

Senate Engrossed
net operating loss; carryback; carryover

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1392

AN ACT

AMENDING SECTIONS 43-1021, 43-1022 AND 43-1123, ARIZONA REVISED STATUTES;
RELATING TO INCOME TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 43-1021, Arizona Revised Statutes, is amended to
3 read:

4 43-1021. Addition to Arizona gross income

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

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

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

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

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

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

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

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

36 8. The amount by which the adjusted basis computed under the
37 internal revenue code with respect to property for which a credit was
38 claimed under section 43-1074.02, 43-1081 or 43-1081.01 and that is sold
39 or otherwise disposed of during the taxable year exceeds the adjusted
40 basis of the property computed under section 43-1074.02, 43-1081 or
41 43-1081.01, as applicable.

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

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

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

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

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

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

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

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

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

38 16. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
39 THE AMOUNT OF NET OPERATING LOSSES TAKEN UNDER SECTION 172 OF THE INTERNAL
40 REVENUE CODE TO THE EXTENT THE AMOUNT IS NOT INCLUDED IN COMPUTING FEDERAL
41 ADJUSTED GROSS INCOME.

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

3 43-1022. Subtractions from Arizona gross income

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

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

7 2. Benefits, annuities and pensions in an amount totaling not more
8 than \$2,500 received from one or more of the following:

9 (a) The United States government service retirement and disability
10 fund, the United States foreign service retirement and disability system
11 and any other retirement system or plan established by federal law, except
12 retired or retainer pay of the uniformed services of the United States
13 that qualifies for a subtraction under paragraph 27 of this section.

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

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

24 4. Interest income received on obligations of the United States,
25 minus any interest on indebtedness, or other related expenses, and
26 deducted in arriving at Arizona gross income, that were incurred or
27 continued to purchase or carry such obligations.

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

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

34 7. The amount allowed by section 43-1025 for contributions during
35 the taxable year of agricultural crops to charitable organizations.

36 8. The portion of any wages or salaries paid or incurred by the
37 taxpayer for the taxable year that is equal to the amount of the federal
38 work opportunity credit, the empowerment zone employment credit, the
39 credit for employer paid social security taxes on employee cash tips and
40 the Indian employment credit that the taxpayer received under sections
41 45A, 45B, 51(a) and 1396 of the internal revenue code.

42 9. The amount of exploration expenses that is determined pursuant
43 to section 617 of the internal revenue code, that has been deferred in a
44 taxable year ending before January 1, 1990 and for which a subtraction has
45 not previously been made. The subtraction shall be made on a ratable

1 basis as the units of produced ores or minerals discovered or explored as
2 a result of this exploration are sold.

3 10. The amount included in federal adjusted gross income pursuant
4 to section 86 of the internal revenue code, relating to taxation of social
5 security and railroad retirement benefits.

6 11. To the extent not already excluded from Arizona gross income
7 under the internal revenue code, compensation received for active service
8 as a member of the reserves, the national guard or the armed forces of the
9 United States, including compensation for service in a combat zone as
10 determined under section 112 of the internal revenue code.

11 12. The amount of unreimbursed medical and hospital costs, adoption
12 counseling, legal and agency fees and other nonrecurring costs of adoption
13 not to exceed \$3,000. In the case of a husband and wife who file separate
14 returns, the subtraction may be taken by either taxpayer or may be divided
15 between them, but the total subtractions allowed both husband and wife
16 shall not exceed \$3,000. The subtraction under this paragraph may be
17 taken for the costs that are described in this paragraph and that are
18 incurred in prior years, but the subtraction may be taken only in the year
19 during which the final adoption order is granted.

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

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

27 15. Any amount of qualified educational expenses that is
28 distributed from a qualified state tuition program determined pursuant to
29 section 529 of the internal revenue code and that is included in income in
30 computing federal adjusted gross income.

31 16. Any item of income resulting from an installment sale that has
32 been properly subjected to income tax in another state in a previous
33 taxable year and that is included in Arizona gross income in the current
34 taxable year.

35 17. The amount authorized by section 43-1030 relating to holocaust
36 survivors.

37 18. For property placed in service:

38 (a) In taxable years beginning before December 31, 2012, an amount
39 equal to the depreciation allowable pursuant to section 167(a) of the
40 internal revenue code for the taxable year computed as if the election
41 described in section 168(k) of the internal revenue code had been made for
42 each applicable class of property in the year the property was placed in
43 service.

44 (b) In taxable years beginning from and after December 31, 2012
45 through December 31, 2013, an amount determined in the year the asset was

1 placed in service based on the calculation in subdivision (a) of this
2 paragraph. In the first taxable year beginning from and after
3 December 31, 2013, the taxpayer may elect to subtract the amount necessary
4 to make the depreciation claimed to date for the purposes of this title
5 the same as it would have been if subdivision (c) of this paragraph had
6 applied for the entire time the asset was in service. Subdivision (c) of
7 this paragraph applies for the remainder of the asset's life. If the
8 taxpayer does not make the election under this subdivision, subdivision
9 (a) of this paragraph applies for the remainder of the asset's life.

10 (c) In taxable years beginning from and after December 31, 2013
11 through December 31, 2015, an amount equal to the depreciation allowable
12 pursuant to section 167(a) of the internal revenue code for the taxable
13 year as computed as if the additional allowance for depreciation had been
14 ten percent of the amount allowed pursuant to section 168(k) of the
15 internal revenue code.

16 (d) In taxable years beginning from and after December 31, 2015
17 through December 31, 2016, an amount equal to the depreciation allowable
18 pursuant to section 167(a) of the internal revenue code for the taxable
19 year as computed as if the additional allowance for depreciation had been
20 fifty-five percent of the amount allowed pursuant to section 168(k) of the
21 internal revenue code.

22 (e) In taxable years beginning from and after December 31, 2016, an
23 amount equal to the depreciation allowable pursuant to section 167(a) of
24 the internal revenue code for the taxable year as computed as if the
25 additional allowance for depreciation had been the full amount allowed
26 pursuant to section 168(k) of the internal revenue code.

27 19. With respect to property that is sold or otherwise disposed of
28 during the taxable year by a taxpayer that complied with section 43-1021,
29 paragraph 12 with respect to that property, the amount of depreciation
30 that has been allowed pursuant to section 167(a) of the internal revenue
31 code to the extent that the amount has not already reduced Arizona taxable
32 income in the current or prior taxable years.

33 20. The amount contributed during the taxable year to college
34 savings plans established pursuant to section 529 of the internal revenue
35 code to the extent that the contributions were not deducted in computing
36 federal adjusted gross income. The amount subtracted shall not exceed:

37 (a) \$2,000 for a single individual or a head of household.

38 (b) \$4,000 for a married couple filing a joint return. In the case
39 of a husband and wife who file separate returns, the subtraction may be
40 taken by either taxpayer or may be divided between them, but the total
41 subtractions allowed both husband and wife shall not exceed \$4,000.

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

1 the loss that exceeds the actual net operating loss carryforward that was
2 deducted in arriving at federal adjusted gross income. This subtraction
3 only applies to taxpayers who made an election under section 172(b)(1)(H)
4 of the internal revenue code as amended by section 1211 of the American
5 recovery and reinvestment act of 2009 (P.L. 111-5) or as amended by
6 section 13 of the worker, homeownership, and business assistance act of
7 2009 (P.L. 111-92).

8 22. For taxable years beginning from and after December 31, 2013,
9 the amount of any net capital gain included in federal adjusted gross
10 income for the taxable year derived from investment in a qualified small
11 business as determined by the Arizona commerce authority pursuant to
12 section 41-1518.

13 23. An amount of any net long-term capital gain included in federal
14 adjusted gross income for the taxable year that is derived from an
15 investment in an asset acquired after December 31, 2011, as follows:

16 (a) For taxable years beginning from and after December 31, 2012
17 through December 31, 2013, ten percent of the net long-term capital gain
18 included in federal adjusted gross income.

19 (b) For taxable years beginning from and after December 31, 2013
20 through December 31, 2014, twenty percent of the net long-term capital
21 gain included in federal adjusted gross income.

22 (c) For taxable years beginning from and after December 31, 2014,
23 twenty-five percent of the net long-term capital gain included in federal
24 adjusted gross income. For the purposes of this paragraph, a transferee
25 that receives an asset by gift or at the death of a transferor is
26 considered to have acquired the asset when the asset was acquired by the
27 transferor. If the date an asset is acquired cannot be verified, a
28 subtraction under this paragraph is not allowed.

29 24. If an individual is not claiming itemized deductions pursuant
30 to section 43-1042, the amount of premium costs for long-term care
31 insurance, as defined in section 20-1691.

32 25. The amount of eligible access expenditures paid or incurred
33 during the taxable year to comply with the requirements of the Americans
34 with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9,
35 article 8 as provided by section 43-1024.

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

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

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

1 27. Benefits, annuities and pensions received as retired or
2 retainer pay of the uniformed services of the United States in amounts as
3 follows:

4 (a) For taxable years through December 31, 2018, an amount totaling
5 not more than \$2,500.

6 (b) For taxable years beginning from and after December 31, 2018,
7 an amount totaling not more than \$3,500.

8 28. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
9 THE AMOUNT OF THE NET OPERATING LOSS DEDUCTION THAT WOULD HAVE BEEN
10 DISALLOWED UNDER SECTION 172(a)(2) OF THE INTERNAL REVENUE CODE.

11 29. TO THE EXTENT NOT ALREADY EXCLUDED FROM ARIZONA GROSS INCOME,
12 FOR ANY TAXABLE YEAR THE TAXPAYER HAS A NET OPERATING LOSS:

13 (a) THE NET OPERATING LOSS SHALL BE A NET OPERATING LOSS CARRYOVER
14 FOR EACH OF THE TWENTY SUCCEEDING TAXABLE YEARS FOR NET OPERATING LOSSES
15 ARISING IN TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2020. THE
16 CARRYOVER IN THE CASE OF EACH SUCH SUCCEEDING TAXABLE YEAR, OTHER THAN THE
17 FIRST SUCCEEDING TAXABLE YEAR, SHALL BE THE EXCESS, IF ANY, OF THE AMOUNT
18 OF SUCH NET OPERATING LOSS OVER THE SUM OF THE TAXABLE INCOME FOR EACH OF
19 THE INTERVENING YEARS COMPUTED BY DETERMINING THE NET OPERATING LOSS
20 SUBTRACTION FOR EACH INTERVENING TAXABLE YEAR, WITHOUT REGARD TO SUCH NET
21 OPERATING LOSS OR TO THE NET OPERATING LOSS FOR ANY SUCCEEDING TAXABLE
22 YEAR.

23 (b) THE NET OPERATING LOSS SHALL BE A NET OPERATING LOSS CARRYBACK
24 FOR:

25 (i) EACH OF THE FIVE TAXABLE YEARS PRECEDING THE TAXABLE YEAR OF
26 THE NET OPERATING LOSS FOR NET OPERATING LOSSES ARISING IN TAXABLE PERIODS
27 BEGINNING FROM AND AFTER DECEMBER 31, 2017 THROUGH DECEMBER 31, 2020.

28 (ii) EACH OF THE TWO TAXABLE YEARS PRECEDING THE TAXABLE YEAR OF
29 THE NET OPERATING LOSS FOR NET OPERATING LOSSES ARISING IN TAXABLE PERIODS
30 BEGINNING FROM AND AFTER DECEMBER 31, 2020.

31 (iii) THE CARRYBACK IN THE CASE OF THE EARLIEST OF THE TAXABLE
32 YEARS TO WHICH THE NET OPERATING LOSS MAY BE CARRIED, SHALL BE THE EXCESS,
33 IF ANY, OF THE AMOUNT OF SUCH NET OPERATING LOSS OVER THE SUM OF THE
34 TAXABLE INCOME FOR EACH OF THE PRIOR TAXABLE YEARS TO WHICH THE NET
35 OPERATING LOSS MAY BE CARRIED COMPUTED BY DETERMINING THE AMOUNT OF THE
36 NET OPERATING LOSS SUBTRACTION FOR EACH PRECEDING TAXABLE YEAR, WITHOUT
37 REGARD TO THE NET OPERATING LOSS FOR THE LOSS YEAR OR TO THE NET OPERATING
38 LOSS FOR ANY SUCCEEDING TAXABLE YEAR.

39 Sec. 3. Section 43-1123, Arizona Revised Statutes, is amended to
40 read:

41 43-1123. Net operating loss: definition

42 A. For the purposes of this section, "net operating loss" means:

43 1. In the case of a taxpayer who has a net operating loss for the
44 taxable year within the meaning of section 172(c) of the internal revenue
45 code, the amount of the net operating loss increased by the subtractions

1 specified in section 43-1122, except the subtraction allowed in section
2 43-1122, paragraph 10, and reduced by the additions specified in section
3 43-1121.

4 2. In the case of a taxpayer not described in paragraph 1 of this
5 subsection, any excess of the subtractions specified in section 43-1122,
6 except the subtraction allowed in section 43-1122, paragraph 10, over the
7 sum of the Arizona gross income plus the additions specified in section
8 43-1121.

9 B. If for any taxable year the taxpayer has a net operating loss:

10 1. Such net operating loss shall be a net operating loss carryover
11 for:

12 (a) Each of the five succeeding taxable years for net operating
13 losses arising in taxable periods through December 31, 2011.

14 (b) Each of the twenty succeeding taxable years for net operating
15 losses arising in taxable periods beginning from and after December 31,
16 2011.

17 2. The carryover in the case of each such succeeding taxable year,
18 other than the first succeeding taxable year, shall be the excess, if any,
19 of the amount of such net operating loss over the sum of the taxable
20 income for each of the intervening years computed by determining the net
21 operating loss subtraction for each intervening taxable year, without
22 regard to such net operating loss or to the net operating loss for any
23 succeeding taxable year.

24 3. SUCH NET OPERATING LOSS SHALL BE A NET OPERATING LOSS CARRYBACK
25 FOR:

26 (a) EACH OF THE FIVE TAXABLE YEARS PRECEDING THE TAXABLE YEAR OF
27 THE NET OPERATING LOSS FOR NET OPERATING LOSSES ARISING IN TAXABLE PERIODS
28 BEGINNING FROM AND AFTER DECEMBER 31, 2017 THROUGH DECEMBER 31, 2020.

29 (b) EACH OF THE TWO TAXABLE YEARS PRECEDING THE TAXABLE YEAR OF THE
30 NET OPERATING LOSS FOR NET OPERATING LOSSES ARISING IN TAXABLE PERIODS
31 BEGINNING FROM AND AFTER DECEMBER 31, 2020.

32 4. THE CARRYBACK IN THE CASE OF THE EARLIEST OF THE TAXABLE YEARS
33 TO WHICH THE NET OPERATING LOSS MAY BE CARRIED, SHALL BE THE EXCESS, IF
34 ANY, OF THE AMOUNT OF SUCH NET OPERATING LOSS OVER THE SUM OF THE TAXABLE
35 INCOME FOR EACH OF THE PRIOR TAXABLE YEARS TO WHICH THE NET OPERATING LOSS
36 MAY BE CARRIED COMPUTED BY DETERMINING THE AMOUNT OF THE NET OPERATING
37 LOSS SUBTRACTION FOR EACH PRECEDING TAXABLE YEAR, WITHOUT REGARD TO THE
38 NET OPERATING LOSS FOR THE LOSS YEAR OR TO THE NET OPERATING LOSS FOR ANY
39 SUCCEEDING TAXABLE YEAR.

40 C. The amount of the net operating loss subtraction shall be the
41 aggregate of the net operating loss carryovers AND CARRYBACKS to the
42 taxable year.

43 Sec. 4. Retroactivity

44 This act applies retroactively to taxable years beginning from and
45 after December 31, 2017.