

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1788

5 By: Representative Dotson  
6

## For An Act To Be Entitled

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

14 TO PHASE IN AN EXTENSION OF THE NET  
15 OPERATING LOSS CARRY-FORWARD PERIOD FOR  
16 CALCULATING ARKANSAS INCOME TAX; AND TO  
17 MAKE TECHNICAL CHANGES.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 26-51-427 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:

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



1 (1)(A).

2 (B) The net operating loss ~~as hereinbelow defined~~ for any  
 3 year ending on or after the passage of the Income Tax Act of 1929, § 26-51-  
 4 101 et seq., and for any succeeding taxable year before January 1, 2017, may  
 5 be carried over to the next-succeeding taxable year and annually thereafter  
 6 for a total period of five (5) years next succeeding the year of the net  
 7 operating loss or until the net operating loss has been exhausted or absorbed  
 8 by the taxable income of any succeeding year, whichever is earlier, if the  
 9 net operating loss occurred in an income year beginning on or after January  
 10 1, 1987, but before January 1, 2017. The net operating loss deduction ~~must~~  
 11 shall be carried forward in the order ~~named above~~ stated in this subdivision  
 12 (1)(B).

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

32 (a) Beginning on or after January 1, 2017, for  
 33 a total period of six (6) years;

34 (b) Beginning on or after January 1, 2018, for  
 35 a total period of seven (7) years;

36 (c) Beginning on or after January 1, 2019, for

1 a total period of eight (8) years;

2 (d) Beginning on or after January 1, 2020, for  
3 a total period of nine (9) years; and

4 (e) Beginning on or after January 1, 2021, for  
5 a total period of ten (10) years.

6 (ii) The net operating loss deduction shall be  
7 carried forward in the order stated in this subdivision (1)(C).

8 (D) As used in this section, “taxable income” or “net  
9 income” ~~shall be deemed to be~~ means the net income computed without benefit  
10 of the deduction for income taxes, personal exemptions, and credit for  
11 dependents. The net income of the taxable period to which the net operating  
12 loss deduction, as adjusted, is carried, ~~shall be~~ is the net income before  
13 the deduction of federal income taxes, personal exemption, and credit for  
14 dependents. ~~Such income~~ Income taxes, exemptions, and credits described in  
15 this subdivision (1)(D) shall not be used to increase the net operating loss  
16 ~~which that~~ may be carried to any other taxable period.

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

19 (a) Research and development in the medical  
20 field; and

21 (b) Manufacture and distribution of medical  
22 products, including therapeutic and diagnostic products.

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

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

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

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

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

5 (B) In the case of a taxpayer other than a corporation,  
6 deductions, not including federal income taxes, not attributable to the  
7 operation of the trade or business ~~shall be~~ are eliminated from the  
8 deductions otherwise allowable for the taxable year to the extent that they  
9 exceed gross income not derived from trade or business. Personal exemptions  
10 and credit for dependents ~~shall not be~~ are not a deduction for the purpose of  
11 computing a net operating loss;

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

14 (D) In the case of a taxpayer other than a "C  
15 corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1,  
16 1985:

17 (i) For income years beginning after December 31,  
18 1986, the amount deductible on account of losses from sales or exchanges of  
19 capital assets shall not exceed the amount includable on account of gains  
20 from sales or exchanges of capital assets; and

21 (ii) For income years beginning after December 31,  
22 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202  
23 [repealed], as in effect on January 1, 1985, shall not be allowed; and

24 (3) In the case of the acquisition of assets of one (1)  
25 corporation by another corporation, the acquiring corporation shall succeed  
26 to and take into account any net operating loss carryover apportionable to  
27 Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-  
28 701 et seq., that the acquired corporation could have claimed had it not been  
29 acquired, subject to the following conditions:

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

34 (B) The net operating loss may not be carried forward to a  
35 taxable year ~~which~~ that ends more than five (5) years after the taxable year  
36 in which the net operating loss occurred if the net operating loss occurred

1 in an income year beginning on or after January 1, 1987, but before January  
 2 1, 2017; and

3 (C) The net operating loss may not be carried forward to a  
 4 taxable year that ends more than the number of years stated in subdivisions  
 5 (1)(B) and (C) of this section after the taxable year in which the net  
 6 operating loss occurred if the net operating loss occurred in an income year  
 7 beginning on or after January 1, 2017; and

8 ~~(C)~~ (D) The net operating loss may be claimed only when  
 9 the ownership of both the acquired and acquiring corporations is  
 10 substantially the same, ~~that is, where~~ in that not less than eighty percent  
 11 (80%) of the voting stock of each corporation is owned by the same person or,  
 12 ~~where prior to~~ before the acquisition, the acquiring corporation owned at  
 13 least eighty percent (80%) of the voting stock of the acquired corporation.  
 14 The carryover losses will be allowed only in those cases ~~where~~ in which the  
 15 assets of the corporation going out of existence earn sufficient profits  
 16 apportionable to Arkansas under the Uniform Division of Income for Tax  
 17 Purposes Act, § 26-51-701 et seq., in the post-merger period to absorb the  
 18 carryover losses claimed by the surviving corporation.

19  
 20 SECTION 2. EFFECTIVE DATE. This act is effective for tax years  
 21 beginning on or after January 1, 2017.