

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/13/03

A Bill

HOUSE BILL 1526

5 By: Representative C. Taylor
6
7

For An Act To Be Entitled

9 *AN ACT TO ENHANCE AND UPDATE THE ARKANSAS TAX-*
10 *DEFERRED TUITION SAVINGS PROGRAM; AND FOR OTHER*
11 *PURPOSES.*

Subtitle

13 *TO ENHANCE AND UPDATE THE ARKANSAS TAX-*
14 *DEFERRED TUITION SAVINGS PROGRAM.*

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Arkansas Code § 6-84-102, concerning the purpose of the*
20 *Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:*

21 *6-84-102. Purpose.*

22 *It is the intent and purpose of this chapter to create and establish*
23 *the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. § 529*
24 *as in effect on January 1, ~~1999~~ 2003, to be administered by the Arkansas*
25 *Teacher Retirement System through the adoption of rules and regulations for*
26 *the administration of the program.*

27
28 *SECTION 2. Arkansas Code § 6-84-103, concerning definitions for the*
29 *Arkansas Tax-Deferred Tuition Savings Program, is amended to read as follows:*

30 *6-84-103. Definitions.*

31 *For purposes of this chapter:*

32 *(1) "Account" means an individual trust account or savings account*
33 *established in accordance with this chapter;*

34 *(2) "Account owner" means the individual or individuals other than the*
35 *designated beneficiary identified at the time the account is opened as having*
36 *the right to withdraw funds from the account;*



1 (3) "Act" means the "Arkansas Tax-Deferred Tuition Savings Program Act
2 of 1999";

3 (4) "Arkansas Tax-Deferred Tuition Savings Program Trust" or "trust"
4 means the trust created under § 6-84-104. Participation in the trust shall
5 be open to Arkansas residents and nonresidents alike;

6 (5) "Committee" means the investment committee provided for in § 6-84-
7 105, which shall oversee the administration of the Arkansas Tax-Deferred
8 Tuition Savings Program and ensure that the program complies with the
9 provisions of this chapter and acts in accordance with 26 U.S.C. § 529;

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

15 (7) "Higher education institution" means an eligible education
16 institution as defined in 26 U.S.C. § ~~135(e)(3)~~ 529(e) as in effect on
17 January 1, ~~1999~~ 2003;

18 (8) "Member of the family" shall have the same meaning as is contained
19 in 26 U.S.C. § 529(e) as in effect on January 1, ~~1999~~ 2003;

20 (9) "Nonqualified withdrawal" means a withdrawal from an account that
21 is not:

22 (A) A qualified withdrawal;

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

25 (C) A withdrawal made as the result of a scholarship, or
26 allowance or payment described in 26 U.S.C. § 135(d)(1)~~(B)~~ ~~or (G)~~ as in
27 effect on January 1, ~~1999~~ 2003, received by the designated beneficiary but
28 only to the extent of the amount of such scholarship, allowance, or payment;
29 or

30 (D) A rollover or change in the designated beneficiary described
31 in § 6-84-108;

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

34 (11) "Qualified higher education expenses" means tuition and other
35 permitted expenses as presently set forth in 26 U.S.C. § 529(e) as in effect
36 on January 1, ~~1999~~ 2003, for the enrollment or attendance of a designated

1 beneficiary at a higher education institution;

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

6 (13) "System" means the Arkansas Teacher Retirement System, which is
7 organized and governed pursuant to § 24-7-101 et seq.; and

8 (14) "Qualified tuition program" means a program established and
9 administered by a state or agency or instrumentality thereof or an eligible
10 education institution as set forth in 26 U.S.C. § 529(b) as in effect on
11 January 1, 2003.

12
13 SECTION 3. Arkansas Code § 6-84-105, concerning administration of the
14 Arkansas Tax-Deferred Savings Program, is amended to read as follows:

15 6-84-105. Administration - Authority - Powers.

16 (a) This chapter shall be administered by the Arkansas Tax-Deferred
17 Tuition Savings Program Investment Committee, which shall be composed of:

18 (1) The Arkansas Teacher Retirement System's investment
19 committee; and

20 (2) The Director of the Department of Higher Education.

21 (b) The Arkansas Tax-Deferred Tuition Savings Program Investment
22 Committee shall adopt such rules and regulations as it deems necessary and
23 proper to administer this subchapter and to ensure the program's compliance
24 with 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003.

25 (c) The Arkansas Tax-Deferred Tuition Savings Program Investment
26 Committee shall have the following powers, duties, and functions:

27 (1) To establish, develop, implement, and maintain the program
28 in a manner consistent with the provisions of this subchapter and 26 U.S.C. §
29 529 as in effect on January 1, ~~1999~~ 2003, to obtain the benefits provided by
30 such section for the program and its participants;

31 (2) To adopt rules and regulations for the general
32 administration of the program;

33 (3) To maintain, invest, and reinvest the funds contributed into
34 the program consistent with the investment restrictions established by the
35 committee and the standard of care described in the prudent investor rule
36 presently codified as § 24-3-417; and

1 (4)(A) To make and enter into any and all contracts, agreements,
2 or arrangements and to retain, employ, and contract for the services of
3 financial institutions, depositories, consultants, broker dealers, investment
4 advisors or managers, third party plan administrators, and research,
5 technical, and other services necessary or desirable for carrying out the
6 purposes of this subchapter.

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

9
10 SECTION 4. Arkansas Code § 6-84-106, concerning the investment of
11 funds held in the Arkansas Tax-Deferred Tuition Savings Program, is amended
12 to read as follows:

13 6-84-106. Investment direction.

14 Except as permitted in 26 U.S.C. § 529 as in effect on January 1, ~~1999~~
15 2003, and regulations thereunder as in effect on January 1, ~~1999~~ 2003, no
16 person shall have the right to direct the investment of any contributions to
17 or earnings from the Arkansas Tax-Deferred Tuition Savings Program.

18
19 SECTION 5. Arkansas Code § 6-84-109, concerning the penalty provisions
20 of the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as
21 follows:

22 6-84-109. Account withdrawals - Penalties.

23 (a) Withdrawal from an account may be made on thirty (30) days'
24 written notice to the Arkansas Tax-Deferred Tuition Savings Program
25 Investment Committee or on such shorter notice as the committee may by
26 regulation provide.

27 (b) A withdrawal shall be designated as a qualified withdrawal or a
28 nonqualified withdrawal, and the application shall provide such information
29 and be made on such forms as the committee shall find are necessary to enable
30 the committee to determine the nature of the withdrawal.

31 (c) ~~The committee shall establish a more than de minimis penalty, at~~
32 ~~the minimum amount necessary to satisfy the requirements of~~ The penalty
33 imposed by this section upon withdrawals not used for qualified higher
34 education expenses shall be equal to ten percent (10%) of the amount of the
35 additional tax provided in 26 U.S.C. § 529 as in effect on January 1, ~~1999~~
36 2003, for a nonqualified withdrawal on the portion of the withdrawal that

1 ~~constitutes~~ is includible in gross income under 26 U.S.C. § 529 as in effect
2 on January 1, ~~1999-2003~~.

3 (d) An account withdrawal paid to or for the benefit of any person
4 during any calendar year shall be reported to the person and the Internal
5 Revenue Service. The report shall be made at the time and contain such
6 information as is required by law.

7 (e) Penalties collected under this section may be used to defray the
8 costs of the Arkansas Tax-Deferred Tuition Savings Program.

9
10 SECTION 6. Arkansas Code § 6-84-111, concerning the taxation of all
11 Tuition Savings Program contributions, earnings and distributions, is amended
12 to read as follows:

13 6-84-111. Funds exempt from tax.

14 (a) Except as otherwise indicated in this chapter, interest,
15 dividends, and capital gains from funds invested in ~~the Arkansas Tax-Deferred~~
16 ~~Tuition Savings Program~~ a qualified tuition program shall be exempt from
17 Arkansas income taxes.

18 (b) Contributions to a ~~tuition savings account established under this~~
19 ~~program~~ qualified tuition program may not be excluded or deducted from the
20 contributor's income for the purpose of calculating Arkansas income tax.

21 (c)(1) Qualified withdrawals from a ~~tuition savings account~~
22 ~~established under this program~~ qualified tuition program will be exempt from
23 Arkansas income tax with respect to the designated beneficiary's income as
24 follows:

25 (A) Distributions from qualified tuition programs
26 established and administered by a state or agency or instrumentality thereof
27 made on or after January 1, 2003; and

28 (B) Distributions from qualified tuition programs
29 established and administered by eligible educational institutions as defined
30 under 26 U.S.C. § 529(e) made on or after January 1, 2004.

31 (2)(A) Nonqualified withdrawals from a ~~tuition savings account~~
32 ~~established under this program~~ qualified tuition program will be subject to
33 Arkansas income tax.

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

1 (d) If an account owner receives a refund of contributions to a
2 ~~tuition savings account established under this program~~ qualified tuition
3 program because of either:

4 (1) The death or disability of the designated beneficiary; or

5 (2) A scholarship, or allowance or payment described in 26
6 U.S.C. § 135 (d)(1)(B) or (C) as in effect on January 1, ~~1999~~ 2003, received
7 by the designated beneficiary then any earnings on the contribution that are
8 included in the refund will be subject to Arkansas income tax.

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10 SECTION 7. Arkansas Code § 6-84-113, concerning the construction of
11 the Arkansas Tax-Deferred Tuition Savings Program, is amended to read as
12 follows:

13 6-84-113. Liberal construction.

14 This chapter shall be liberally construed to comply with the
15 requirement of 26 U.S.C. § 529 as in effect on January 1, ~~1999~~ 2003.

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17 SECTION 8. This act applies to tax years beginning on or after January
18 1, 2003.

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20 /s/ C. Taylor
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