



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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February 5, 2019



RE: Income Tax – Tax Deferred Tuition Savings Program  
Opinion 20181117

Dear [REDACTED]:

This letter is in response to your email of January 19, 2018, requesting a legal opinion from the Department. Your request posed the following three questions.

Question 1. According to Ark. Code Ann. § 26-51-403(b) “Adjusted gross income” means, in the case of an individual, gross income minus the following deductions: (17) deductions for contributions to the Arkansas Tax-Deferred Tuition Savings Program not to exceed five thousand dollars (\$5,000) per taxpayer under § 6-84-111(b). Ark. Code Ann. § 6-84-111(b) states (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).

If a taxpayer contributes to the Arkansas 529 plan, and subsequently withdraws the funds for a beneficiary’s enrollment or attendance at an elementary school or secondary public, private, or religious school, would the taxpayer benefit from the Arkansas 529 contribution deduction?

Response: In December of 2017, federal law on qualified tuition programs was amended. The amendment expanded the scope of “qualified higher education expenses” to include tuition paid to attend an elementary or secondary public, private, or religious school. IRC § 529(c)(7). During the 2018 Arkansas fiscal legislative session, the new federal expansion of qualified higher education expenses was adopted as of January 1, 2018. *Act 15 of the Second Extraordinary Session*. The deduction would therefore be available to the taxpayer as long as the withdrawn funds are used only for the qualified expense of k-12 tuition.

Question 2: Ark. Code Ann. § 6-84-111(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, 2017**, shall be exempt from Arkansas income taxes (emphasis added). Ark. Code Ann. § 6-84-111(d)(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, 2017**, will be subject to Arkansas income tax (emphasis added).

If a taxpayer contributes to the Arkansas 529 plan, and subsequently withdraws the funds for a beneficiary's enrollment or attendance at an elementary school or secondary public, private, or religious school, would the interest, dividends, and capital gains from that allocated distribution be exempt from Arkansas income tax?

Response: Yes. Ark. Code Ann. § 6-84-111(a)(1).

Question 3: Are there any penalties for unqualified withdrawals for Arkansas (other than the previously deducted contributions and earnings subject to Arkansas income tax)?

Response: There are no penalty provisions for Arkansas income tax purposes under Ark. Code Ann. § 6-84-111 for nonqualified withdrawals.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. Since you have not identified a specific taxpayer in your correspondence, this opinion will be issued for general informational purposes only and will not be binding upon the Department. DFA Gross Receipts Tax Rule GR-75(A). A legal opinion is valid for three years from its date of issue and can be renewed upon request. Rule GR-75(B).

Sincerely,

Michael Wehrle  
Office of Revenue Legal Counsel