a taxable year.

SECTION 5. Arkansas Code 26-52-604 is amended to read as follows:

26-52-604. Individual taxpayers entitled to benefit of subchapter.

(a) Any individual taxpayer ~~residing in~~ who is a resident of any border city or town located outside the State of Arkansas shall be entitled to the benefits of the provisions of this subchapter with respect to income derived by any individual taxpayer from employment or business activity engaged in the Arkansas border city upon which income tax is due the State of Arkansas under the provisions of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq.

(b) A person is a resident of a border city or town if the person is domiciled in the border city or town.

(c) A person's domicile is the place established as the person’s true, fixed, and permanent home, and to which place, whenever the person is absent, he or she has the intention of returning. A domicile, once established, remains until a new one is established and the old domicile is conclusively abandoned.

SECTION 6. [THE ARKANSAS CODE REVISION COMMISSION IS NOT REQUIRED TO CODIFY THIS SECTION.] In codifying this act, the Arkansas Code Revision Commission may make any necessary changes to conform Arkansas Code 26-51-102 to Code style and format.