

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 309

4
5 By: Senator Wooldridge
6
7

For An Act To Be Entitled

8
9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE
10 ARKANSAS INCOME TAX LAWS BY ADOPTING RECENT
11 CHANGES TO THE INTERNAL REVENUE CODE; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 TO MAKE TECHNICAL CORRECTIONS TO THE
16 ARKANSAS INCOME TAX LAWS BY ADOPTING
17 RECENT CHANGES TO THE INTERNAL REVENUE
18 CODE.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 26-51-301(c), concerning the definition of
24 "head of household" is amended to read as follows:

25 (c) As used in this section, the term "head of household" shall have
26 the same meaning as defined in section 2(b) of the federal Internal Revenue
27 Code of 1986, in effect on January 1, ~~1991~~ 2005.
28

29 SECTION 2. Arkansas Code § 26-51-404(b)(1), concerning exclusions from
30 gross income, is amended to read as follows:

31 (1) Section 1033 of the Internal Revenue Code of 1986, as in
32 effect on January 1, ~~1999~~ 2005, relating to the exclusion from gross income
33 of gain resulting from the involuntary conversion of a taxpayer's property,
34 is hereby adopted for the purpose of computing Arkansas income tax liability;
35

36 SECTION 3. Arkansas Code § 26-51-404(b)(2), concerning exclusions from



1 gross income, is amended to read as follows:

2 (2) Section 121 of the Internal Revenue Code of 1986, as in
3 effect on January 1, ~~1999~~ 2005, relating to the exclusion from gross income
4 of gain from the sale or exchange of property owned and used as the
5 taxpayer's principal residence, is hereby adopted for the purpose of
6 computing Arkansas income tax liability;

7
8 SECTION 4. Arkansas Code § 26-51-404(b)(12), concerning the exclusion
9 of dependent care assistance from gross income, is amended to read as
10 follows:

11 (12) Section 129 of the Internal Revenue Code of 1986, as in
12 effect on January 1, ~~1997~~ 2005, 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 (b)(12) shall be taken into account in computing
16 the dependent care credit contained in § 26-51-502;

17
18 SECTION 5. Arkansas Code § 26-51-404(b), concerning exclusions from
19 gross income, is amended to add an additional subdivision to read as follows:

20 (26) Section 134 of the Internal Revenue Code of 1986, as in
21 effect on January 1, 2005, regarding the exclusion from income of child care
22 benefits provided to members of the United States military, is adopted for
23 the purpose of computing Arkansas income tax liability.

24
25 SECTION 6. Arkansas Code § 26-51-409 is amended to read as follows:

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

27 (a) Subchapter S of the Internal Revenue Code of 1986, as in effect on
28 January 1, ~~2003~~ 2005, regarding small business corporations, is hereby
29 adopted for the purpose of computing Arkansas income tax liability.

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

35 (c)(1) However, all nonresident shareholders of S corporations
36 receiving a prorated share of income, loss, deduction, or credit pursuant to

1 the provisions of this section must file a properly executed state income tax
2 return with the Director of the Department of Finance and Administration and
3 remit the applicable state income tax due.

4 (2) Failure to so report and remit on the part of any
5 shareholder shall be grounds upon which the director shall be authorized to
6 revoke the corporation's Subchapter S election and collect the tax from the
7 corporation by any manner authorized by the Arkansas Income Tax Act of 1929,
8 § 26-51-101 et seq.

9
10 SECTION 7. Arkansas Code § 26-51-411(e), concerning the installment
11 method of accounting, is amended to read as follows:

12 (e) Sections 453, 453A, and 453B of the Internal Revenue Code of 1986,
13 as in effect on January 1, ~~1995~~ 2005, are adopted concerning the installment
14 method of accounting.

15
16 SECTION 8. Arkansas Code § 26-51-414(a), concerning deferred
17 compensation plans, is amended to read as follows:

18 (a)(1) Sections 72, 219, 401-404, 406-416, and 457 of the Internal
19 Revenue Code of 1986, as in effect on January 1, ~~2002~~ 2005, relating to
20 annuities, retirement savings, and employee benefit plans, respectively, are
21 hereby adopted for the purpose of computing Arkansas income tax liability,
22 except Arkansas capital gains treatment, and the Arkansas tax rates shall
23 apply.

24 (2) The requirements for filing a joint return under §
25 219(c)(1)(A) of the Internal Revenue Code of 1986 shall not apply.

26
27 SECTION 9. Arkansas Code § 26-51-419 is amended to read as follows:
28 26-51-419. Deductions – Charitable contributions.

29 (a) Section 170 of the Internal Revenue Code of 1986, as in effect on
30 January 1, ~~2001~~ 2005, regarding deductions for charitable contributions, is
31 hereby adopted for the purpose of computing Arkansas income tax liability.
32 This adoption is for taxable years beginning on or after January 1, ~~2001~~
33 2005, and will have no effect on years prior to its adoption. Provided,
34 however, with respect to contributions of qualified appreciated stock within
35 the meaning of Internal Revenue Code § 170(e)(5) made after May 31, 1997, the
36 provisions of this section shall apply after taking into account the

1 extension of the provisions of Internal Revenue Code § 170(e)(5) by § 602 of
2 the Taxpayer Relief Act of 1997 and § 1004(a) of the Tax Extension Act.

3 (b) The provisions of subsection (a) of this section shall apply to a
4 corporation that files an Arkansas consolidated corporation income tax return
5 pursuant to § 26-51-805, provided that each member of the affiliated group
6 shall follow the provisions of § 26-51-805(f) and calculate its contribution
7 limits separately.

8
9 SECTION 10. Arkansas Code § 26-51-423 is amended to read as follows:
10 26-51-423. Deductions – Expenses.

11 (a) In computing net income, there shall be allowed as deductions the
12 following expenses:

13 (1) Business expenses. All of § 162, except subsection (n), of
14 the Internal Revenue Code of 1986, as in effect on January 1, ~~1999~~ 2005,
15 regarding trade or business expenses, is hereby adopted for the purpose of
16 computing Arkansas income tax liability;

17 (2) Medical and dental expenses. Section 213 of the Internal
18 Revenue Code of 1986, as in effect on January 1, 1997, is adopted in
19 computing the medical and dental expense deduction under the state income tax
20 law;

21 (3) Travel expenses. In determining travel expenses deductible
22 as a business expense in computing net income as provided under subdivision
23 (a)(1) of this section, the deduction for vehicle miles shall be determined
24 by the Director of the Department of Finance and Administration under his
25 regulatory authority in § 26-18-301; and

26 (4) Moving expenses. Section 217 of the Internal Revenue Code of
27 1986, as in effect on January 1, 1995, regarding the deduction of moving
28 expenses, is hereby adopted for the purpose of computing Arkansas income tax
29 liability.

30 (b) Section 274 of the Internal Revenue Code of 1986, as in effect on
31 January 1, ~~1999~~ 2005, regarding the deductions of expenses for entertainment,
32 amusement, recreation, business meals, travel, et cetera, is hereby adopted
33 for the purpose of computing Arkansas income tax liability.

34 (c)(1) An individual who is self-employed shall be allowed a deduction
35 equal to the applicable percentage as set forth in 26 U.S.C. § 162(1)(1)(B)
36 as in effect on January 1, 1999, of the amount paid during the taxable year

1 for insurance which constitutes medical care for the taxpayer, his spouse,
2 and dependents.

3 (2)(A) No deduction shall be allowed under subsection (c) of
4 this section to the extent that the amount of such deduction exceeds the
5 taxpayer's earned income derived by the taxpayer from the trade or business
6 with respect to which the plan providing the medical care coverage is
7 established.

8 (B) Subsection (c) of this section shall not apply to any
9 taxpayer who is eligible to participate in any subsidized health plan
10 maintained by any employer of the taxpayer or the spouse of the taxpayer.

11 (3) Any amount paid by the taxpayer for insurance to which
12 subsection (c) of this section applies shall not be taken into account in
13 computing the amount allowable to the taxpayer as a deduction under
14 subdivision (a)(2) of this section.

15 (d) Section 221 of the Internal Revenue Code of 1986, as in effect on
16 January 1, 2003, regarding the deduction of interest paid on qualified
17 education loans, is adopted for the purpose of computing Arkansas income tax
18 liability.

19 (e) Section 198 of the Internal Revenue Code of 1986, as in effect on
20 January 1, ~~1999~~ 2005, regarding the deduction of costs paid or incurred for
21 the cleanup of certain hazardous substances, is adopted for the purpose of
22 computing Arkansas income tax liability.

23 (f) Section 190 of the Internal Revenue Code of 1986, as in effect on
24 January 1, 2001, regarding the deduction of costs paid or incurred to improve
25 access to vehicles and facilities for handicapped and elderly persons, is
26 adopted for the purpose of computing Arkansas income tax liability.

27 (g)(1) A deduction pursuant to subsection (a)(1) of this section for
28 interest or intangible-related expenses paid by the taxpayer to a related
29 party shall be allowed only if:

30 (A) The interest or intangible-related income received by
31 the related party is subject to income tax imposed by the State of Arkansas,
32 another state, or a foreign government that has entered into a comprehensive
33 income tax treaty with the United States;

34 (B) The interest or intangible-related income received by
35 the related party was received pursuant to:

36 (i) An "arm's length" contract or at an "arm's

1 length" rate of interest; and

2 (ii) A transaction not intended to avoid the payment
3 of Arkansas income tax otherwise due;

4 (C) The taxpayer and the director enter into a written
5 agreement prior to the due date of the taxpayer's Arkansas income tax return:

6 (i) Authorizing the taxpayer to take the deduction
7 for the tax year at issue; or

8 (ii) Requiring the use of an alternative method of
9 income apportionment by the taxpayer for the tax year at issue; or

10 (D) During the taxable year, the related party recipient
11 of interest or intangible related income, in a location not described
12 in(g)(1)(A), a "non-tax location":

13 (i) Operates an active trade or business in the non-
14 tax location;

15 (ii) Has a minimum of fifty (50) full-time-
16 equivalent employees in the non-tax location;

17 (iii) Owns real or tangible personal property with a
18 fair market value in excess of one million dollars (\$1,000,000) located in
19 the non-tax location; and

20 (iv) Has revenues generated from sources within the
21 non-tax location in excess of one million dollars (\$1,000,000).

22 (2) "Related party" means a related party as defined by Section
23 267 of the Internal Revenue Code of 1986, as in effect on January 1, 2003.

24 (h) Section 194 of the Internal Revenue Code of 1986, as in effect on
25 January 1, 2005, regarding the amortization of qualified reforestation
26 expenses, is adopted for the purpose of computing Arkansas income tax
27 liability.

28
29 SECTION 11. Arkansas Code § 26-51-429 is amended to read as follows:
30 26-51-429. Deductions – Depletion allowances.

31 (a) In the case of all natural resources for which a deduction for
32 depletion is allowed under § 611 of the Internal Revenue Code of 1986, the
33 provisions of §§ 611-613, 614, 616, and 617 of the Internal Revenue Code of
34 1986, as amended and in effect on January 1, ~~1999~~ 2005, are adopted in
35 computing the depletion allowance deduction under Arkansas income tax law.

36 (b) In computing the depletion allowance deduction allowed by this

1 section for oil and gas wells, the provisions of § 613 of the Internal
2 Revenue Code of 1986 shall not be in effect, but instead the computation of
3 the amount of the depletion deduction shall be controlled by the provisions
4 of § 613A of the Internal Revenue Code of 1986, as amended and in effect on
5 January 1, ~~1999~~ 2005, which are adopted as part of the state income tax law.

6
7 SECTION 12. Arkansas Code § 26-51-436, concerning limitations on
8 deductions, is amended to add a new subdivision to read as follows:

9 (7) Section 470 of the Internal Revenue Code of 1986, as in
10 effect on January 1, 2005, regarding leasing transactions between taxpayers,
11 is adopted for the purpose of computing Arkansas income tax liability.

12
13 SECTION 13. Arkansas Code § 26-51-439 is amended to read as follows:

14 26-51-439. Capitalization of certain expenses.

15 (a) Section 263A, subsections (a), (b), (c), (d), (e), (f), (g), and
16 (h) of the federal Internal Revenue Code of 1986, as in effect on January 1,
17 1989, regarding capitalization and inclusion in inventory costs of certain
18 expenses, is hereby adopted for the purpose of computing Arkansas corporate
19 income tax liability.

20 (b) Section 195 of the Internal Revenue Code of 1986, as in effect on
21 January 1, 2001, regarding capitalization and amortization of a corporation's
22 start-up expenses, is adopted for the purpose of computing Arkansas income
23 tax liability.

24 (c) Section 248 of the Internal Revenue Code of 1986, as in effect on
25 January 1, ~~2001~~ 2005, regarding capitalization and amortization of a
26 corporation's organizational expenses, is adopted for the purpose of
27 computing Arkansas income tax liability.

28 (d) Section 709 of the Internal Revenue Code of 1986, as in effect on
29 January 1, 2005, regarding the amortization of partnership organizational
30 expenses, is adopted for the purpose of computing Arkansas income tax
31 liability.

32
33 SECTION 14. Arkansas Code § 26-51-448 is amended to read as follows:

34 26-51-448. Educational individual retirement accounts.

35 Section 530 of the Internal Revenue Code of 1986, as in effect on
36 January 1, ~~2002~~ 2005, relating to educational individual retirement accounts,

1 is adopted for the purposes of computing Arkansas income tax liability. Any
2 additional tax or penalty imposed by this section shall be ten percent (10%)
3 of the amount of any additional tax or penalty provided in the federal income
4 tax law adopted by this section.

5
6 SECTION 15. Arkansas Code § 26-51-501(a), concerning personal tax
7 credits, is amended to read as follows:

8 (a) There shall be deducted from the tax after the tax shall have been
9 computed as set forth in this act a personal tax credit as follows:

10 (1) For a single individual, the adjusted individual credit.
11 However, a taxpayer who was blind or deaf at any time during the income year
12 shall be entitled to an additional tax credit of twenty dollars (\$20.00). A
13 single individual who is deaf-blind shall be entitled to an additional tax
14 credit of forty dollars (\$40.00). A single individual of sixty-five (65)
15 years of age or older shall be entitled to an additional tax credit of twenty
16 dollars (\$20.00);

17 (2)(A)(i) For the head of household, surviving spouse, or a
18 married individual living with husband or wife, the adjusted joint credit. A
19 husband and wife living together and filing either jointly or separately on
20 the same income tax form shall receive but one (1) adjusted joint credit
21 against their aggregate tax.

22 (ii) Subdivision (2)(A)(i) of this section shall
23 apply if the Director of the Department of Finance and Administration
24 continues to provide a tax return on which a husband and wife can elect to
25 file jointly or separately on the same return.

26 (B) However, in the event that the husband or wife shall
27 be sixty-five (65) years of age or older, each of them who is sixty-five (65)
28 years of age or older shall be entitled to an additional tax credit of twenty
29 dollars (\$20.00).

30 (C) However, any husband or wife filing a separate return
31 on a separate tax form shall receive the adjusted individual credit on each
32 return so filed, but if the husband or wife is sixty-five (65) years of age
33 or older, each of them who is sixty-five (65) years of age or older shall be
34 entitled to an additional tax credit of twenty dollars (\$20.00).

35 (D) The term "head of household" shall have the same
36 meaning as defined in section 2(b) of the Internal Revenue Code of 1986, as

1 in effect on January 1, 2001.

2 (E) The term "surviving spouse" shall have the same
 3 meaning as defined in section 2(a) of the Internal Revenue Code of 1986, as
 4 in effect on January 1, 2001;

5 (3)(A) For each individual, other than husband or wife, who has
 6 a gross income for the tax year of less than three thousand dollars (\$3,000),
 7 who has not filed a joint return with his or her spouse for the taxable year,
 8 and who is dependent upon and receives his or her chief support from the
 9 taxpayer, the adjusted individual credit.

10 (B) ~~For the purposes of subdivision (a)(3)(A) of this~~
 11 ~~section, the term "dependent" means any of the following persons over half of~~
 12 ~~whose support for the income year was received from the taxpayer:~~

- 13 ~~(i) A son or daughter or descendant of either;~~
- 14 ~~(ii) A stepson or stepdaughter;~~
- 15 ~~(iii) A brother, sister, stepbrother, or stepsister;~~
- 16 ~~(iv) The father or mother or an ancestor of either;~~
- 17 ~~(v) A stepfather or stepmother;~~
- 18 ~~(vi) A son or daughter of a brother or sister;~~
- 19 ~~(vii) A brother or sister of the father or mother;~~

20 or

21 ~~(viii) A son in law, daughter in law, father in law,~~
 22 ~~mother in law, brother in law, or sister in law of the taxpayer. As used in~~
 23 ~~subdivision (a)(3)(A) of this section, the term "dependent" shall have the~~
 24 ~~same meaning as defined in § 152 of the Internal Revenue Code of 1986, in~~
 25 ~~effect on January 1, 2005.~~

26 ~~(C) As used in subdivision (a)(3)(B) of this section, the~~
 27 ~~terms "brother" and "sister" include a brother or sister by half blood. For~~
 28 ~~the purpose of determining whether any of the foregoing relationships exist,~~
 29 ~~a legally adopted child of a person shall be considered a child of that~~
 30 ~~person by blood.~~

31 ~~(D) The term "dependent" does not include any individual~~
 32 ~~who is a citizen or subject of a foreign country unless that individual is a~~
 33 ~~resident of the United States or a country contiguous to the United States;~~

34 ~~(4) In the case of a fiduciary:~~

35 ~~(A) If taxable under § 26-51-203(a)(1), the adjusted~~
 36 ~~individual credit;~~

1 ~~(B) If taxable under § 26-51-203(a)(2), the same tax~~
2 ~~credit as would be allowed the deceased if living;~~

3 ~~(C) If taxable under § 26-51-203(a)(3), the tax credit to~~
4 ~~which the beneficiary would be entitled; and~~

5 ~~(5) In the case of a nonresident taxpayer, the taxpayer shall be~~
6 ~~entitled to that proportion of the tax credit granted by this act that the~~
7 ~~gross income within the state bears to the entire gross income wherever~~
8 ~~earned.~~

9
10 SECTION 16. Arkansas Code § 26-51-502(b), concerning household and
11 dependent care services, is amended to read as follows:

12 (b)(1) Section 21 of the Internal Revenue Code of 1986, as amended and
13 in effect on January 1, ~~2003~~ 2005, is adopted for purposes of determining the
14 allowable credit under the Income Tax Act of 1929, § 26-51-101 et seq., for
15 household and dependent care services necessary for gainful employment.

16 (2) The amount of credit shall be twenty percent (20%) of the
17 federal credit allowable.

18
19 SECTION 17. Arkansas Code § 26-51-801(d), concerning individual income
20 tax returns, is amended to read as follows:

21 (d) DEFINITIONS.

22 (1) As used in this section, the term "head of household" shall
23 have the same meaning as defined in section 2(b) of the federal Internal
24 Revenue Code of 1986, in effect on January 1, ~~1991~~ 2005;

25 (2) As used in this section, the term "qualifying widow or
26 widower with dependent child" shall mean surviving spouse as defined in
27 section 2(a) of the federal Internal Revenue Code of 1986, in effect on
28 January 1, ~~1991~~ 2005;

29 (3) As used in this section, the term "jointly" means filing a
30 joint return;

31 (4) As used in this section, the term "dependent" shall have the
32 same meaning as defined in section 152 of the federal Internal Revenue Code
33 of 1986, in effect on January 1, ~~1991~~ 2005.

34
35 SECTION 18. This act shall become effective for tax years on and after
36 January 1, 2005.