

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

State of Arkansas
93rd General Assembly
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As Engrossed: H3/18/21

A Bill

HOUSE BILL 1035

By: Representatives Beaty Jr., Jett

For An Act To Be Entitled

AN ACT TO ADOPT RECENT CHANGES TO THE INTERNAL
REVENUE CODE; AND FOR OTHER PURPOSES.

Subtitle

TO ADOPT RECENT CHANGES TO THE INTERNAL
REVENUE CODE.

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

SECTION 1. Arkansas Code § 6-84-102 is 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, ~~2018~~ 2020, to be administered by the Section 529 Plan Review Committee through the adoption of rules for the administration of the program.

SECTION 2. Arkansas Code § 6-84-103(5) and (6), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(5) "Committee" means the Section 529 Plan Review Committee, provided for in § 6-84-105, which 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, ~~2018~~ 2020;

(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, ~~2018~~ 2020;

SECTION 3. Arkansas Code § 6-84-103(10), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(10) "Member of the family" shall have the same meaning as is contained in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

SECTION 4. Arkansas Code § 6-84-103(12), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(12) "Person" means a person as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

SECTION 5. Arkansas Code § 6-84-103(14) and (15), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(14) "Qualified higher education expenses" means tuition and other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, for the enrollment or attendance of a designated beneficiary;

(15) "Qualified tuition program" means a qualified tuition program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

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

(17) "Rollover" means a disbursement or transfer from an account that is transferred to or deposited within sixty (60) calendar days of the transfer:

(A) Into an account of the same person for the benefit of the same designated beneficiary;

(B) To the credit of 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, as in effect on January 1, ~~2018~~ 2020; or

(C)(i) Before January 1, 2026, into an ABLE account under 26 U.S.C. § 529A(e)(6), as in effect on January 1, ~~2018~~ 2020, of the designated beneficiary or a member of the family of the designated beneficiary.

(ii) Subdivision (17)(C)(i) of this section does not apply to so much of a distribution which, when added to all other contributions made to the ABLE account for the taxable year, exceeds the limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1, ~~2018~~ 2020.

SECTION 7. Arkansas Code § 6-84-105(b) and (c), concerning the administration of the Arkansas Tax-Deferred Tuition Savings Program Act and the authority and powers of the Section 529 Plan Review Committee, are amended to read as follows:

(b) The committee shall adopt such rules 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, ~~2018~~ 2020.

(c) The committee shall have the following powers, duties, and functions:

(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, ~~2018~~ 2020, and to obtain the benefits provided by 26 U.S.C. § 529 for the program, account owners, and designated beneficiaries;

(2) To adopt rules for the general administration of the program;

(3) To maintain, invest, and reinvest the funds contributed into the program consistent with the investment restrictions established by the committee and the standard of care described in the prudent investor rule under § 24-2-610; and

(4)(A) To make and enter into any and all contracts, agreements, or arrangements and to retain, employ, and contract for the services of

financial institutions, depositories, consultants, broker dealers, investment advisors or managers, third-party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of this chapter.

(B) Contracts entered into by the committee may be for a term of from one (1) to ten (10) years.

SECTION 8. 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, ~~2018~~ 2020, 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 9. Arkansas Code § 6-84-108(b), concerning the naming of a 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 on January 1, ~~2018~~ 2020.

SECTION 10. Arkansas Code § 6-84-109(b)(2), concerning the reporting of account withdrawals under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(2) The report shall be made at the time required by the rules of the Internal Revenue Service as in effect on January 1, ~~2018~~ 2020, and contain such information as is required by law.

SECTION 11. Arkansas Code § 6-84-111(a)(1), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(a)(1) 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, ~~2018~~ 2020, shall be exempt from Arkansas income taxes.

SECTION 12. Arkansas Code § 6-84-111(b)(3), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

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

(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, ~~2018~~ 2020.

SECTION 13. Arkansas Code § 6-84-111(e) and (f), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(e)(1)(A) Contributions to a tuition savings account established under the program or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

(B) A taxpayer may not deduct from the taxpayer's adjusted gross income a contribution to a tax-deferred tuition savings program established by another state if the taxpayer deducted the contribution in another state or on another state's income taxes.

(2)(A) The deductible contributions for a tuition savings account established under this chapter shall not exceed five thousand dollars (\$5,000) per taxpayer in any tax year.

(B) If the aggregate amount of contributions by a taxpayer during a tax year exceeds the limitation under subdivision (e)(2)(A) of this section, the unused aggregate amount may be carried forward to the next succeeding four (4) tax years.

(C) The deductible contributions for a tax-deferred

tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, shall not exceed three thousand dollars (\$3,000) per taxpayer in any tax year.

(D) The deductible contributions for a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, that are rolled over into a tuition savings account established under this chapter shall not exceed seven thousand five hundred dollars (\$7,500) per taxpayer in the tax year in which they were rolled.

(f)(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, ~~2018~~ 2020, 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, ~~2018~~ 2020, 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.

~~(f)~~(g) 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, ~~2018~~ 2020, 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 (d)(1)(C), as in effect on January 1, 2018, received by the designated beneficiary.

SECTION 14. 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, ~~2018~~ 2020.

SECTION 15. Arkansas Code § 26-51-404(b)(10), concerning items excluded from the meaning 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, ~~2019~~ 2020, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

SECTION 16. Arkansas Code § 26-51-404(b)(20), concerning items excluded from the meaning of "gross income" under the Income Tax Act of 1929, is amended to read as follows:

(20) Title 26 U.S.C. § 127, as in effect on ~~January 1, 2017~~ April 1, 2020, regarding the exclusion from gross income for employees whose education expenses were paid by an employer, is adopted for the purpose of computing Arkansas income tax liability;

SECTION 17. Arkansas Code § 26-51-414(a)(1), concerning the treatment of deferred compensation plans under the Income Tax Act of 1929, 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, 2017; and

(B) Title 26 U.S.C. § 401, as in effect on ~~March 30, 2010~~ April 1, 2020.

SECTION 18. Arkansas Code § 26-51-423(d), concerning deductions for certain expenses under the Income Tax Act of 1929, is amended to read as follows:

(d) Title 26 U.S.C. § 221, as in effect on ~~January 2, 2013~~ April 1, 2020, regarding the deduction of interest paid on qualified education loans, is adopted for the purpose of computing Arkansas income tax liability.

SECTION 19. Arkansas Code § 26-51-428(a), concerning deductions for

the depreciation of assets under the Income Tax Act of 1929, is amended to read as follows:

(a) Title 26 U.S.C. §§ 167 and 168(a)-(j), as in effect on ~~January 1, 2019~~ April 1, 2020, 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 20. Arkansas Code § 26-51-453(a), concerning the deduction for amounts deposited into health savings accounts under the Income Tax Act of 1929, is amended to read as follows:

(a) Title 26 U.S.C. § 223(a)-(d), (e)(2), (f), and (g), as in effect on ~~January 1, 2011~~ April 1, 2020, regarding a deduction from income for amounts deposited to health savings accounts, is adopted for purposes of computing Arkansas income tax liability.

SECTION 21. EFFECTIVE DATE. Sections 1-20 of this act are effective for tax years beginning on or after January 1, 2021.

/s/Jett