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

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

43-222. Income tax credit review schedule

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

1. For years ending in 0 and 5, sections 43-1079.01, 43-1087, 43-1088, 43-1089.04, 43-1167.01 and 43-1175.
2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02, 42-1075, 43-1083, 43-1083.02, 43-1164.03 and 43-1183.
3. For years ending in 2 and 7, sections 43-1073, 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1164 and 43-1169.
4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and 43-1178.
5. For years ending in 4 and 9, sections 43-1073.01, 43-1076, 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05, and 43-1184.

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

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

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

B. Any other individual who is subject to the tax imposed by this title may make payments of estimated tax during the individual's taxable year. The amount of any estimated tax payments for the taxable year shall be an amount that reasonably reflects a taxpayer's Arizona income tax liability that will be unpaid at the end of the taxpayer's taxable year. This amount shall be paid in four installments on or before the due dates established by the internal revenue code and shall total, when combined with the taxpayer's withholding tax, at least ninety percent of the tax due for the current taxable year or one hundred percent of the tax due for the preceding taxable year.

C. A PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION THAT ELECTS TO PAY THE TAX UNDER SECTION 43-1014 AND WHOSE TAXABLE INCOME FOR THE TAXABLE YEAR EXCEEDS $150,000 IN THE PRECEDING TAXABLE YEAR SHALL MAKE
PAYMENTS OF ESTIMATED TAX DURING THE TAXABLE YEAR IN A MANNER THAT IS
CONSISTENT WITH THE MANNER PRESCRIBED IN THIS SECTION FOR INDIVIDUALS.

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

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

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

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

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

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

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

A. For taxable years beginning from and after December 31, 2017,
the partners, members or shareholders of a business that is a partnership,
limited liability company or S corporation for federal income tax purposes
may consent to be taxed at the entity level at a rate of four percent of
its entire taxable income that is derived from sources within this state
for that taxable year. The election under this subsection must be made on
or before the due date or extended due date of the business's return under
this chapter.

B. If the election is made under subsection A of this section, all
of the following apply:

1. The taxable income of the partnership, limited liability company
or S corporation shall be computed under this chapter or chapter 14 of
this title, as applicable.

2. If the partnership, limited liability company or S corporation
does not pay the amount owed to the department as a result of the election
under this section, the department may collect the amount from the
partners, members or shareholders based on their proportionate share of
such income.
3. THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION SHALL PAY ESTIMATED TAX PURSUANT TO SECTION 43-581 AS NECESSARY.

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

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

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

43-1021. Addition to Arizona gross income

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
THE PARTNER'S, MEMBER'S OR SHAREHOLDER'S PRO RATA SHARE OF THE AMOUNT
DEDUCTED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION
PURSUANT TO THE INTERNAL REVENUE CODE FOR THE AMOUNT PAID UNDER SECTION 43-1014.

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

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

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

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

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

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

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

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

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

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

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

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

D. For taxable years beginning on or after January 1, 2002 and subject to the following conditions, a resident of this state, who is also considered to be a resident of another state under the laws of the other
state, is allowed a credit against the taxes imposed by this title for net
income taxes imposed by and paid to that state on income taxable under
this title as follows:

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

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

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

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

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

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

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

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

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

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

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

6. H. If the taxpayer claims the credit for taxes paid to a foreign country, the taxpayer shall use the conversion rate in effect on the date the taxpayer paid the taxes to the foreign country.

7. I. For the purposes of this section:

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

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

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

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

5. "Net income tax":
   (a) Means:
      (i) A tax that grants deductions or exemptions from gross income.
      (ii) Any tax imposed by another country that qualifies for a credit under sections 901 and 903 of the internal revenue code and the regulations under those sections, even if withheld from income.
   (b) Except as specifically included in subdivision (a) of this paragraph, does not include:
      (i) A system of taxation that assesses taxes on gross income, gross receipts or gross dividends.
      (ii) Taxes withheld from income.

6. "Tax payable under this chapter" means the income tax imposed by this state on the taxpayer's taxable income as defined under section 43-1001 minus any tax credit amount claimed for the taxable year under this article but not including the credit amount allowed under this section.
Sec. 6. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1075, to read:

43-1075. Credit for entity-level income tax

A. For taxable years beginning from and after December 31, 2017, a credit is allowed against the taxes imposed by this title for a taxpayer who is a partner in a partnership, a member in a limited liability company or a shareholder of an S corporation that elects to pay the tax under section 43-1014.

B. The amount of the credit is the partner's, member's or shareholder's pro rata share of the tax paid by the partnership, limited liability company or S corporation under section 43-1014.

C. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset taxes under this title may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability.

Sec. 7. Purpose

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

Sec. 8. Effective date; retroactivity

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