

State of Arkansas

76th General Assembly

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HOUSE BILL 2003

By: Reps. Cunningham, Barclay and Clark

"INCOME TAX ACT OF 1987"

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

SECTION 1. This Act shall be known and may be cited as the "Income Tax Act of 1987."

PURPOSE

SECTION 2. The purpose of this Act is to make technical amendments to the Income Tax Act of 1929, Act 118 of 1929, as amended, and to the Arkansas Tax Procedure Act, Act 401 of 1979, as amended, to make the Arkansas Income Tax and Tax Procedure statutes conform to several recent amendments to their counterparts in the Federal Income statutes, to eliminate procedural problems that have arisen since the enactment of these Acts and for other purposes.

INCOME TAX PROVISIONS

(Subchapter S Corporation)

SECTION 3. Section 1 of Act 414 of 1979, as amended, the same being Ark. Stat. Ann. 84-2004.1, is hereby amended to read as follows:

"Section 1. Subchapter S of the Federal Internal Revenue Code of 1986 and in effect on January 1, 1987, the same being 26 U.S.C. Sections 1361 through 1379, is hereby adopted under this Act. The corporate election and shareholder consents required to be filed under Subchapter S of the Internal Revenue Code of 1986 for Arkansas income tax purposes shall be filed with the Director of the Department of Finance and Administration of the State of Arkansas in the same manner and at the same time as required under the said Subchapter S.

Provided, however, that all non-resident shareholders of corporations receiving income in the form of distributions pursuant to the provisions of

this Act must file a properly executed Arkansas Income Tax Return with the Director of the Department of Finance and Administration and remit the applicable Arkansas Income Tax upon the amount distributed. Failure to so report and remit on the part of any shareholder shall be grounds upon which the Director shall be authorized to revoke the corporation's Subchapter S election and collect the tax from the corporation by any manner authorized by the Arkansas Income Tax Act of 1929, as amended."

(Tax Benefit Recovery)

SECTION 4. Subsection (1) of Section 8 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2008(1), is hereby amended to read as follows:

"(1) 'Gross Income' defined--Exempt Items. The words 'gross income' include gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership of, use of or interest in such property; also from interest, rent, royalties, dividends, securities, or the transaction of any business carried on for gain or profit or gains or profits and income derived from any source whatever; also, any payments of alimony and separate maintenance received pursuant to a court order. The amount of all such items shall be included in the gross income of the taxable year in which received by the taxpayer; provided, that when property is sold upon what is known as the installment plan, the income may be included for taxation in that portion of any installment payment representing gain or profit in the year in which payment is received, unless under the methods of accounting permitted under this Act, any such amounts are to be properly accounted for as of a different period. Any recovery of an amount which was deducted from gross income in a prior year must be treated as taxable income in the year recovered to the extent that the deduction resulted in a reduction in income tax liability."

SECTION 5. The term "adjusted gross income" means gross income minus the following deductions and exemption:

- (a) Deductions for alimony payments.
- (b) Deductions for separate maintenance payments.

(c) Deductions for interest forfeited to a bank, savings association, etc., on premature withdrawals from time savings accounts or deposits.

(d) Deductions allowed for cash payments to individual retirement accounts (IRAs) and deductions allowed for cash payments to retirement savings plans of certain married individuals to cover a nonworking spouse.

(e) Deductions for contributions by self-employed persons to pension, profit-sharing, and annuity plans.

(f) Border City Exemption as provided by Section 2 of Act 48 of 1977 [Arkansas Statute 84-1946].

SECTION 6. The first sentence of Section 7 of Act 118 of 1929, as amended, the same being Arkansas Statute 84-2007, is hereby amended to read as follows:

"The words 'net income' mean the adjusted gross income of a taxpayer less the deductions allowed by this Act."

(Debt Discharge in Bankruptcy)

SECTION 7. Section 8 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2008, is hereby amended by adding as subsection (2)(m) to read as follows:

"(m) Income from discharge of indebtedness. (1) Gross income shall not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if: (A) the discharge occurs in a case filed under Title 11 of the United States Code, or

(B) the discharge occurs when the taxpayer is insolvent.

(2) Insolvency exclusion limited to amount of insolvency.

In the case of a discharge to which paragraph (1)(B) of this subsection applies, the amount excluded under paragraph (1)(B) of this subsection shall not exceed the amount by which the taxpayer is insolvent.

(3) Reduction of tax attributes in cases filed under Title 11 or insolvency.

(A) In general. The amount excluded from gross income under subparagraph (A) or (B) of subsection (m)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in subparagraph (B) of this paragraph.

(B) Tax attributes affected; order of reduction. The reduction

referred to in subparagraph (3) (A) shall be made in the following tax attributes in the following order:

(i) NOL. Any net operating loss for the taxable year of the discharge, and any net operating loss carry over to such taxable year.

(ii) Capital loss carryovers. Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year.

(iii) Basis reduction. The basis of the property of the taxpayer.

(4) Amount of reduction. The reductions described in subparagraph (3) (A) shall be one dollar for each dollar excluded by subsection (m)."

(Cafeteria Plans)

SECTION 8. Section 8 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2008, is hereby amended by adding subsection (2) (n) to read as follows:

"(n) Cafeteria Plans. Section 125 (26 U.S.C. §125) of the Internal Revenue Code of 1986 in effect on January 1, 1987, is hereby adopted in computing amounts excludible from gross income under Arkansas Income Tax Law for payments received under a cafeteria plan."

(Dependent Care Assistance Program)

SECTION 9. Section 8 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2008, is hereby amended by adding subsection (2) (o) to read as follows:

"(o) Dependent care assistance programs. Section 129 (26 U.S.C. 129) of the Internal Revenue Code of 1986, in effect on January 1, 1987, is hereby adopted in computing an exclusion from gross income of an employee under Arkansas Income Tax Laws for amounts paid or incurred by an employer for dependent care assistance. Provided, however, no amounts excluded from gross income pursuant to this section shall be taken into account in computing the Dependent Care Credit contained in Section 2 of Act 490 of 1973, as amended, the same being Arkansas Statute 84-2089."

(Group-term Life Premiums)

SECTION 10. Section 8 of Act 118 of 1929, as amended, the same being Ark.

Stat. Ann. 84-2008, is hereby amended by adding subsection (2)(p) to read as follows:

"(p) Group-term life insurance purchased for employees. Section 79 (26 U.S.C. 79) of the Internal Revenue Code of 1986, as in effect on January 1, 1987, is hereby adopted in computing the amount excluded under Arkansas Income Tax Law from the gross income of an employee with respect to group-term life insurance purchased for such employee."

(Disability and Health Payments)

SECTION 11. Section 8 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2008, is hereby amended by adding subsection (2)(q) to read as follows:

"(q) Disability and Health Plan Payments. Sections 104 through 106 (26 U.S.C. 104 through 106) inclusive, of the Income Revenue Code of 1986, in effect on January 1, 1987, are hereby adopted for computing exclusions from gross income of disability and health plan payments under Arkansas Income Tax Law."

(Computation of Tax Liability)

SECTION 12. Section 9 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2012, is hereby amended to read as follows:

"Section 9. (a) A taxpayer must calculate his Arkansas income tax liability using the same accounting method for Arkansas income tax purposes as used for federal income tax purposes. A taxpayer must also calculate his Arkansas income tax liability using the same income year for Arkansas income tax purposes as used for federal income tax purposes. Taxpayers must provide to the Commissioner a copy of any certification or approval from the federal Internal Revenue Service authorizing the taxpayer to change his accounting method or his income year.

(b) An individual carrying on business as a partner in partnership shall be liable for income tax only in his individual capacity and shall include in his gross income the distributive share of the net income or net loss of the partnership received by him or distributable to him during the income year and the partner shall report all deductions or credits distributable to him personally as a partner in the partnership.

(c) Limitation on allowance of losses. - a partner's distributive

share of partnership loss shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(d) Every individual, taxable under this Act, who is a beneficiary of an estate or trust, shall include in his gross income the distributive share of the income or loss of the estate or trust received by him or distributable to him during the income year. Unless otherwise provided in the law the will, the deed or other instrument creating the estate, trust or fiduciary relationship, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution) ratably, in proportion to their respective interests. Any excess losses accumulated by such estate or trust at the time of the termination of the estate or trust shall be distributable to the beneficiaries rateably and claimed by the beneficiaries on the individual Arkansas income tax returns as otherwise provided by this Act.

(e) (1) Nonresidents or part year residents of Arkansas shall compute their taxable income as if all income were earned in Arkansas.

(2) Using Arkansas income tax rates, nonresident or part year residents of Arkansas shall compute their tax liability on the amount computed in paragraph (1) of this subsection.

(3) From the tax liability computed in paragraph (2), there shall be deducted all allowable credits to determine the amount of tax due.

(4) Nonresidents and part-year residents shall divided adjusted gross income from Arkansas sources by the adjusted gross income from all sources to arrive at the applicable percentage that Arkansas adjusted gross income represents of all adjusted income received by the taxpayer in the income year.

(5) Nonresidents and part year residents shall multiply the amount computed in paragraph (3) by the applicable percentage from paragraph (4) in order to determine the amount of income tax which must be paid to the State of Arkansas."

(Corporate Liquidations)

SECTION 13. Section 1 of Act 174 of 1973, the same being Ark. Stat. Ann. 84-2013.1, is hereby amended to read as follows:

"Section 1. Determination of gain or loss--corporate liquidations. Sections 332, 334, 336, 337 and 338 of the Internal Revenue Code of 1986, (26 U.S.C. 382, 334, 336, 337 and 338), in effect on January 1, 1987, are hereby adopted for the purpose of determining taxable income under the Arkansas Income Tax Law. For the purposes of the application of the above sentence, the transition rule of Sections 633(c) and (d) of the Tax Reform Act of 1986 (Public Law 99-514) shall also apply under the Arkansas Income Tax Law."

(Medical and Dental Deduction)

SECTION 14. Subsection (a) (2) of Section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2016(a) (2), is hereby amended to read as follows:

"(2) Section 213 (26 U.S.C. 213) of the Internal Revenue Code of 1986, in effect on January 1, 1987, is hereby adopted in computing the medical and dental expense deduction under Arkansas Income Tax Law.

(Interest Deduction)

SECTION 15. Subsection (b) of section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2016(b), is hereby amended to read as follows:

"(b) Interest - Section 163 of the Internal Revenue Code of 1986, as in effect on January 1, 1987, the same being 26 U.S.C. 163, is hereby adopted in computing the interest deduction under Arkansas Income Tax Law."

(Tax Deduction)

SECTION 16. Subsection (c) of section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2016(c), is hereby amended to read as follows:

"(c) Taxes. Taxes paid or accrued within the income year, imposed by the authority of the United States or any of its possessions, or of any state, territory, or any political subdivision of any state or territory, or the District of Columbia, or of any foreign country, except estate, succession or inheritance taxes, or except income taxes imposed by this act, and taxes assessed for local benefits of a kind tending to increase the value of the property assessed for such benefits; provided, however, that the deductions herein allowed for taxes shall not include any allowances or deductions for

federal income taxes paid or accrued by the taxpayer within the income year which are imposed by the authority of the United States or any of its possessions; nor shall individuals be allowed an itemized deduction for general sales or use taxes imposed by the authority of any state or subdivision thereof or for the cost of license plates or drivers licenses, or for motor fuel or special motor fuel taxes."

(Depreciation Deduction)

SECTION 17. Subsection (f) of Section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2016(f), is hereby amended to read as follows:

"(f) Depreciation. (1) Section 168 (26 U.S.C. 168) of the Internal Revenue Code of 1986, in effect on January 1, 1987, is hereby adopted in computing the depreciation deduction under the Arkansas Income Tax law.

(2) Section 179 (26 U.S.C. 179) of the Internal Revenue Code of 1986, in effect on January 1, 1987, is hereby adopted to allow an election to expense certain depreciable business assets under the Arkansas Income Tax Law.

(3) The taxpayer shall adjust the basis of depreciable assets to that basis used for federal income tax purposes. Such assets shall be thereafter depreciated in accordance with depreciation claimed for federal income tax purposes. This adjustment shall be made for the first income year beginning on or after January 1, 1987. Twenty-five percent (25%) of the difference which results from this adjustment shall be taken into income or allowed as a deduction in each of four successive income years, the first such year being the first income year beginning on or after January 1, 1987."

(Net Operating Losses)

SECTION 18. Subdivision (1) of Subsection (1) of Section 13 of Act 118 84-2016(1) (1) is hereby amended to read as follows:

"(1) (A) The net operating loss as hereinbelow defined for any year ending on or after the passage of this Act 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 such net operating loss or until such net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier if the 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.

(B) The net operating loss as hereinbelow defined for any year ending on or after the passage of this Act and for any succeeding taxable year may be carried over to the next succeeding taxable year and annually thereafter for a total period of five (5) years next succeeding the year of such net operating loss or until such net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier if the loss occurred in an income year beginning on or after January 1, 1987. The net operating loss deduction must be carried forward in the order named above.

(C) As used herein the term 'taxable income,' or 'net income' shall be deemed to be the net income computed without benefit of the deduction for income taxes, personal exemptions and credit for dependents. The net income of the taxable period to which the net operating loss deduction, as adjusted, is carried, shall be the net income before the deduction of Federal income taxes, personal exemption and credit for dependents, and such income taxes, exemptions and credits shall not be used to increase the net operating loss which may be carried to any other taxable period."

(Net Operating Losses)

SECTION 19. Subdivision (3) of Subsection (1) of Section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016 (1)(3) is hereby amended to read as follows:

"(3) In the case of the acquisition of assets of one (1) corporation by another corporation, the acquiring corporation shall succeed to and take into account any net operating loss carryover apportionable to Arkansas, under Ark. Stats. Ann. §§84-2055 - 84-2073, that the acquired corporation could have claimed had it not been acquired, subject to the following conditions and

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

(B) The net operating loss may not be carried forward to a taxable year which ends more than five (5) years after the taxable year in which the loss occurred, if the loss occurred in an income year beginning on or after January 1, 1987.

(C) The net operating loss may be claimed only when the ownership of both the acquired and acquiring corporations is substantially the same; that is, where not less than eighty percent (80%) of the voting stock of each corporation is owned by the same person or persons, or where prior to the acquisition the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation. The carryover losses will be allowed only in those cases where the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas, under Ark. Stats. Ann. 84-2055 - 84-2073, is the post-merger period to absorb the carryover losses claimed by the surviving corporation."

(Alimony)

SECTION 20. Subsection (n) of section (13) of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016(n), is hereby amended to read as follows:

"(n) Alimony and separate maintenance. (1) Section 71 (26 U.S.C. §71) of the Internal Revenue Code of 1986, as in effect on January 1, 1987, is hereby adopted for purposes of determining amount of alimony or separate maintenance to include in the gross income of the recipient.

(2) Section 215 (26 U.S.C. 215) of the Internal Revenue Code of 1986, as in effect on January 1, 1987, is hereby adopted for purposes of determining the amount of alimony or separate maintenance that can be deducted from a taxpayer's income for any income year."

(At Risk and Passive Loss Limitations)

SECTION 21. Section 13 of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. 84-2016, is hereby amended by adding subsection (o) to read as follows:

"(o) At risk and passive loss limitations. Notwithstanding any other provision of this Act with regard to deductions allowed in computing net income:

(1) Section 465 (26 U.S.C. 465) of the Internal Revenue Code of 1986, in effect on January 1, 1987, is hereby adopted to limit deductions claimed under this Act to the amount the taxpayer has at risk, as that term is used in the federal income tax law;

(2) Section 469 (26 U.S.C. 469) of the Internal Revenue Code of 1986, in

effect on January 1, 1987, is hereby adopted to limit passive activity losses and credits, as those terms are as used in the federal income tax law."

(Charitable Contributions)

SECTION 22. Section 2 of Act 25 of 1967, as amended, the same being Ark. Stat. Ann. §84-2016.3, is hereby amended to read as follows:

"Section 2. Charitable Contributions. Section 170 of the Federal Internal Revenue Code of 1986 (26 U.S.C. 170), in effect on January 1, 1987, is hereby adopted in computing the charitable deduction for individuals and corporations under Arkansas Income Tax Law."

(Mileage Deduction)

SECTION 23. Section 1 of Act 469 of 1981, the same being Ark. Stat. Ann. 84-2016.11, is hereby amended to read as follows:

"Section 1. In determining travel expenses deductible as a business expense in computing net income as provided under subsection (a) of section 13 of Act 118 of 1929, as amended, the deduction for vehicle miles shall be the same as is authorized in the Internal Revenue Code of 1986, as in effect on January 1, 1987."

(Tax Credits)

SECTION 24. Section 16 of Act 118 of 1929, as amended, the same being Arkansas Statutes 84-2021 is hereby amended to read as follows:

"Section 16. (1) There shall be deducted from the tax after the same shall have been computed as set forth in this act, a personal tax credit as follows:

(a) For a single individual, twenty dollars (\$20.00), provided that a taxpayer who was blind or deaf at any time during the income year shall be entitled to an additional tax credit of twenty dollars (\$20.00), provided further that a single individual who is deaf-blind shall be entitled to an additional tax credit of forty dollars (\$40.00), provided further that a single individual of 65 years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(b) For head of family, or married individual living with husband or wife, forty dollars (\$40.00). A husband and wife living together and filing either jointly or separately on the same income tax form shall receive but one

(1) personal tax credit of forty dollars (\$40.00) against their aggregate tax. Provided that in the event the husband and/or wife shall be 65 years of age or older, each of them which is 65 years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00). Provided, however, that any husband or wife filing a separate return on a separate tax form shall receive a tax credit of twenty dollars (\$20.00) on each return so filed, but if the husband or wife is 65 years of age or older, each of them that is 65 years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00). Provided, further, that the preceding sentence shall apply only so long as the Commissioner continues to provide a tax return on which a husband and wife can elect to file jointly or separately on the same return.

(c) For each individual, other than husband or wife, who has gross income for the tax year of less than three thousand dollars (\$3,000), and who has not filed a joint return with his or her spouse for the taxable year, and who is dependent upon and receives his or her chief support from the taxpayer, twenty dollars (\$20.00).

For the purposes of this paragraph, the term 'dependent' means any of the following persons over half of whose support for the income year was received from the taxpayer: a son or daughter, or descendant of either; a stepson or stepdaughter; a brother, sister, stepbrother or stepsister; father or mother or an ancestor of either; a stepfather or stepmother; a son or daughter of a brother or sister; a brother or sister of the father or mother; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer. As used in this paragraph the term 'brother' and 'sister' includes a brother or sister by half-blood. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child or a person shall be considered a child of such person by blood. The term 'dependent' does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or a country contiguous to the United States.

(d) In the case of fiduciary, if taxable under clause (a) of paragraph 1 of section 5 (section 84-2005, Arkansas Statutes, 1947), twenty dollars (\$20.00); if taxable under clause (b) of said paragraph the same tax credit as would be allowed the deceased, if living; if taxable under clause (c) of said paragraph, the tax credit to which the beneficiary would be entitled;

(e) In the case of a nonresident taxpayer, the taxpayer shall be

entitled to that proportion of the tax credit granted by this act that the gross income within the State bears to the entire gross income wherever earned.

(2) The status of the last day of the income year shall determine the right to the tax credits provided in this section; provided, that a taxpayer shall be entitled to such tax credits for husband or wife or dependent who has died during the income year.

(Partnership Returns)

SECTION 25. Section 274 of the Internal Revenue Code of 1986, as in effect on January 1, 1987, the same being 26 U.S.C. 274 regarding the deduction of expenses for entertainment, amusement, recreation, business meals, travel, etc., is hereby adopted for purposes of computing Arkansas income tax liability.

(Corporate Income Tax Returns)

SECTION 26. Section 20 of Act 118 of 1929, the same being Ark. Stat. Ann. §84-2025, is hereby amended to read as follows:

"Section 20. (a) Every corporation subject to taxation under this Act shall make a return stating specifically the items of its gross income and the deductions and credits allowed by this Act; and such return shall be sworn to by the President, Vice-President, Treasurer or other principal officer.

(1) If any foreign corporation has no office or place of business in this State but has an agent in this State, the returns shall be made by the agent.

(2) In the case of a receiver, trustee in bankruptcy or assignee operating the property or business of a corporation, such receiver, trustee or assignee shall make returns for such corporation in the same manner and form as corporations are required to make returns, and any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporations of whose business or property they have custody or control.

(b) Returns made under this Section shall be subject to the provisions of this Act."

(IRA and Deferred Compensation)

SECTION 27. Section 2 of Act 202 of 1959, as amended, the same being

Ark. Stat. Ann. §84-2049, is hereby amended to read as follows:

"Section 2. Sections 219 and 401 through 416 (26 U.S.C. §§219 and 401 through 416) inclusive, of the Internal Revenue Code of 1986, in effect on January 1, 1987, are hereby adopted in computing the income tax liabilities, under the provisions of the Income Tax Act of 1929, as amended, for all participants in deferred compensation plans qualifying as such under these provisions, except Arkansas capital gains treatment and Arkansas tax rates shall apply. Any additional tax or penalty imposed by this Section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this Section."

SECTION 28. MISCELLANEOUS ITEMIZED DEDUCTIONS (a) In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds two percent (2%) of adjusted gross income.

(b) For the purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than:

(1) The deduction allowed under Section 13(a)(1) of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016(a)(1), relating to expenses in carrying on a trade or business. However, employee business expenses which are not reimbursed by the employer are miscellaneous itemized deductions.

(2) The deduction allowed under Section 13(a)(2) of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016(a)(2), relating to medical, dental, drug and related health care expenses.

(3) The deduction allowed under Section 13(b) of Act 118 of 1929, as amended the same being Ark. Stat. Ann. §84-2016(b), relating to interest.

(4) The deduction allowed under Section 13(c) of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016(c), relating to taxes.

(5) The deduction allowed under Section 13(d) of Act 118 of 1929, as amended, the same being Ark. Stat. Ann. §84-2016(d), relating to losses.

(6) The deduction allowed under Section 2 of Act 25 of 1967, as amended, the same being Ark. Stat. Ann. §84-2016.3, relating to charitable contributions.

(7) The deduction allowed under §1 of Act 818 of 1983, the same being Ark. Stat. Ann. §84-2016.15, relating to the donation of artistic, literary and musical creations.

#### PROCEDURAL PROVISIONS

(FOIA Exclusion for all Tax Returns)

SECTION 29. Subsection (a) of Section 6 of Act 401 of 1979, as amended, the same being Ark. Stat. Ann. §84-4706, are hereby amended to read as follows:

"(a) The Commissioner is the official custodian of all records and files required by any State tax law to be filed with the Commissioner and is required to take all steps necessary to maintain their confidentiality. Except as otherwise provided by this Act, the records and files of the commissioner concerning the administration of any State tax law are confidential and privileged. These records and files and any information obtained from these records or files or from any examination or inspection of the premises or property of any taxpayer shall not be divulged or disclosed by the Commissioner or any other person who may have obtained these records and files. It is the specific intent of this Act that all tax returns, audit reports and information pertaining to any tax returns, whether filed by individuals, corporations, partnerships or fiduciaries, shall not be subject to the provisions of Act 93 of 1967, as amended."

(FOIA Exclusion for all Tax Returns)

SECTION 30. Subsection (c) of Section 6 of Act 401 of 1979, as amended, the same being Ark. Stat. Ann. 84-4706(c), is hereby amended to read as follows:

"(c) The provisions of this section shall be strictly interpreted and shall not permit any other disclosure of tax information concerning a taxpayer (whether the taxpayer is an individual, a corporation, a partnership, or a fiduciary) that is contained in the records and files of the Commissioner relating to income tax or any other State tax administered under this Act."

#### MISCELLANEOUS PROVISIONS

(Severability)

SECTION 31. Severability. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that extent, the provisions of this Act are declared to be severable.

(Repealer)

SECTION 32. Repealer. The following laws and parts of laws are hereby repealed for all income years beginning January 1, 1987:

"(a) Section 1 of Act 62 of 1967 (Ark. Stat. Ann. 84-2016.5);

(b) Section 1 of Act 613 of 1977 (Ark. Stat. Ann. 84-2016.6);

(c) Section 1 of Act 854 of 1983 (Ark. Stat. Ann. 84-2016.16);

(d) Section 8(2)(k) of Act 118 of 1929, as amended, (Ark. Stat. Ann. 84-2008(2)(k));

(e) All other laws and parts of laws in conflict with this Act are hereby repealed for income years beginning on and after January 1, 1987."

SECTION 33. Except as provided in paragraph (b) of this Section, the provisions of this Act shall apply to income years beginning on and after January 1, 1987.

(b) Sections 29 and 30 of this Act, regarding confidentiality of tax returns and other tax information, shall apply retroactively to any pending suit, action or prosecution, administrative or judicial, for which no final judgement has been rendered by a court of competent jurisdiction and all future suits, actions and prosecutions.

SECTION 34. It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

SECTION 35. The words appearing in parentheses () above each Section of this Bill are solely intended to be for the purpose of ease of identification during the legislative review process and are not to be considered as substantive provisions of this Bill.



/s/ Ernest Cunningham, et al