

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1390

By: Representative Jett

For An Act To Be Entitled

AN ACT CONCERNING INCOME TAX LAWS; TO ADOPT RECENT CHANGES TO THE INTERNAL REVENUE CODE; TO CLARIFY THAT CHILD SUPPORT PAYMENTS ARE NOT INCLUDED IN THE GROSS INCOME OF THE RECIPIENT; TO CLARIFY THAT GAMBLING LOSSES ARE DEDUCTIBLE TO THE EXTENT OF GAMBLING WINNINGS; AND FOR OTHER PURPOSES.

Subtitle

TO ADOPT RECENT CHANGES TO THE INTERNAL REVENUE CODE; AND TO CLARIFY PROVISIONS CONCERNING CHILD SUPPORT PAYMENTS AND GAMBLING LOSSES.

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

SECTION 1. Arkansas Code §§ 6-84-102 and 6-84-103 are amended to read as follows:

6-84-102. Purpose.

It is the intent and purpose of this chapter to create and establish the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, to be administered by the Section 529 Plan Review Committee through the adoption of rules and regulations for the administration of the program.

6-84-103. Definitions.

As used in this chapter:

(1) "Account" means an account established in accordance with



this chapter;

(2) "Account owner" means the person who, under this chapter or the rules promulgated by the Section 529 Plan Review Committee, is entitled to select or change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no other person is designated;

(3) "Act" means the Arkansas Tax-Deferred Tuition Savings Program Act, § 6-84-104 et seq.;

(4)(A) "Arkansas Tax-Deferred Tuition Savings Program Trust" or "trust" means the trust created under § 6-84-104.

(B) Participation in the trust shall be open to Arkansas residents and nonresidents alike;

(5) "Committee" means the Section 529 Plan Review Committee, provided for in § 6-84-105, that shall oversee the administration of the Arkansas Tax-Deferred Tuition Savings Program and ensure that the program complies with the provisions of this chapter and acts in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017;

(6) "Contribution" means:

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

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

(7) "Contributor" means any person making a contribution to an account;

(8) "Designated beneficiary" means, except as provided in § 6-84-108, the individual designated at the time the account is opened as having the right to receive a qualified withdrawal for the payment of qualified higher education expenses or, if the designated beneficiary is replaced in accordance with § 6-84-108, the replacement;

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

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

(11) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(A) A qualified withdrawal;

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

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

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

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

(13) "Program" means the Arkansas Tax-Deferred Tuition Savings Program established by this chapter;

(14) "Qualified higher education expenses" means tuition and other permitted expenses as set forth in 26 U.S.C. § 529(e), as in effect on January 1, ~~2015~~ 2017, for the enrollment or attendance of a designated beneficiary at a higher education institution;

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

(16) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary but only if the withdrawal is made in accordance with the requirements of the program; and

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

SECTION 2. Arkansas Code § 6-84-105(b), concerning the administration and powers of the Section 529 Plan Review Committee, is amended to read as follows:

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

SECTION 3. Arkansas Code § 6-84-105(c)(1), concerning the administration and powers of the Section 529 Plan Review Committee, is amended to read as follows:

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

SECTION 4. Arkansas Code § 6-84-106 is amended to read as follows:
6-84-106. Investment direction.

Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, no person shall have the right to direct the investment of any contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings Program.

SECTION 5. Arkansas Code § 6-84-108(b), concerning the naming of designated beneficiary and transfers of accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

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

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

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

Revenue Service.

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

SECTION 7. Arkansas Code § 6-84-111 is amended to read as follows:

6-84-111. Funds exempt from tax.

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

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

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

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

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

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

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

(c)(1) Qualified withdrawals from a tuition savings account established under this program or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, will be exempt from Arkansas income tax with respect to the designated beneficiary's income.

(2)(A) Nonqualified withdrawals from a tuition savings account

established under this program or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2015~~ 2017, will be subject to Arkansas income tax.

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

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

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

SECTION 8. Arkansas Code § 6-84-113 is amended to read as follows:

6-84-113. Liberal construction.

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

SECTION 9. Arkansas Code § 26-51-309 is amended to read as follows:

26-51-309. Charitable remainder trusts.

(a) Title 26 U.S.C. § 664, as in effect on January 1, ~~2007~~ 2017, and the regulations of the Secretary of the Treasury promulgated under 26 U.S.C. § 664 and in effect on January 1, ~~2007~~ 2017, are adopted for the purpose of computing the tax liability of charitable remainder trusts and their beneficiaries under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) Furthermore, any other provision of the federal income tax law and regulations which are necessary for interpreting and implementing 26 U.S.C. § 664 are adopted to the extent as in effect on January 1, ~~2007~~ 2017.

SECTION 10. Arkansas Code § 26-51-404(a)(4), concerning the definition of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

- (4) Title 26 U.S.C. § 117, as in effect on January 2, ~~2013~~ 2017,

regarding the taxability of scholarships, fellowships, grants, and stipends, is adopted for the purpose of clarifying and calculating Arkansas income tax liability.

SECTION 11. Arkansas Code § 26-51-404(b)(10), concerning exclusions from the definition of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(10) Title 26 U.S.C. §§ 108 and 1017, as in effect on January 1, ~~2015~~ 2017, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

SECTION 12. Arkansas Code § 26-51-404(b)(14), concerning exclusions from the definition of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(14) The following sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq., regarding the exclusion from income of disability and health plan payments, are adopted for the purpose of computing Arkansas income tax liability:

(A) Title 26 U.S.C. §§ 104 and 106, as in effect on January 1, 2011; and

(B) Title 26 U.S.C. § 105, as in effect on ~~March 30, 2010~~ January 1, 2017;

SECTION 13. Arkansas Code § 26-51-404(b)(19), concerning exclusions from the definition of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(19) Title 26 U.S.C. § 132, as in effect on January 1, ~~2015~~ 2017, regarding the exclusion from income of certain fringe benefits, is adopted for the purpose of computing Arkansas income tax liability;

SECTION 14. Arkansas Code § 26-51-404(b), concerning exclusions from the definition of "gross income" under the Income Tax Act of 1929, is amended to add an additional subdivision to read as follows:

(29) Child support payments shall not be included in the gross income of the recipient.

SECTION 15. Arkansas Code § 26-51-409(a), concerning the adoption of Subchapter S of the Internal Revenue Code for income tax purposes, is amended to read as follows:

(a) Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et seq., as in effect on January 1, ~~2015~~ 2017, regarding small business corporations, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 16. Arkansas Code § 26-51-411(h), concerning gains or losses on sales of property for purposes of computing income tax, is amended to read as follows:

(h) Title 26 U.S.C. § 267, as in effect on January 1, ~~2004~~ 2017, regarding losses, expenses, and interest arising from transactions between related taxpayers, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 17. Arkansas Code § 26-51-412(d), concerning gains or losses on exchanges of property for purposes of computing income tax, is amended to read as follows:

(d) Title 26 U.S.C. §§ 351, 354-358, 361, 362, 367, and 368, as in effect on January 1, ~~2009~~ 2017, regarding corporate organization, reorganization, and recognition of gain, are adopted for the purpose of computing Arkansas income tax liability.

SECTION 18. Arkansas Code § 26-51-414(a)(1), concerning deferred compensation plans in computing income tax, is amended to read as follows:

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

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

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

(2) The requirements for filing a joint return under 26 U.S.C. § 219(c)(1)(A) shall not apply.

SECTION 19. Arkansas Code § 26-51-415 is amended to read as follows:
26-51-415. Deductions – Interest.

Title 26 U.S.C. § 163, as in effect on January 1, ~~2015~~ 2017, regarding deductions for interest expenses, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 20. Arkansas Code § 26-51-419 is amended to read as follows:
26-51-419. Deductions – Charitable contributions.

(a)(1) Title 26 U.S.C. § 170, as in effect on January 1, ~~2015~~ 2017, regarding deductions for charitable contributions, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 21. Arkansas Code § 26-51-424(a), concerning the income tax deduction for losses, is amended to read as follows:

(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, including without limitation gambling losses, which are:

(i) Deductible to the extent of gambling winnings;

and

(ii) Not subject to the two percent (2%) limitation on miscellaneous itemized deductions.

SECTION 22. Arkansas Code § 26-51-428(a), concerning the income tax deduction for depreciation and the expensing of property, is amended to read as follows:

(a) Title 26 U.S.C. §§ 167 and 168(a)-(j), as in effect on January 1, ~~2015~~ 2017, and 26 U.S.C. § 179, as in effect on January 1, 2009, regarding depreciation and expensing of property, are adopted for the purpose of computing Arkansas income tax liability for property purchased in tax years beginning on or after January 1, 2014.

SECTION 23. Arkansas Code § 26-51-440(a)(1), concerning the adoption of Subchapter M of the Internal Revenue Code for income tax purposes, is amended to read as follows:

(a)(1) Subchapter M of the Internal Revenue Code, 26 U.S.C. § 851 et seq., as in effect on January 1, ~~2015~~ 2017, relating to regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, and financial asset securitization investment trusts, is adopted for the purpose of computing Arkansas income tax liability and shall govern all corporations that are registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as in effect on January 1, ~~2015~~ 2017.

SECTION 24. Arkansas Code § 26-51-815(c), concerning computing capital gains and losses for purposes of income tax, is amended to read as follows:

(c) Title 26 U.S.C. § 1202, as in effect on January 1, ~~1995~~ 2017, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 25. EFFECTIVE DATE. Sections 1 through 24 of this act are effective for tax years beginning on and after January 1, 2015.