

REFERENCE TITLE: **taxation of capital gains; subtraction**

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SB 1389**

Introduced by  
Senators Pierce S, Bundgaard, Pearce R

**AN ACT**

**AMENDING SECTIONS 43-1022 AND 43-1122, ARIZONA REVISED STATUTES; RELATING TO  
INDIVIDUAL AND CORPORATE INCOME TAX SUBTRACTIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1022, Arizona Revised Statutes, is amended to  
3 read:

4 43-1022. Subtractions from Arizona gross income

5 In computing Arizona adjusted gross income, the following amounts shall  
6 be subtracted from Arizona gross income:

7 1. The amount of exemptions allowed by section 43-1023.

8 2. Benefits, annuities and pensions in an amount totaling not more  
9 than two thousand five hundred dollars received from one or more of the  
10 following:

11 (a) The United States government service retirement and disability  
12 fund, retired or retainer pay of the uniformed services of the United States,  
13 the United States foreign service retirement and disability system and any  
14 other retirement system or plan established by federal law.

15 (b) The Arizona state retirement system, the corrections officer  
16 retirement plan, the public safety personnel retirement system, the elected  
17 officials' retirement plan, an optional retirement program established by the  
18 Arizona board of regents under section 15-1628, an optional retirement  
19 program established by a community college district board under section  
20 15-1451 or a retirement plan established for employees of a county, city or  
21 town in this state.

22 3. A beneficiary's share of the fiduciary adjustment to the extent  
23 that the amount determined by section 43-1333 decreases the beneficiary's  
24 Arizona gross income.

25 4. The amount of any distributions from an individual retirement  
26 account as provided for in section 408 of the internal revenue code or from a  
27 qualified retirement plan of a self-employed individual as provided for in  
28 section 401 of the internal revenue code to the extent that total adjustments  
29 made pursuant to this paragraph in all tax years do not exceed the total of  
30 all contributions made by the taxpayer to such plans prior to December 31,  
31 1975, which were included in computing Arizona taxable income.

32 5. The amount of income on an installment receivable ~~which~~ THAT is  
33 recognized pursuant to the internal revenue code and ~~which~~ THAT has already  
34 been recognized on the death of the taxpayer for purposes of this title for  
35 tax years ending before January 1, 1990.

36 6. Interest income received on obligations of the United States, less  
37 any interest on indebtedness, or other related expenses, and deducted in  
38 arriving at Arizona gross income, which were incurred or continued to  
39 purchase or carry such obligations.

40 7. The amount of any income tax refunds ~~which~~ THAT were received from  
41 states other than Arizona and ~~which~~ THAT were included as income in computing  
42 federal adjusted gross income.

43 8. Annuity income included in federal adjusted gross income pursuant  
44 to section 72 of the internal revenue code if the first payment with respect  
45 to such annuity was received prior to December 31, 1978.

1           9. The excess of a partner's share of income required to be included  
2 under section 702(a)(8) of the internal revenue code over the income required  
3 to be included under chapter 14, article 2 of this title.

4           10. The excess of a partner's share of partnership losses determined  
5 pursuant to chapter 14, article 2 of this title over the losses allowable  
6 under section 702(a)(8) of the internal revenue code.

7           11. The amount by which the adjusted basis of property described in  
8 this paragraph and computed pursuant to this title and the income tax act of  
9 1954, as amended, exceeds the adjusted basis of such property computed  
10 pursuant to the internal revenue code. This paragraph shall apply to all  
11 property ~~which~~ THAT is held for the production of income and ~~which~~ THAT is  
12 sold or otherwise disposed of during the taxable year other than depreciable  
13 property used in a trade or business.

14           12. The amount allowed by section 43-1024 for amortization, by a  
15 qualified defense contractor certified by the department of commerce under  
16 section 41-1508, of a capital investment for private commercial activities.

17           13. The amount of gain included in federal adjusted gross income on the  
18 sale or other disposition of a capital investment that a qualified defense  
19 contractor has elected to amortize pursuant to section 43-1024.

20           14. The amount allowed by section 43-1025 for contributions during the  
21 taxable year of agricultural crops to charitable organizations.

22           15. The portion of any wages or salaries paid or incurred by the  
23 taxpayer for the taxable year that is equal to the amount of the federal work  
24 opportunity credit, the empowerment zone employment credit, the credit for  
25 employer paid social security taxes on employee cash tips and the Indian  
26 employment credit that the taxpayer received under sections 45A, 45B, 51(a)  
27 and 1396 of the internal revenue code.

28           16. The amount of prizes or winnings less than five thousand dollars in  
29 a single taxable year from any of the state lotteries established and  
30 operated pursuant to title 5, chapter 5, article 1, except that all such  
31 winnings before March 22, 1983, including periodic distributions from such  
32 winnings made after March 22, 1983, may be subtracted.

33           17. The amount of exploration expenses that is determined pursuant to  
34 section 617 of the internal revenue code, that has been deferred in a taxable  
35 year ending before January 1, 1990 and for which a subtraction has not  
36 previously been made. The subtraction shall be made on a ratable basis as  
37 the units of produced ores or minerals discovered or explored as a result of  
38 this exploration are sold.

39           18. The amount included in federal adjusted gross income pursuant to  
40 section 86 of the internal revenue code, relating to taxation of social  
41 security and railroad retirement benefits.

42           19. To the extent not already excluded from Arizona gross income under  
43 the internal revenue code, compensation received for active service as a  
44 member of the reserves, the national guard or the armed forces of the United

1 States, including compensation for service in a combat zone as determined  
2 under section 112 of the internal revenue code.

3 20. The amount of unreimbursed medical and hospital costs, adoption  
4 counseling, legal and agency fees and other nonrecurring costs of adoption  
5 not to exceed three thousand dollars. In the case of a husband and wife who  
6 file separate returns, the subtraction may be taken by either taxpayer or may  
7 be divided between them, but the total subtractions allowed both husband and  
8 wife shall not exceed three thousand dollars. The subtraction under this  
9 paragraph may be taken for the costs that are described in this paragraph and  
10 that are incurred in prior years, but the subtraction may be taken only in  
11 the year during which the final adoption order is granted.

12 21. The amount authorized by section 43-1027 for the taxable year  
13 relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

14 22. With respect to a medical savings account established pursuant to  
15 section 43-1028:

16 (a) An eligible individual may subtract:

17 (i) The amount of contributions made by the individual's employer  
18 during the taxable year to the individual's medical savings account pursuant  
19 to section 43-1028 to the extent that the employer contributions are included  
20 in the individual's federal adjusted gross income.

21 (ii) The amount deposited by the individual in the account during the  
22 taxable year to the extent that the individual's contributions are included  
23 in the individual's federal adjusted gross income.

24 (b) The individual's employer may subtract the amount of contributions  
25 made by the employer to a medical savings account established on the  
26 individual's behalf to the extent that the contributions are not deductible  
27 under the internal revenue code.

28 23. The amount by which a net operating loss carryover or capital loss  
29 carryover allowable pursuant to section 43-1029, subsection F exceeds the net  
30 operating loss carryover or capital loss carryover allowable pursuant to  
31 section 1341(b)(5) of the internal revenue code.

32 24. Any amount of qualified educational expenses that is distributed  
33 from a qualified state tuition program determined pursuant to section 529 of  
34 the internal revenue code and that is included in income in computing federal  
35 adjusted gross income.

36 25. Any item of income resulting from an installment sale that has been  
37 properly subjected to income tax in another state in a previous taxable year  
38 and that is included in Arizona gross income in the current taxable year.

39 26. The amount authorized by section 43-1030 relating to holocaust  
40 survivors.

41 27. The amount authorized by section 43-1031 for constructing an energy  
42 efficient residence.

43 28. An amount equal to the depreciation allowable pursuant to section  
44 167(a) of the internal revenue code for the taxable year computed as if the  
45 election described in section 168(k)(2)(D)(iii) of the internal revenue code

1 had been made for each applicable class of property in the year the property  
2 was placed in service.

3 29. With respect to property that is sold or otherwise disposed of  
4 during the taxable year by a taxpayer that complied with section 43-1021,  
5 paragraph 26 with respect to that property, the amount of depreciation that  
6 has been allowed pursuant to section 167(a) of the internal revenue code to  
7 the extent that the amount has not already reduced Arizona taxable income in  
8 the current or prior taxable years.

9 30. With respect to property for which an adjustment was made under  
10 section 43-1021, paragraph 27, an amount equal to one-fifth of the amount of  
11 the adjustment pursuant to section 43-1021, paragraph 27 in the year in which  
12 the amount was adjusted under section 43-1021, paragraph 27 and in each of  
13 the following four years.

14 31. For taxable years beginning from and after December 31, 2007  
15 through December 31, 2012, the amount contributed during the taxable year to  
16 college savings plans established pursuant to section 529 of the internal  
17 revenue code to the extent that the contributions were not deducted in  
18 computing federal adjusted gross income. The amount subtracted shall not  
19 exceed:

20 (a) Seven hundred fifty dollars for a single individual or a head of  
21 household.

22 (b) One thousand five hundred dollars for a married couple filing a  
23 joint return. In the case of a husband and wife who file separate returns,  
24 the subtraction may be taken by either taxpayer or may be divided between  
25 them, but the total subtractions allowed both husband and wife shall not  
26 exceed one thousand five hundred dollars.

27 32. To the extent not already excluded from Arizona gross income under  
28 the internal revenue code, the amount authorized by section 43-1032 for  
29 displaced pupils choice grants.

30 33. The amount of any original issue discount that was deferred and not  
31 allowed to be deducted in computing federal adjusted gross income or federal  
32 taxable income in the current taxable year pursuant to section 108(i) of the  
33 internal revenue code as added by section 1231 of the American recovery and  
34 reinvestment act of 2009 (P.L. 111-5).

35 34. The amount of previously deferred discharge of indebtedness income  
36 that is included in the computation of federal adjusted gross income or  
37 federal taxable income in the current taxable year pursuant to section 108(i)  
38 of the internal revenue code as added by section 1231 of the American  
39 recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the  
40 amount was previously added to Arizona gross income pursuant to section  
41 43-1021, paragraph 33.

42 35. The portion of the net operating loss carryforward that would have  
43 been allowed as a deduction in the current year pursuant to section 172 of  
44 the internal revenue code if the election described in section 172(b)(1)(H)  
45 of the internal revenue code had not been made in the year of the loss that

1 exceeds the actual net operating loss carryforward that was deducted in  
2 arriving at federal adjusted gross income. This subtraction only applies to  
3 taxpayers who made an election under section 172(b)(1)(H) of the internal  
4 revenue code as amended by section 1211 of the American recovery and  
5 reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the  
6 worker, homeownership, and business assistance act of 2009 (P.L. 111-92).

7 **36. FIFTY-SEVEN PER CENT OF ANY NET CAPITAL GAIN INCLUDED IN FEDERAL**  
8 **ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR.**

9 Sec. 2. Section 43-1122, Arizona Revised Statutes, is amended to read:

10 **43-1122. Subtractions from Arizona gross income; corporations**

11 In computing Arizona taxable income for a corporation, the following  
12 amounts shall be subtracted from Arizona gross income:

13 1. The amounts computed pursuant to section 43-1022, paragraphs 8  
14 through 15, 28, 29, 30, 33, ~~and~~ 34 **AND 36**. For the purposes of this  
15 paragraph, "federal adjusted gross income" as used in section 43-1022 means  
16 "federal taxable income".

17 2. The amount of Arizona capital loss carryover as defined in section  
18 43-1124 in an amount not to exceed one thousand dollars.

19 3. With respect to a financial institution as defined in section  
20 6-101, expenses and interest relating to tax-exempt income disallowed  
21 pursuant to section 265 of the internal revenue code.

22 4. Dividends received from another corporation owned or controlled  
23 directly or indirectly by a recipient corporation. For the purposes of this  
24 paragraph, "control" means direct or indirect ownership or control of fifty  
25 per cent or more of the voting stock of the payor corporation by the  
26 recipient corporation. Dividends shall have the meaning provided in section  
27 316 of the internal revenue code. This subtraction shall apply without  
28 regard to the provisions of section 43-961, paragraph 2 and article 4 of this  
29 chapter. A corporation that has its commercial domicile, as defined in  
30 section 43-1131, in this state may subtract the full amount of the  
31 dividends. A corporation that does not have its commercial domicile in this  
32 state may subtract:

33 (a) For its taxable year beginning in 1990, an amount equal to  
34 one-half of the dividends.

35 (b) For taxable years beginning in 1991 and thereafter, the full  
36 amount of the dividends.

37 5. Interest income received on obligations of the United States.

38 6. The amount of dividend income from foreign corporations.

39 7. The amount of net operating loss allowed by section 43-1123.

40 8. The amount of any state income tax refunds received which were  
41 included as income in computing federal taxable income.

42 9. The amount of expense recapture included in income pursuant to  
43 section 617 of the internal revenue code for mine exploration expenses.

44 10. The amount of deferred exploration expenses allowed by section  
45 43-1127.

1           11. The amount of exploration expenses related to the exploration of  
2 oil, gas or geothermal resources, computed in the same manner and on the same  
3 basis as a deduction for mine exploration pursuant to section 617 of the  
4 internal revenue code. This computation is subject to the adjustments  
5 contained in section 43-1121, paragraph 8 and paragraphs 9 and 10 of this  
6 section relating to exploration expenses.

7           12. The amortization of pollution control devices allowed by section  
8 43-1129.

9           13. The amount of amortization of the cost of child care facilities  
10 pursuant to section 43-1130.

11           14. The amount of income from a domestic international sales  
12 corporation required to be included in the income of its shareholders  
13 pursuant to section 995 of the internal revenue code.

14           15. The income of an insurance company that is exempt under section  
15 43-1201 to the extent that it is included in computing Arizona gross income  
16 on a consolidated return pursuant to section 43-947.

17           16. The amount of contributions by the taxpayer during the taxable year  
18 to medical savings accounts established on behalf of the taxpayer's employees  
19 as provided by section 43-1028, to the extent that the contributions are not  
20 deductible under the internal revenue code.

21           17. The amount by which a capital loss carryover allowable pursuant to  
22 section 43-1130.01, subsection F exceeds the capital loss carryover allowable  
23 pursuant to section 1341(b)(5) of the internal revenue code.

24           Sec. 3. Retroactivity

25           This act applies retroactively to taxable years beginning from and  
26 after December 31, 2010.