

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 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1480

4
5 By: Representative Maloch
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
14

Subtitle

15
16 TO MAKE TECHNICAL CORRECTIONS TO THE
17 ARKANSAS INCOME TAX LAWS BY ADOPTING
18 CURRENT INTERNAL REVENUE CODE
19 PROVISIONS.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 26-51-303(a), concerning organizations
25 exempt from income tax, is amended to add the following new subdivision:

26 (10) A political organization that does not have political
27 organization taxable income for the tax year under 26 U.S.C. § 527, as in
28 effect on January 1, 2009.
29

30 SECTION 2. Arkansas Code § 26-51-307(c)(1), concerning retirement
31 benefits, is amended to read as follows:

32 (c)(1) Section 72 of the Internal Revenue Code of 1986, as in effect
33 on January 1, ~~2007~~ 2009, ~~shall provide~~ is the sole method by which a
34 recipient of benefits from an individual retirement account or from public or
35 private employment-related retirement systems, plans, or programs may deduct
36 or recover his or her cost of contribution to the plan when computing his or



1 her income for state income tax purposes.

2

3 SECTION 3. Arkansas Code § 26-51-308 is amended to read as follows:

4 26-51-308. Trusts for qualified deferred compensation plans exempt.

5 An organization or trust described in section 401(a) of the Internal
6 Revenue Code, as in effect on January 1, ~~2007~~ 2009, ~~shall be~~ is exempt from
7 income taxation under the ~~provisions of the~~ Income Tax Act of 1929, § 26-51-
8 101 et seq.

9

10 SECTION 4. Arkansas Code § 26-51-404(b)(1), concerning exclusions from
11 gross income, is amended to read as follows:

12 (1) Section 1033 of the Internal Revenue Code of 1986, as in
13 effect on January 1, ~~2007~~ 2009, relating to the exclusion from gross income
14 of gain resulting from the involuntary conversion of a taxpayer's property,
15 is adopted for the purpose of computing Arkansas income tax liability;

16

17 SECTION 5. Arkansas Code § 26-51-404(b)(2), concerning exclusions from
18 gross income, is amended to read as follows:

19 (2) Section 121 of the Internal Revenue Code of 1986, as in
20 effect on January 1, ~~2007~~ 2009, relating to the exclusion from gross income
21 of gain from the sale or exchange of property owned and used as the
22 taxpayer's principal residence, is adopted for the purpose of computing
23 Arkansas income tax liability.

24

25 SECTION 6. Arkansas Code § 26-51-404(b)(10), concerning income from the
26 discharge of indebtedness, is amended to read as follows:

27 (10) Sections 108 and 1017 of the Internal Revenue Code of 1986,
28 as in effect on January 1, ~~1999~~ 2009, regarding income from the discharge of
29 indebtedness, are adopted for the purpose of computing Arkansas income tax
30 liability;

31

32 SECTION 7. Arkansas Code § 26-51-404(b)(11), concerning amounts
33 excludable from gross income, is amended to read as follows:

34 (11) Section 125 of the Internal Revenue Code of 1986, in effect
35 on January 1, ~~1997~~ 2009, is adopted in computing amounts excludible from
36 gross income under the Income Tax Act of 1929, § 26-51-101 et seq., for

1 payments received under a cafeteria plan;

2

3 SECTION 8. Arkansas Code § 26-51-404(b)(19), concerning the exclusion
4 from income of certain fringe benefits, is amended to read as follows:

5 (19) Section 132 of the Internal Revenue Code of 1986, as in
6 effect on January 1, ~~2003~~ 2009, regarding the exclusion from income of
7 certain fringe benefits, is adopted for the purpose of computing Arkansas
8 income tax liability;

9

10 SECTION 9. Arkansas Code § 26-51-404(b)(27), concerning the exclusion
11 from income of certain benefits provided to members of the United States
12 military, is amended to read as follows:

13 (27) Section 134 of the Internal Revenue Code of 1986, as in
14 effect on January 1, ~~2005~~ 2009, regarding the exclusion from income of ~~child~~
15 ~~care benefits~~ qualified military benefits provided to members of the United
16 States military, is adopted for the purpose of computing Arkansas income tax
17 liability; and

18

19 SECTION 10. Arkansas Code § 26-51-409(a), concerning small business
20 corporations, is amended to read as follows:

21 (a) Subchapter S of the Internal Revenue Code of 1986, as in effect on
22 January 1, ~~2007~~ 2009, regarding small business corporations, is adopted for
23 the purpose of computing Arkansas income tax liability.

24

25 SECTION 11. Arkansas Code § 26-51-412(d), concerning recognition of
26 gain from a corporate organization or reorganization, is amended to read as
27 follows:

28 (d) Sections 351, 354 – 358, 361, 362, 367, and 368 of the Internal
29 Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009, regarding
30 corporate organization, reorganization, and recognition of gain, are adopted
31 for the purpose of computing Arkansas income tax liability.

32

33 SECTION 12. Arkansas Code § 26-51-414(a)(1), concerning annuities,
34 retirement savings, and income, is amended to read as follows:

35 (a)(1) Sections 72, 219, 401-404, 406-416, and 457 of the Internal
36 Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009, relating to

1 annuities, retirement savings, and employee benefit plans, respectively, are
 2 adopted for the purpose of computing Arkansas income tax liability, except
 3 Arkansas capital gains treatment and the Arkansas tax rates shall apply.

4
 5 SECTION 13. Arkansas Code § 26-51-415 is amended to read as follows:
 6 26-51-415. Deductions – Interest.

7 Section 163 of the Internal Revenue Code of 1986, as in effect on
 8 January 1, ~~2007~~ 2009, regarding deductions for interest expenses, is adopted
 9 for the purpose of computing Arkansas income tax liability.

10
 11 SECTION 14. Arkansas Code § 26-51-419(a)(1), concerning deductions for
 12 charitable contributions, is amended to read as follows:

13 (a)(1)(A) Section 170 of the Internal Revenue Code of 1986, as in
 14 effect on January 1, ~~2007~~ 2009, regarding deductions for charitable
 15 contributions, is adopted for the purpose of computing Arkansas income tax
 16 liability.

17 (B) This adoption is for taxable years beginning on or
 18 after January 1, ~~2007~~ 2009, and will have no effect on years ~~prior to~~ before
 19 its adoption.

20
 21 SECTION 15. Arkansas Code § 26-51-423(a)(1) concerning business
 22 expenses, is amended to read as follows:

23 (1) Business expenses. All of § 162, except subsection (n), of
 24 the Internal Revenue Code of 1986, as in effect on January 1, ~~2005~~ 2009,
 25 regarding trade or business expenses, is adopted for the purpose of computing
 26 Arkansas income tax liability;

27
 28 SECTION 16. Arkansas Code § 26-51-423(e), concerning deduction of
 29 costs paid or incurred for the cleanup of certain hazardous substances, is
 30 amended to read as follows:

31 (e) Section 198 of the Internal Revenue Code of 1986, as in effect on
 32 January 1, ~~2005~~ 2009, regarding the deduction of costs paid or incurred for
 33 the cleanup of certain hazardous substances, is adopted for the purpose of
 34 computing Arkansas income tax liability.

35
 36 SECTION 17. Arkansas Code § 26-51-424 is amended to read as follows:

26-51-424. Deductions – Losses.

(a)(1) In computing net income there shall be allowed as a deduction any loss sustained during the income year and not compensated for by insurance or otherwise.

(2) In the case of an individual, the deduction under subdivision (a)(1) of this section shall be limited to:

(A) Losses incurred in a trade or business; or

(B) Losses incurred in any transaction entered into for profit, though not connected with the trade or business; ~~or .~~

~~(C) Losses of property not connected with a trade or business if these losses arise from fires, storms, shipwrecks, other easualty, or theft, only to the extent that the amount of the loss from each easualty or theft shall exceed one hundred dollars (\$100) and if the aggregate amount of all such losses sustained by an individual during any one (1) income year exceeds ten percent (10%) of the net income of the individual for that income year.~~

~~(b)(1) Notwithstanding the provisions of subdivision (a)(1) of this section, any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the United States Government under the Disaster Relief Act of 1974 may, at the election of the taxpayer, be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred.~~

~~(2) The deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claims the loss.~~

~~(3) If an election is made under this subsection, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.~~

(b) Sections 165(h) and 165(i) of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding losses arising from a casualty or a disaster, are adopted for the purpose of computing Arkansas income tax liability.

(c) Section 183 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding hobby losses, is adopted for the purpose of computing Arkansas income tax liability.

1 SECTION 18. Arkansas Code § 26-51-428(a), concerning the deduction for
 2 depreciation and expensing of property, is amended to read as follows:

3 (a) Sections 167, 168, ~~(a) through (j)~~, and 179A of the Internal
 4 Revenue Code of 1986, as in effect on January 1, ~~1999~~ 2009, and section 179
 5 of the Internal Revenue Code of 1986, as in effect on January 1, ~~2007~~ 2009,
 6 regarding depreciation and expensing of property, are adopted for the purpose
 7 of computing Arkansas income tax liability for property purchased in tax
 8 years beginning on or after January 1, 2009. The same class-life
 9 depreciation method and convention used for federal income tax depreciation
 10 purposes shall also be used for Arkansas depreciation purposes.

11
 12 SECTION 19. Arkansas Code § 26-51-429(b), concerning the deduction for
 13 depletion for oil and gas wells, is amended to read as follows:

14 (b) In computing the depletion allowance deduction allowed by this
 15 section for oil and gas wells, the provisions of § 613 of the Internal
 16 Revenue Code of 1986 shall not be in effect, but instead the computation of
 17 the amount of the depletion deduction shall be controlled by the provisions
 18 of § 613A of the Internal Revenue Code of 1986, as in effect on January 1,
 19 ~~2007~~ 2009, which are adopted as part of the state income tax law.

20
 21 SECTION 20. Arkansas Code § 26-51-436(4), concerning limits on
 22 itemized deductions, is amended to read as follows:

23 (4) Section 68 of the Internal Revenue Code of 1986, as in
 24 effect on January 1, ~~1995~~ 2009, is adopted to limit itemized deductions;

25
 26 SECTION 21. Arkansas Code § 26-51-436(7), concerning the deduction of
 27 certain leasing transactions, is amended to read as follows:

28 (7) Section 470 of the Internal Revenue Code of 1986, as in
 29 effect on January 1, ~~2007~~ 2009, regarding leasing transactions between
 30 taxpayers, is adopted for the purpose of computing Arkansas income tax
 31 liability.

32
 33 SECTION 22. Arkansas Code § 26-51-440 is amended to read as follows:
 34 26-51-440. Federal Subchapter M adopted.

35 (a)(1) Subchapter M of the Internal Revenue Code of 1986, as in effect
 36 on January 1, ~~2007~~ 2009, relating to regulated investment companies, real

1 estate investment trusts, and financial asset securitization investment
 2 trusts, is adopted for the purpose of computing Arkansas income tax liability
 3 and shall govern all corporations which are registered as investment
 4 companies under the Investment Company Act of 1940, as in effect on January
 5 1, ~~2007~~ 2009.

6 (2)(A) However, those provisions of Subchapter M addressing the
 7 tax rates applied to financial asset securitization investment trust income
 8 are not adopted.

9 (B) Any financial asset securitization investment trust
 10 income subject to Arkansas income tax shall be taxed at the rates set forth
 11 in § 26-51-205.

12 (b) As used in this section:

13 (1)(A) “Captive real estate investment trust” means a real
 14 estate investment trust the shares or beneficial interests of which are not
 15 regularly traded on an established securities market and more than fifty
 16 percent (50%) of the voting power or value of the beneficial interests or
 17 shares of which are owned or controlled, directly or indirectly, or
 18 constructively, by a single entity that is:

19 (i) Treated as an association taxable as a
 20 corporation under the Internal Revenue Code of 1986, as in effect on January
 21 1, 2009; and

22 (ii) Not exempt from federal income tax under 26
 23 U.S.C. § 501(a), as in effect on January 1, 2009.

24 (B) “Captive real estate investment trust” does not
 25 include a real estate investment trust that is intended to be regularly
 26 traded on an established securities market, and that satisfies the
 27 requirements of 26 U.S.C. § 856(a)(5) and (6), as in effect on January 1,
 28 2009, by reason of 26 U.S.C. § 856(h)(2), as in effect on January 1, 2009;
 29 and

30 (2) “Real estate investment trust” means the same as defined in
 31 26 U.S.C. § 856, as in effect on January 1, 2009.

32 (c) For purposes of applying subsection (b)(1)(A)(i) of this section,
 33 the following entities are not considered an association taxable as a
 34 corporation under the Internal Revenue Code of 1986, a:

35 (1) A real estate investment trust other than a captive real
 36 estate investment trust;

1 (2) A qualified real estate investment trust subsidiary under 26
 2 U.S.C. § 856(i), as in effect on January 1, 2009, other than a qualified real
 3 estate investment trust subsidiary of a captive real estate investment trust;

4 (3) A listed Australian Property Trust, meaning an Australian
 5 unit trust registered as a Managed Investment Scheme under the Australian
 6 Corporations Act in which the principal class of units is listed on a
 7 recognized stock exchange in Australia and is regularly traded on an
 8 established securities market, or an entity organized as a trust, provided
 9 that a Listed Australian Property Trust owns or controls, directly or
 10 indirectly, seventy-five percent (75%) or more of the voting power or value
 11 of the beneficial interests or shares of such trust; or

12 (4) A qualified Foreign Entity, meaning a corporation, trust,
 13 association or partnership organized outside the laws of the United States
 14 and which satisfies the following criteria:

15 (A) At least seventy-five percent (75%) of the entity's
 16 total asset value at the close of its taxable year is represented by real
 17 estate assets, as defined in 26 U.S.C. § 856(c)(5)(B), as in effect on
 18 January 1, 2009, including shares or certificates of beneficial interest in
 19 any real estate investment trust, cash and cash equivalents, and United
 20 States Government securities;

21 (B) The entity is not subject to tax on amounts
 22 distributed to its beneficial owners or is exempt from entity-level taxation;

23 (C) The entity distributes at least eighty-five percent
 24 (85%) of its taxable income, as computed in the jurisdiction in which it is
 25 organized, to the holders of its shares or certificates of beneficial
 26 interest on an annual basis;

27 (D) More than ten percent (10%) of the voting power or
 28 value in the entity is not held directly, indirectly, or constructively by a
 29 single entity or individual, or the shares or beneficial interests of the
 30 entity are regularly traded on an established securities market; and

31 (E) The entity is organized in a country that has a tax
 32 treaty with the United States.

33 (d) The dividends-paid deduction otherwise allowed by federal law in
 34 computing net income of a real estate investment trust that is subject to
 35 federal income tax shall be added back in computing the tax imposed by § 26-
 36 51-101 et seq. if the real estate investment trust is a captive real estate

1 investment trust.

2 (e)(1) A real estate investment trust that does not become regularly
 3 traded on an established securities market within one (1) year of the date on
 4 which it first became a real estate investment trust shall not be considered
 5 to have been regularly traded on an established securities market,
 6 retroactive to the date it first became a real estate investment trust, and
 7 the owner of the real estate investment trust shall file an amended return
 8 reflecting the retroactive designation for any tax year or part year
 9 occurring during its initial year of status as a real estate investment
 10 trust.

11 (2) Under this section, a real estate investment trust becomes a
 12 real estate investment trust on the first day that it has:

13 (A) Met the requirements of 26 U.S.C § 856 as in effect on
 14 January 1, 2009; and

15 (B) Elected to be treated as a real estate investment
 16 trust under 26 U.S.C. § 856(c)(1), as in effect on January 1, 2009, by the
 17 owner of the real estate investment trust.

18 (f) Under this section, the constructive ownership rules of 26 U.S.C.
 19 § 318(a), as in effect on January 1, 2009, as modified by 26 U.S.C. §
 20 856(d)(5), as in effect on January 1, 2009, shall apply in determining the
 21 ownership of stock, assets, or net profits of a person.

22 (g) ~~Any~~ An election made for federal income tax purposes under
 23 Subchapter M of the Internal Revenue Code of 1986, as in effect on January 1,
 24 2007 2009, shall be deemed made for state income tax purposes.

25 ~~(e)~~(h) This section shall take effect and be enforced for tax years
 26 beginning on or after January 1, 2007 2009.

27
 28 SECTION 23. Arkansas Code § 26-51-448(a) relating to educational
 29 individual retirement accounts, is amended to read as follows:

30 (a) Section 530 of the Internal Revenue Code of 1986, as in effect on
 31 January 1, ~~2005~~ 2009, relating to educational individual retirement accounts,
 32 is adopted for the purposes of computing Arkansas income tax liability.

33
 34 SECTION 24. Arkansas Code § 26-51-919(b)(3), concerning the filing
 35 date for pass-through entities to report distributions, is amended to read as
 36 follows:

1 (3) A pass-through entity shall annually furnish a nonresident
2 member of the pass-through entity with a record of the amount of tax withheld
3 on behalf of the nonresident member no later than the fifteenth day of the
4 ~~third~~ fourth month following the end of the pass-through entity's tax year.

5
6 SECTION 25. EFFECTIVE DATE. This act is effective for tax years
7 beginning on and after January 1, 2009.