

1 State of Arkansas  
2 91st General Assembly  
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4

As Engrossed: H3/10/17

# A Bill

HOUSE BILL 1762

5 By: Representative Brown  
6

## For An Act To Be Entitled

8 AN ACT TO ALLOW AN EMPLOYER TO MAKE A MATCHING  
9 CONTRIBUTION TO AN EMPLOYEE'S TAX-DEFERRED TUITION  
10 SAVINGS PROGRAM AS AN EMPLOYEE BENEFIT; AND FOR OTHER  
11 PURPOSES.  
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### Subtitle

14 TO ALLOW AN EMPLOYER TO MAKE A MATCHING  
15 CONTRIBUTION TO AN EMPLOYEE'S TAX-  
16 DEFERRED TUITION SAVINGS PROGRAM AS AN  
17 EMPLOYEE BENEFIT.  
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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 § 6-84-102 is amended to read as follows:*  
24 *6-84-102. Purpose.*

25 *It is the intent and purpose of this chapter to create and establish*  
26 *the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §*  
27 *529, as in effect on January 1, ~~2015~~ 2017, to be administered by the Section*  
28 *529 Plan Review Committee through the adoption of rules and regulations for*  
29 *the administration of the program.*  
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31 *SECTION 2. Arkansas Code § 6-84-103(5) and (6), concerning the*  
32 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*  
33 *Program, are amended to read as follows:*

34 *(5) "Committee" means the Section 529 Plan Review Committee,*  
35 *provided for in § 6-84-105, that shall oversee the administration of the*  
36 *Arkansas Tax-Deferred Tuition Savings Program and ensure that the program*



1 *complies with the provisions of this chapter and acts in accordance with 26*  
2 *U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;*

3 (6) *“Contribution” means:*

4 (A) *Any payment directly allocated to an account for the*  
5 *benefit of a designated beneficiary or used to pay administrative fees*  
6 *associated with an account; and*

7 (B) *That portion of any rollover amount treated as a*  
8 *contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;*

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10 *SECTION 3. Arkansas Code § 6-84-103(9)-(12), concerning the*  
11 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*  
12 *Program, are amended to read as follows:*

13 (9) *“Higher education institution” means an eligible education*  
14 *institution as defined in 26 U.S.C. § 135(c)(3), as in effect on January 1,*  
15 *~~2015~~ 2017;*

16 (10) *“Member of the family” shall have the same meaning as is*  
17 *contained in 26 U.S.C. § 529(e), as in effect on January 1, ~~2015~~ 2017;*

18 (11) *“Nonqualified withdrawal” means a withdrawal from an*  
19 *account that is not:*

20 (A) *A qualified withdrawal;*

21 (B) *A withdrawal made as the result of the death or*  
22 *disability of the designated beneficiary;*

23 (C) *A withdrawal made as the result of a scholarship,*  
24 *allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (C), as in*  
25 *effect on January 1, ~~2015~~ 2017, received by the designated beneficiary but*  
26 *only to the extent of the amount of the scholarship, allowance, or payment;*  
27 *or*

28 (D) *A rollover or change in the designated beneficiary;*

29 (12) *“Person” means a person as defined in 26 U.S.C. § 529, as*  
30 *in effect on January 1, ~~2015~~ 2017;*

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32 *SECTION 4. Arkansas Code § 6-84-103(14) and (15), concerning the*  
33 *definitions used in relation to the Arkansas Tax-Deferred Tuition Savings*  
34 *Program, is amended to read as follows:*

35 (14) *“Qualified higher education expenses” means tuition and*  
36 *other permitted expenses as set forth in 26 U.S.C. § 529(e), as in effect on*

1 January 1, ~~2015~~ 2017, for the enrollment or attendance of a designated  
2 beneficiary at a higher education institution;

3 (15) "Qualified tuition program" means a qualified tuition  
4 program as defined in 26 U.S.C. § 529(b), as in effect January 1, ~~2015~~ 2017;

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6 SECTION 5. Arkansas Code § 6-84-103(17), concerning the definitions  
7 used in relation to the Arkansas Tax-Deferred Tuition Savings Program, is  
8 amended to read as follows:

9 (17) "Rollover" means a disbursement or transfer from an account  
10 that is transferred to or deposited within sixty (60) calendar days of the  
11 transfer into an account of the same person for the benefit of the same  
12 designated beneficiary or another person as a designated beneficiary if the  
13 transferee account was created under this chapter or under another qualified  
14 tuition program maintained in accordance with 26 U.S.C. § 529(c), as in  
15 effect on January 1, ~~2015~~ 2017.

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17 SECTION 6. Arkansas Code § 6-84-105(b), concerning the administration,  
18 authority, and powers of the Section 529 Plan Review Committee, is amended to  
19 read as follows:

20 (b) The committee shall adopt such rules and regulations as it deems  
21 necessary and proper to administer this chapter and to ensure the compliance  
22 of the Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as  
23 in effect on January 1, ~~2015~~ 2017.

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25 SECTION 7. Arkansas Code § 6-84-105(c)(1), concerning the powers and  
26 duties of the Section 529 Plan Review Committee, is amended to read as  
27 follows:

28 (1) To establish, develop, implement, and maintain the program  
29 in a manner consistent with the provisions of this chapter and 26 U.S.C. §  
30 529, as in effect on January 1, ~~2015~~ 2017, and to obtain the benefits  
31 provided by 26 U.S.C. § 529 for the program, account owners, and designated  
32 beneficiaries;

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34 SECTION 8. Arkansas Code § 6-84-106 is amended to read as follows:

35 6-84-106. Investment direction.

36 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2015~~

1 2017, no person shall have the right to direct the investment of any  
2 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings  
3 Program.

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5 SECTION 9. Arkansas Code § 6-84-107(a), concerning accounts  
6 established under the Arkansas Tax-Deferred Tuition Savings Program, is  
7 amended to add an additional subdivision to read as follows:

8 (4)(A) An Arkansas employer of an employee with an account  
9 established under this chapter may make a matching contribution to the  
10 account of the employee offered as an employee fringe benefit.

11 (B) The maximum contribution amount allowed under  
12 subdivision (a)(4)(A) of this section is five hundred dollars (\$500) per  
13 contributing employee per year.

14  
15 SECTION 10. Arkansas Code § 6-84-108(b), concerning the naming of a  
16 designated beneficiary and transfers of accounts under the Arkansas Tax-  
17 Deferred Tuition Savings Program, is amended to read as follows:

18 (b) At the direction of an account owner, all or a portion of an  
19 account may be transferred to another account of which the designated  
20 beneficiary is a member of the family of the designated beneficiary of the  
21 transferee account if the transferee account was created by this chapter or  
22 under another qualified tuition program maintained in accordance with 26  
23 U.S.C. § 529, as in effect January 1, ~~2015~~ 2017.

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25 SECTION 11. Arkansas Code § 6-84-109(b), concerning account  
26 withdrawals under the Arkansas Tax-Deferred Tuition Savings Program, is  
27 amended to read as follows:

28 (b)(1) An account withdrawal paid to or for the benefit of any person  
29 during any calendar year shall be reported to the person and to the Internal  
30 Revenue Service.

31 (2) The report shall be made at the time required by the rules  
32 of the Internal Revenue Service as in effect on January 1, ~~2015~~ 2017, and  
33 contain such information as is required by law.

34  
35 SECTION 12. Arkansas Code § 6-84-110(a), concerning prohibitions under  
36 the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as

1 follows:

2 (a)(1) Total contributions to all accounts established on behalf of a  
3 particular designated beneficiary in excess of those reasonably necessary to  
4 meet the designated beneficiary's qualified higher education expenses are  
5 prohibited.

6 (2) An employer matching contribution to the account of an  
7 employee with an account established under this chapter shall not exceed five  
8 hundred dollars (\$500) per contributing employee per year.

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10 SECTION 13. Arkansas Code § 6-84-111 is amended to read as follows:

11 6-84-111. Funds exempt from tax.

12 (a) Except as otherwise indicated in this chapter, interest,  
13 dividends, and capital gains from funds invested in the Arkansas Tax-Deferred  
14 Tuition Savings Program or a tax-deferred tuition savings program established  
15 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017,  
16 shall be exempt from Arkansas income taxes.

17 (b)(1) For tax years beginning on or after January 1, 2005,  
18 contributions to a tuition savings account established under this program may  
19 be deducted from the taxpayer's adjusted gross income for the purpose of  
20 calculating Arkansas income tax under § 26-51-403(b).

21 (2) The deductible contributions shall not exceed five thousand  
22 dollars (\$5,000) per taxpayer in any tax year.

23 (3) Contributions to this program that have been deducted from  
24 the taxpayer's adjusted gross income for prior tax years shall be subject to  
25 recapture if the taxpayer:

26 (A) Makes a subsequent nonqualified withdrawal from the  
27 account; or

28 (B) Rolls the account over to a tax-deferred tuition  
29 savings program established by another state or institution under 26 U.S.C. §  
30 529, as in effect on January 1, ~~2015~~ 2017.

31 (4) The contribution shall be recaptured by adding the amount  
32 previously deducted, not to exceed the amount of the nonqualified withdrawal  
33 or rollover, to the taxpayer's adjusted gross income for the tax year in  
34 which the nonqualified withdrawal or rollover occurred.

35 (c)(1) Qualified withdrawals from a tuition savings account  
36 established under this program or a tax-deferred tuition savings program

1 established by another state under 26 U.S.C. § 529, as in effect on January  
2 1, ~~2015~~ 2017, will be exempt from Arkansas income tax with respect to the  
3 designated beneficiary's income.

4 (2)(A) Nonqualified withdrawals from a tuition savings account  
5 established under this program or a tax-deferred tuition savings program  
6 established by another state under 26 U.S.C. § 529, as in effect on January  
7 1, ~~2015~~ 2017, will be subject to Arkansas income tax.

8 (B) The nonqualified withdrawal will be taxable to the  
9 party, account owner, or designated beneficiary who actually makes the  
10 withdrawal.

11 (d) Any earnings on the contribution that are included in the refund  
12 will be subject to Arkansas income tax if an account owner receives a refund  
13 of contributions to a tuition savings account established under this program  
14 or a tax-deferred tuition savings program established by another state under  
15 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, because of either:

16 (1) The death or disability of the designated beneficiary; or  
17 (2) A scholarship, allowance, or payment described in 26 U.S.C.  
18 § 135(d)(1)(B) or (C), as in effect on January 1, ~~2015~~ 2017, received by the  
19 designated beneficiary.

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21 SECTION 14. Arkansas Code § 6-84-113 is amended to read as follows:  
22 6-84-113. Liberal construction.

23 This chapter shall be liberally construed to comply with the  
24 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017.

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26 SECTION 15. Arkansas Code § 26-51-404(b)(20), concerning exemptions  
27 from "gross income" under the Income Tax Act of 1929, is amended to read as  
28 follows:

29 (20) Title 26 U.S.C. § 127, as in effect on ~~January 2, 2013~~  
30 January 1, 2017, regarding the exclusion from gross income for employees  
31 whose education expenses were paid by an employer, is adopted for the purpose  
32 of computing Arkansas income tax liability;

33  
34 SECTION 16. Arkansas Code § 26-51-409(a), concerning the adoption of  
35 federal Subchapter S, is amended to read as follows:

36 (a) Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et

1 *seq., as in effect on January 1, ~~2015~~ 2017, regarding small business*  
2 *corporations, is adopted for the purpose of computing Arkansas income tax*  
3 *liability.*

4  
5 *SECTION 17. Arkansas Code § 26-51-414(a)(1), concerning deferred*  
6 *compensation plans, is amended to read as follows:*

7 *(a)(1) The following sections relating to annuities, retirement*  
8 *savings, and employee benefit plans are adopted for the purpose of computing*  
9 *Arkansas income tax liability, except Arkansas capital gains treatment and*  
10 *the Arkansas tax rates shall apply:*

11 *(A) Title 26 U.S.C. §§ 72, 219, 402-404, 406-416, and 457,*  
12 *as in effect on January 1, ~~2015~~ 2017; and*

13 *(B) Title 26 U.S.C. § 401, as in effect on March 30,*  
14 *2010.*

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16 */s/Brown*  
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