

1 State of Arkansas *As Engrossed: S1/29/13 S3/21/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 108

4

5 By: Senators K. Ingram, *A. Clark*

6 By: Representatives *Gillam, Ferguson*

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## For An Act To Be Entitled

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

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## Subtitle

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

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

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23 SECTION 1. Arkansas Code § 26-51-427 is amended to read as follows:  
24 26-51-427. Deductions – Net operating loss carryover.

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

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



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

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

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

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

5 (E)(i) As used in this section, "qualified medical  
6 company" means a corporation engaged in:

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

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

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

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

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

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

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

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

36 (C) ~~No~~ A net operating loss deduction shall not be

1 allowed; and

2 (D) In the case of a taxpayer other than a "C  
3 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,  
4 1985:

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

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

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

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

22 (B) The net operating loss may not be carried forward to a  
23 taxable year ~~which~~ that ends more than five (5) years after the taxable year  
24 in which the net operating loss occurred if the net operating loss occurred  
25 in an income year beginning on or after January 1, 1987, but before January  
26 1, 2013; and

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

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

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

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

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10 /s/K. Ingram  
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