

REFERENCE TITLE: **income tax; partnerships; S corporations**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2838

Introduced by

Representatives Chaplik: Barton, Biasiucci, Blackman, Bolick, Bowers, Burges, Carroll, Cobb, Cook, Dunn, Fillmore, Finchem, Grantham, Griffin, Hoffman, John, Kaiser, Nguyen, Nutt, Osborne, Parker, Payne, Pingerelli, Pratt, Roberts, Toma, Udall, Weninger, Wilmeth

AN ACT

AMENDING SECTIONS 43-222 AND 43-581, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1014; AMENDING SECTIONS 43-1021 AND 43-1071, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1075; RELATING TO THE TAXATION OF INCOME.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section. 1. Section 43-222, Arizona Revised Statutes, is amended to
3 read:

4 43-222. Income tax credit review schedule

5 The joint legislative income tax credit review committee shall
6 review the following income tax credits:

7 1. For years ending in 0 and 5, sections 43-1079.01, 43-1087,
8 43-1088, 43-1089.04, 43-1167.01 and 43-1175.

9 2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02,
10 42-1075, 43-1083, 43-1083.02, 43-1164.03 and 43-1183.

11 3. For years ending in 2 and 7, sections 43-1073, 43-1085, 43-1086,
12 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1164 and 43-1169.

13 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081,
14 43-1168, 43-1170 and 43-1178.

15 5. For years ending in 4 and 9, sections 43-1073.01, 43-1076,
16 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05, and 43-1184.

17 Sec. 2. Section 43-581, Arizona Revised Statutes, is amended to
18 read:

19 43-581. Payment of estimated tax; penalty; rules; forms

20 A. An individual who is subject to the tax imposed by this title
21 and whose Arizona gross income, as defined by section 43-1001, or as
22 described by section 43-1091 in the case of nonresidents, for the taxable
23 year exceeds ~~seventy-five thousand dollars~~ \$75,000 or ~~one hundred fifty~~
24 ~~thousand dollars~~ \$150,000 if a joint return is filed and whose Arizona
25 gross income was greater than ~~seventy-five thousand dollars~~ \$75,000 in the
26 preceding taxable year or ~~one hundred fifty thousand dollars~~ \$150,000 in
27 the preceding taxable year if a joint return is filed shall make payments
28 of estimated tax during the individual's taxable year. The amount of the
29 payments of estimated tax shall be an amount that reasonably reflects a
30 taxpayer's Arizona income tax liability that will be unpaid at the end of
31 the taxpayer's taxable year. This amount shall be paid in four
32 installments on or before the due dates established by the internal
33 revenue code and shall total, when combined with the taxpayer's
34 withholding tax, at least ninety percent of the tax due for the current
35 taxable year or one hundred percent of the tax due for the preceding
36 taxable year.

37 B. Any other individual who is subject to the tax imposed by this
38 title may make payments of estimated tax during the individual's taxable
39 year. The amount of any estimated tax payments for the taxable year shall
40 be an amount that reasonably reflects a taxpayer's Arizona income tax
41 liability that will be unpaid at the end of the taxpayer's taxable year.

42 C. A PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION THAT
43 ELECTS TO PAY THE TAX UNDER SECTION 43-1014 AND WHOSE TAXABLE INCOME FOR
44 THE TAXABLE YEAR EXCEEDS \$150,000 IN THE PRECEDING TAXABLE YEAR SHALL MAKE

1 PAYMENTS OF ESTIMATED TAX DURING THE TAXABLE YEAR IN A MANNER THAT IS
2 CONSISTENT WITH THE MANNER PRESCRIBED IN THIS SECTION FOR INDIVIDUALS.

3 ~~E.~~ D. The department shall prescribe rules for the payments of
4 estimated tax that shall provide for estimated payments in a manner
5 similar to the manner prescribed in the internal revenue code.

6 ~~D.~~ E. If the taxpayer does not pay the estimated tax required by
7 subsection A OR C of this section on or before the prescribed dates, there
8 is assessed and the department shall collect a penalty on the unpaid
9 amount as prescribed by section 42-1125, subsection Q. ~~No~~ Penalties or
10 interest shall NOT be assessed or collected if either of the following
11 applies:

12 1. The estimated tax payments made pursuant to this section are
13 allowable exceptions under section 6654 of the internal revenue code.

14 2. The taxpayer's Arizona income tax liability due on the
15 taxpayer's return is less than ~~one thousand dollars~~ \$1,000. For the
16 purposes of this paragraph, "Arizona income tax liability due on the
17 taxpayer's return" means the amount of tax due on the return minus the
18 amount of Arizona income tax withheld and tax credits claimed by the
19 taxpayer.

20 ~~E.~~ F. The department shall make available suitable forms and
21 instructions to taxpayers who make estimated tax payments pursuant to this
22 article.

23 Sec. 3. Title 43, chapter 10, article 2, Arizona Revised Statutes,
24 is amended by adding section 43-1014, to read:

25 43-1014. Entity-level tax election; partnerships; limited
26 liability companies; S corporations

27 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
28 THE PARTNERS, MEMBERS OR SHAREHOLDERS OF A BUSINESS THAT IS A PARTNERSHIP,
29 LIMITED LIABILITY COMPANY OR S CORPORATION FOR FEDERAL INCOME TAX PURPOSES
30 MAY CONSENT TO BE TAXED AT THE ENTITY LEVEL AT A RATE OF FOUR PERCENT OF
31 ITS ENTIRE TAXABLE INCOME THAT IS DERIVED FROM SOURCES WITHIN THIS STATE
32 FOR THAT TAXABLE YEAR. THE ELECTION UNDER THIS SUBSECTION MUST BE MADE ON
33 OR BEFORE THE DUE DATE OR EXTENDED DUE DATE OF THE BUSINESS'S RETURN UNDER
34 THIS CHAPTER.

35 B. IF THE ELECTION IS MADE UNDER SUBSECTION A OF THIS SECTION, ALL
36 OF THE FOLLOWING APPLY:

37 1. THE TAXABLE INCOME OF THE PARTNERSHIP, LIMITED LIABILITY COMPANY
38 OR S CORPORATION SHALL BE COMPUTED UNDER THIS CHAPTER OR CHAPTER 14 OF
39 THIS TITLE, AS APPLICABLE.

40 2. IF THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION
41 DOES NOT PAY THE AMOUNT OWED TO THE DEPARTMENT AS A RESULT OF THE ELECTION
42 UNDER THIS SECTION, THE DEPARTMENT MAY COLLECT THE AMOUNT FROM THE
43 PARTNERS, MEMBERS OR SHAREHOLDERS BASED ON THEIR PROPORTIONATE SHARE OF
44 SUCH INCOME.

1 3. THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION
2 SHALL PAY ESTIMATED TAX PURSUANT TO SECTION 43-581 AS NECESSARY.

3 C. ONLY PARTNERSHIPS, LIMITED LIABILITY COMPANIES AND S
4 CORPORATIONS WHOSE PARTNERS, MEMBERS OR SHAREHOLDERS ARE ALL RESIDENTS OF
5 THIS STATE MAY MAKE THE ELECTION UNDER THIS SECTION.

6 D. THE DEPARTMENT SHALL ADOPT RULES AND PRESCRIBE FORMS AND
7 PROCEDURES AS NECESSARY TO ADMINISTER THIS SECTION.

8 Sec. 4. Section 43-1021, Arizona Revised Statutes, is amended to
9 read:

10 43-1021. Addition to Arizona gross income

11 In computing Arizona adjusted gross income, the following amounts
12 shall be added to Arizona gross income:

13 1. A beneficiary's share of the fiduciary adjustment to the extent
14 that the amount determined by section 43-1333 increases the beneficiary's
15 Arizona gross income.

16 2. An amount equal to the ordinary income portion of a lump sum
17 distribution that was excluded from federal adjusted gross income pursuant
18 to the special rule for individuals who attained fifty years of age before
19 January 1, 1986 under Public Law 99-514, section 1122(h)(3).

20 3. The amount of interest income received on obligations of any
21 state, territory or possession of the United States, or any political
22 subdivision thereof, located outside the state of Arizona, reduced, for
23 taxable years beginning from and after December 31, 1996, by the amount of
24 any interest on indebtedness and other related expenses that were incurred
25 or continued to purchase or carry those obligations and that are not
26 otherwise deducted or subtracted in arriving at Arizona gross income.

27 4. The excess of a partner's share of partnership taxable income
28 required to be included under chapter 14, article 2 of this title over the
29 income required to be reported under section 702(a)(8) of the internal
30 revenue code.

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

34 6. Any amount of agricultural water conservation expenses that were
35 deducted pursuant to the internal revenue code for which a credit is
36 claimed under section 43-1084.

37 7. The amount by which the depreciation or amortization computed
38 under the internal revenue code with respect to property for which a
39 credit was taken under either section 43-1081 or 43-1081.01 exceeds the
40 amount of depreciation or amortization computed pursuant to the internal
41 revenue code on the Arizona adjusted basis of the property.

42 8. The amount by which the adjusted basis computed under the
43 internal revenue code with respect to property for which a credit was
44 claimed under section 43-1074.02, 43-1081 or 43-1081.01 and that is sold
45 or otherwise disposed of during the taxable year exceeds the adjusted

1 basis of the property computed under section 43-1074.02, 43-1081 or
2 43-1081.01, as applicable.

3 9. The deduction referred to in section 1341(a)(4) of the internal
4 revenue code for restoration of a substantial amount held under a claim of
5 right.

6 10. The amount by which a net operating loss carryover or capital
7 loss carryover allowable pursuant to section 1341(b)(5) of the internal
8 revenue code exceeds the net operating loss carryover or capital loss
9 carryover allowable pursuant to section 43-1029, subsection F.

10 11. Any wage expenses deducted pursuant to the internal revenue
11 code for which a credit is claimed under section 43-1087 and representing
12 net increases in qualified employment positions for employment of
13 temporary assistance for needy families recipients.

14 12. The amount of any depreciation allowance allowed pursuant to
15 section 167(a) of the internal revenue code to the extent not previously
16 added.

17 13. The amount of a nonqualified withdrawal, as defined in section
18 15-1871, from a college savings plan established pursuant to section 529
19 of the internal revenue code that is made to a distributee to the extent
20 the amount is not included in computing federal adjusted gross income,
21 except that the amount added under this paragraph shall not exceed the
22 difference between the amount subtracted under section 43-1022 in prior
23 taxable years and the amount added under this section in any prior taxable
24 years.

25 14. If a subtraction is or has been taken by the taxpayer under
26 section 43-1024, in the current or a prior taxable year for the full
27 amount of eligible access expenditures paid or incurred to comply with the
28 requirements of the Americans with disabilities act of 1990 (P.L. 101-336)
29 or title 41, chapter 9, article 8, any amount of eligible access
30 expenditures that is recognized under the internal revenue code, including
31 any amount that is amortized according to federal amortization schedules,
32 and that is included in computing taxable income for the current taxable
33 year.

34 15. For taxable years beginning from and after December 31, 2017,
35 the amount of any net capital loss included in Arizona gross income for
36 the taxable year that is derived from the exchange of one kind of legal
37 tender for another kind of legal tender. For the purposes of this
38 paragraph:

39 (a) "Legal tender" means a medium of exchange, including specie,
40 that is authorized by the United States Constitution or Congress to pay
41 debts, public charges, taxes and dues.

42 (b) "Specie" means coins having precious metal content.

43 16. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
44 THE PARTNER'S, MEMBER'S OR SHAREHOLDER'S PRO RATA SHARE OF THE AMOUNT
45 DEDUCTED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION

1 PURSUANT TO THE INTERNAL REVENUE CODE FOR THE AMOUNT PAID UNDER SECTION
2 43-1014.

3 Sec. 5. Section 43-1071, Arizona Revised Statutes, is amended to
4 read:

5 43-1071. Credit for income taxes paid to other states;
6 definitions

7 A. Subject to the following conditions, residents ~~shall be~~ ARE
8 allowed a credit against the taxes imposed by this chapter for net income
9 taxes imposed by and paid to another state or country on income taxable
10 under this chapter:

11 1. The credit ~~shall be~~ IS allowed only for taxes paid to the other
12 state or country on income that is derived from sources within that state
13 or country and that is taxable under its laws irrespective of the
14 residence or domicile of the recipient.

15 2. The credit ~~shall~~ IS not ~~be~~ allowed if the other state or country
16 allows residents of this state a credit against the taxes imposed by that
17 state or country for taxes paid or payable under this chapter.

18 3. The credit shall not exceed the proportion of the tax payable
19 under this chapter as the income subject to tax in the other state or
20 country and also taxable under this title bears to the taxpayer's entire
21 income on which the tax is imposed by this chapter.

22 B. If any taxes paid to another state or country for which a
23 taxpayer has been allowed a credit under this section are at any time
24 credited or refunded to the taxpayer:

25 1. The taxpayer shall immediately report that fact to the
26 department.

27 2. A tax equal to the credit allowed for the taxes credited or
28 refunded by the other state or country is due and payable from the
29 taxpayer on notice and demand from the department.

30 3. Interest shall be added to and collected as a part of the tax at
31 the rate determined pursuant to section 42-1123 from the date the credit
32 was allowed under this chapter to the date of the notice and demand.

33 4. If the tax and interest are not paid within ten days ~~from~~ AFTER
34 the date of notice and demand, there shall be collected as a part of the
35 tax interest on the unpaid amount of tax and interest at the rate of
36 twelve percent a year from the date of the notice and demand until the
37 amount is paid.

38 C. The credit against the taxes imposed by this chapter for net
39 income taxes paid to another state or country ~~shall~~ IS not ~~be~~ allowed to
40 any taxpayer or any class of taxpayers if the allowances of the credit
41 will result in any invalid or illegal discrimination against another
42 taxpayer or another class of taxpayers.

43 D. For taxable years beginning on or after January 1, 2002 and
44 subject to the following conditions, a resident of this state, who is also
45 considered to be a resident of another state under the laws of the other

1 state, is allowed a credit against the taxes imposed by this title for net
2 income taxes imposed by and paid to that state on income taxable under
3 this title as follows:

4 1. The credit is allowed only if the other state taxes the income
5 to the resident of this state and does not allow the taxpayer a credit
6 against taxes imposed by that state on that income for taxes paid or
7 payable on that income under this title.

8 2. The credit is allowed only for the proportion of the taxes paid
9 to the other state as the income taxable under this title and also subject
10 to tax in the other state bears to the entire income on which the taxes
11 paid to the other state are imposed.

12 3. The credit may not exceed the proportion of the tax payable
13 under this title as the income taxable under this title and also subject
14 to tax in the other state bears to the entire income taxable under this
15 title.

16 4. For the purpose of the credit allowed under this subsection,
17 "income taxable under this title and also subject to tax in the other
18 state" means income that would be sourced to the other state if the other
19 state were imposing its income tax on the taxpayer as if the taxpayer was
20 a nonresident of that other state.

21 E. The taxpayer may apply the allowable credit only against Arizona
22 income tax for the same taxable year in which the income is subject to tax
23 in the other state.

24 F. An individual who participates in a composite income tax return
25 in another state may claim a credit for taxes paid to the other state if
26 the taxpayer meets all of the requirements of this section and the taxes
27 paid to the other state are imposed on and paid directly by the individual
28 taxpayer and not the entity. For the purposes of this subsection, taxes
29 are considered to be imposed on and paid directly by the individual under
30 one or more of the following circumstances:

31 1. The individual makes direct payment to the other state.

32 2. The individual makes direct payment to the entity filing the
33 composite income tax return.

34 3. The entity charges the individual's loan account for the amount
35 of the tax.

36 4. The entity reduces the individual's capital account.

37 G. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017, A
38 RESIDENT TAXPAYER IS ALLOWED A CREDIT AGAINST THE TAX OTHERWISE DUE UNDER
39 THIS TITLE FOR THE AMOUNT OF ANY TAX THAT THE DEPARTMENT DETERMINES IS
40 SUBSTANTIALLY SIMILAR TO THE TAX IMPOSED PURSUANT TO SECTION 43-1014 FOR
41 THE TAXABLE YEAR BY ANOTHER STATE OF THE UNITED STATES OR A POLITICAL
42 SUBDIVISION OF SUCH A STATE, OR BY THE DISTRICT OF COLUMBIA, WITH RESPECT
43 TO THE DIRECT AND INDIRECT DISTRIBUTIVE PROCEEDS FROM A PASS-THROUGH
44 ENTITY THAT ARE ALSO SUBJECT TO TAX UNDER THIS TITLE. A CREDIT ALLOWED
45 PURSUANT TO THIS SUBSECTION MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN

1 ALLOWED IF THE INCOME WERE TAXED AT THE INDIVIDUAL LEVEL AND NOT TAXED AT
2 THE ENTITY LEVEL.

3 ~~G.~~ H. If the taxpayer claims the credit for taxes paid to a
4 foreign country, the taxpayer shall use the conversion rate in effect on
5 the date the taxpayer paid the taxes to the foreign country.

6 ~~H.~~ I. For the purposes of this section:

7 1. "Composite income tax return" means a single income tax return
8 that is filed with another state on behalf of a group of individuals who
9 are partners or shareholders of the partnership or S corporation that
10 filed the return on their behalf.

11 2. "Entire income on which the other state's or country's tax is
12 imposed" means the other state's or country's income computed under the
13 equivalent of section 43-1094 but does not include any exemption allowable
14 under the equivalent of section 43-1023.

15 3. "Entire income on which the tax is imposed by this chapter"
16 means Arizona adjusted gross income as defined and computed under section
17 43-1001 but does not include any exemption allowed under section 43-1023.

18 4. "Income subject to tax in the other state or country and also
19 taxable under this title" means the portion of income that is included in
20 entire income on which the tax is imposed by this chapter that is also
21 included in the entire income on which the other state's or country's tax
22 is imposed. The taxpayer shall increase or reduce the portion of income
23 that is included in the entire income on which the tax is imposed by this
24 chapter by any related additions under section 43-1021 and by any related
25 subtractions under section 43-1022. The taxpayer shall increase or reduce
26 the portion of income that is included in the entire income on which the
27 other state's or country's tax is imposed by any related additions and
28 subtractions under the other state's equivalent of sections 43-1021 and
29 43-1022, as applicable.

30 5. "Net income tax":

31 (a) Means:

32 (i) A tax that grants deductions or exemptions from gross income.

33 (ii) Any tax imposed by another country that qualifies for a credit
34 under sections 901 and 903 of the internal revenue code and the
35 regulations under those sections, even if withheld from income.

36 (b) Except as specifically included in subdivision (a) of this
37 paragraph, does not include:

38 (i) A system of taxation that assesses taxes on gross income, gross
39 receipts or gross dividends.

40 (ii) Taxes withheld from income.

41 6. "Tax payable under this chapter" means the income tax imposed by
42 this state on the taxpayer's taxable income as defined under section
43 43-1001 minus any tax credit amount claimed for the taxable year under
44 this article but not including the credit amount allowed under this
45 section.

1 Sec. 6. Title 43, chapter 10, article 5, Arizona Revised Statutes,
2 is amended by adding section 43-1075, to read:

3 43-1075. Credit for entity-level income tax

4 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017, A
5 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR A TAXPAYER
6 WHO IS A PARTNER IN A PARTNERSHIP, A MEMBER IN A LIMITED LIABILITY COMPANY
7 OR A SHAREHOLDER OF AN S CORPORATION THAT ELECTS TO PAY THE TAX UNDER
8 SECTION 43-1014.

9 B. THE AMOUNT OF THE CREDIT IS THE PARTNER'S, MEMBER'S OR
10 SHAREHOLDER'S PRO RATA SHARE OF THE TAX PAID BY THE PARTNERSHIP, LIMITED
11 LIABILITY COMPANY OR S CORPORATION UNDER SECTION 43-1014.

12 C. IF THE ALLOWABLE CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
13 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER
14 THIS TITLE, THE AMOUNT OF THE CLAIM NOT USED TO OFFSET TAXES UNDER THIS
15 TITLE MAY BE CARRIED FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
16 YEARS AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

17 Sec. 7. Purpose

18 Pursuant to section 43-223, Arizona Revised Statutes, the
19 legislature enacts section 43-1075, Arizona Revised Statutes, as added by
20 this act, to restore the ability for partnerships, limited liability
21 companies and S corporations in this state to deduct state income taxes.

22 Sec. 8. Effective date; retroactivity

23 This act is effective from and after December 31, 2021 and applies
24 retroactively to taxable years beginning from and after December 31, 2017.