

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 108

5 By: Senator K. Ingram
6

For An Act To Be Entitled

8 AN ACT TO EXTEND THE NET OPERATING LOSS CARRY-FORWARD
9 PERIOD FOR CALCULATING ARKANSAS INCOME TAX; TO MAKE
10 TECHNICAL CHANGES; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO EXTEND THE NET OPERATING LOSS CARRY-
14 FORWARD PERIOD FOR CALCULATING ARKANSAS
15 INCOME TAX; AND TO MAKE TECHNICAL
16 CHANGES.
17
18
19

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

22 SECTION 1. Arkansas Code § 26-51-427 is amended to read as follows:

23 26-51-427. Deductions – Net operating loss carryover.

24 In addition to other deductions allowed by this chapter, there ~~shall be~~
25 is allowed as a deduction from gross income a net operating loss carryover
26 under the following rules:

27 (1)(A) The net operating loss ~~as hereinbelow defined~~ for any
28 ~~year ending on or after the passage of the Income Tax Act of 1929 and for any~~
29 ~~succeeding~~ taxable year may be carried over to the next-succeeding taxable
30 year and annually thereafter for a total period of three (3) years next
31 succeeding the year of the net operating loss or until the net operating loss
32 has been exhausted or absorbed by the taxable income of any succeeding year,
33 whichever is earlier, if the net operating loss occurred in an income year
34 beginning before January 1, 1987. The net operating loss deduction must be
35 carried forward in the order ~~named above~~ stated in this subdivision (1)(A).

36 (B) The net operating loss ~~as hereinbelow defined~~ for any



1 year ending on or after the passage of the Income Tax Act of 1929, and for
 2 any succeeding taxable year before January 1, 2013, may be carried over to
 3 the next-succeeding taxable year and annually thereafter for a total period
 4 of five (5) years next succeeding the year of the net operating loss or until
 5 the net operating loss has been exhausted or absorbed by the taxable income
 6 of any succeeding year, whichever is earlier, if the net operating loss
 7 occurred in an income year beginning on or after January 1, 1987, but before
 8 January 1, 2013. The net operating loss deduction must be carried forward in
 9 the order ~~named above~~ stated in this subdivision (1)(B).

10 (C) ~~The net operating loss as hereinbelow defined which~~
 11 ~~resulted from farming operations, for income years beginning on or after~~
 12 ~~January 1, 1981, and expired in accordance with subdivision (1)(A) of this~~
 13 ~~section before being fully used, may be carried forward for an additional two~~
 14 ~~(2) years and any unused portions can be combined and either applied to tax~~
 15 ~~years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to~~
 16 ~~claim the additional two-year carry forward, taxpayers must attach copies of~~
 17 ~~both their federal tax returns and their state tax returns, showing the net~~
 18 ~~operating losses for income years beginning on or after January 1, 1981, to~~
 19 ~~their state tax returns. As used in this subdivision (1)(C), "farming~~
 20 ~~operations" means that at least sixty-six and two-thirds percent (66 2/3%) of~~
 21 ~~the total gross income, from all sources for the taxable year, must come from~~
 22 ~~farming as defined by 26 U.S.C. § 464(e)(1) in effect on January 1, 1989.~~
 23 The net operating loss for a taxable year may be carried over to the next
 24 succeeding taxable year and annually thereafter for a total period of ten
 25 (10) tax years next succeeding the tax year of the net operating loss or
 26 until the net operating loss has been exhausted or absorbed by the taxable
 27 income of a succeeding year, whichever is earlier, if the net operating loss
 28 occurred in an income year beginning on or after January 1, 2013. The net
 29 operating loss deduction must be carried forward in the order stated in this
 30 subdivision (1)(C).

31 (D) As used in this section, "taxable income" or "net
 32 income" ~~shall be deemed to be~~ means the net income computed without benefit
 33 of the deduction for income taxes, personal exemptions, and credit for
 34 dependents. The net income of the taxable period to which the net operating
 35 loss deduction, as adjusted, is carried, ~~shall be~~ is the net income before
 36 the deduction of federal income taxes, personal exemption, and credit for

1 dependents. ~~Such income~~ Income taxes, exemptions, and credits described in
 2 this subdivision (1)(D) shall not be used to increase the net operating loss
 3 ~~which that~~ may be carried to any other taxable period.

4 (E)(i) As used in this section, “qualified medical
 5 company” means a corporation engaged in:

6 (a) Research and development in the medical
 7 field; and

8 (b) Manufacture and distribution of medical
 9 products, including therapeutic and diagnostic products.

10 (ii) In the case of a qualified medical ~~companies,~~
 11 ~~as defined herein,~~ company, a net operating loss for ~~any a~~ taxable year ~~shall~~
 12 ~~be~~ is a net operating loss carryover to each of the fifteen (15) taxable
 13 years following the taxable year of the loss.

14 (iii) If the qualified medical company is an “S”
 15 corporation, the pass-through provisions of § 26-51-409, as in effect for the
 16 taxable year of the net operating loss, ~~shall be~~ are applicable.

17 (iv) The net operating loss provisions ~~set forth~~
 18 ~~above~~ stated in this subdivision (1)(E), which resulted from the operation of
 19 a qualified medical company, ~~shall be~~ are effective for taxable years
 20 beginning on and after January 1, 1987;

21 (2) As used in this section, “net operating loss” is defined as
 22 the excess of allowable deductions over gross income for the taxable year,
 23 subject to the following adjustments:

24 (A) There shall be added to gross income all nontaxable
 25 income, not required by law to be reported as gross income, ~~as provided by~~
 26 ~~law~~, less any expenses properly and reasonably incurred in earning nontaxable
 27 income, which expenses would otherwise be nondeductible;

28 (B) In the case of a taxpayer other than a corporation,
 29 deductions, not including federal income taxes, not attributable to the
 30 operation of the trade or business ~~shall be~~ are eliminated from the
 31 deductions otherwise allowable for the taxable year to the extent that they
 32 exceed gross income not derived from trade or business. Personal exemptions
 33 and credit for dependents ~~shall not be~~ are not a deduction for the purpose of
 34 computing a net operating loss;

35 (C) ~~No~~ A net operating loss deduction shall not be
 36 allowed; and

1 (D) In the case of a taxpayer other than a "C
2 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,
3 1985:

4 (i) For income years beginning after December 31,
5 1986, the amount deductible on account of losses from sales or exchanges of
6 capital assets shall not exceed the amount includable on account of gains
7 from sales or exchanges of capital assets; and

8 (ii) For income years beginning after December 31,
9 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202
10 [repealed], as in effect on January 1, 1985, shall not be allowed; and

11 (3) In the case of the acquisition of assets of one (1)
12 corporation by another corporation, the acquiring corporation shall succeed
13 to and take into account any net operating loss carryover apportionable to
14 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-
15 701 et seq., that the acquired corporation could have claimed had it not been
16 acquired, subject to the following conditions:

17 (A) The net operating loss may not be carried forward to a
18 taxable year ~~which~~ that ends more than three (3) years after the taxable year
19 in which the net operating loss occurred if the net operating loss occurred
20 in an income year beginning before January 1, 1987;

21 (B) The net operating loss may not be carried forward to a
22 taxable year ~~which~~ that ends more than five (5) years after the taxable year
23 in which the net operating loss occurred if the net operating loss occurred
24 in an income year beginning on or after January 1, 1987, but before January
25 1, 2013; and

26 (C) The net operating loss may not be carried forward to a
27 taxable year that ends more than ten (10) years after the taxable year in
28 which the net operating loss occurred if the net operating loss occurred in
29 an income year beginning on or after January 1, 2013; and

30 ~~(C)~~ (D) The net operating loss may be claimed only when
31 the ownership of both the acquired and acquiring corporations is
32 substantially the same, ~~that is, where~~ in that not less than eighty percent
33 (80%) of the voting stock of each corporation is owned by the same person or,
34 ~~where prior to~~ before the acquisition, the acquiring corporation owned at
35 least eighty percent (80%) of the voting stock of the acquired corporation.
36 The carryover losses will be allowed only in those cases ~~where~~ in which the

1 assets of the corporation going out of existence earn sufficient profits
2 apportionable to Arkansas under the Uniform Division of Income for Tax
3 Purposes Act, § 26-51-701 et seq., in the post-merger period to absorb the
4 carryover losses claimed by the surviving corporation.

5
6 SECTION 2. EFFECTIVE DATE. This act is effective for tax years
7 beginning on or after January 1, 2013.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36