

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
4

As Engrossed: S2/24/05

A Bill

SENATE BILL 309

5 By: Senator Wooldridge
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For An Act To Be Entitled

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

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

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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.

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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 § 26-51-419 is amended to read as follows:
17 26-51-419. Deductions – Charitable contributions.

18 (a) Section 170 of the Internal Revenue Code of 1986, as in effect on
19 January 1, ~~2001~~ 2005, regarding deductions for charitable contributions, is
20 hereby adopted for the purpose of computing Arkansas income tax liability.
21 This adoption is for taxable years beginning on or after January 1, ~~2001~~
22 2005, and will have no effect on years prior to its adoption. Provided,
23 however, with respect to contributions of qualified appreciated stock within
24 the meaning of Internal Revenue Code § 170(e)(5) made after May 31, 1997, the
25 provisions of this section shall apply after taking into account the
26 extension of the provisions of Internal Revenue Code § 170(e)(5) by § 602 of
27 the Taxpayer Relief Act of 1997 and § 1004(a) of the Tax Extension Act.

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

33
34 SECTION 9. Arkansas Code § 26-51-423 is amended to read as follows:
35 26-51-423. Deductions – Expenses.

36 (a) In computing net income, there shall be allowed as deductions the

1 following expenses:

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

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

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

15 (4) Moving expenses. Section 217 of the Internal Revenue Code of
16 1986, as in effect on January 1, 1995, regarding the deduction of moving
17 expenses, is hereby adopted for the purpose of computing Arkansas income tax
18 liability.

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

23 (c)(1) An individual who is self-employed shall be allowed a deduction
24 equal to the applicable percentage as set forth in 26 U.S.C. § 162(1)(1)(B)
25 as in effect on January 1, 1999, of the amount paid during the taxable year
26 for insurance which constitutes medical care for the taxpayer, his spouse,
27 and dependents.

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

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

36 (3) Any amount paid by the taxpayer for insurance to which

1 subsection (c) of this section applies shall not be taken into account in
2 computing the amount allowable to the taxpayer as a deduction under
3 subdivision (a)(2) of this section.

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

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

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

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

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

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

25 (i) An "arm's length" contract or at an "arm's
26 length" rate of interest; and

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

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

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

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

35 (D) During the taxable year, the related party recipient
36 of interest or intangible related income, in a location not described

1 in(g)(1)(A), a "non-tax location":

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

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

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

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

11 (2) "Related party" means a related party as defined by Section
12 267 of the Internal Revenue Code of 1986, as in effect on January 1, 2003.

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

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18 SECTION 10. Arkansas Code § 26-51-429 is amended to read as follows:
19 26-51-429. Deductions – Depletion allowances.

20 (a) In the case of all natural resources for which a deduction for
21 depletion is allowed under § 611 of the Internal Revenue Code of 1986, the
22 provisions of §§ 611-613, 614, 616, and 617 of the Internal Revenue Code of
23 1986, as amended and in effect on January 1, ~~1999~~ 2005, are adopted in
24 computing the depletion allowance deduction under Arkansas income tax law.

25 (b) In computing the depletion allowance deduction allowed by this
26 section for oil and gas wells, the provisions of § 613 of the Internal
27 Revenue Code of 1986 shall not be in effect, but instead the computation of
28 the amount of the depletion deduction shall be controlled by the provisions
29 of § 613A of the Internal Revenue Code of 1986, as amended and in effect on
30 January 1, ~~1999~~ 2005, which are adopted as part of the state income tax law.

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32 SECTION 11. Arkansas Code § 26-51-436, concerning limitations on
33 deductions, is amended to add a new subdivision to read as follows:

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

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SECTION 12. Arkansas Code § 26-51-439 is amended to read as follows:
26-51-439. Capitalization of certain expenses.

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

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

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

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

SECTION 13. Arkansas Code § 26-51-448 is amended to read as follows:
26-51-448. Educational individual retirement accounts.

Section 530 of the Internal Revenue Code of 1986, as in effect on January 1, ~~2002~~ 2005, relating to educational individual retirement accounts, is adopted for the purposes of computing Arkansas income tax liability. Any additional tax or penalty imposed by this section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this section.

SECTION 14. Arkansas Code §26-51-501(a)(3)(B), concerning the definition of dependents for purposes of personal income tax credits, is amended to read as follows:

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

- 1 ~~(i) A son or daughter or descendant of either;~~
 2 ~~(ii) A stepson or stepdaughter;~~
 3 ~~(iii) A brother, sister, stepbrother, or stepsister;~~
 4 ~~(iv) The father or mother or an ancestor of either;~~
 5 ~~(v) A stepfather or stepmother;~~
 6 ~~(vi) A son or daughter of a brother or sister;~~
 7 ~~(vii) A brother or sister of the father or mother;~~

8 ~~or~~

9 ~~(viii) A son in law, daughter in law, father in law,~~
 10 ~~mother in law, brother in law, or sister in law of the taxpayer~~ As used in
 11 subdivision (a)(3)(A) of this section, "dependent" has the same meaning as
 12 defined in § 152 of the Internal Revenue Code of 1986, in effect on
 13 January 1, 2005.

14
 15 SECTION 15. Arkansas Code § 26-51-502(b), concerning household and
 16 dependent care services, is amended to read as follows:

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

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

23
 24 SECTION 16. Arkansas Code § 26-51-801(d), concerning individual income
 25 tax returns, is amended to read as follows:

26 (d) DEFINITIONS.

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

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

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

36 (4) As used in this section, the term "dependent" shall have the

1 same meaning as defined in section 152 of the federal Internal Revenue Code
2 of 1986, in effect on January 1, ~~1991~~ 2005.

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4 SECTION 17. This act shall become effective for tax years on and after
5 January 1, 2005.

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/s/ Wooldridge

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