

STATEMENT OF IMMINENT PERIL

On June 26, 2003, the Arkansas Supreme Court issued its decision in the case of *Weiss v. McFadden*. In this decision, the Court found that the provisions of Ark. Code Ann. § 26-51-307(c) constituted an unconstitutional violation of Amendment 47 of the Arkansas Constitution. This code section provides that recipients of retirement or disability benefits from public or private employment-related retirement systems, plans, or programs shall not be allowed to deduct or recover their cost of contribution in the plan when computing the recipient's Arkansas state income tax liability. Based on the Court's decision, Arkansas taxpayers will now be allowed to deduct their cost of contribution with regard to distributions from employment-related retirement plans for tax years beginning on and after January 1, 2003; however, Arkansas law is silent with regard to the proper method for claiming this cost of contribution deduction. This rule is necessary to provide the proper mechanism for individual taxpayers to claim the cost of contribution deduction on their individual income tax returns filed for tax year 2003 and thereafter. It is necessary that this rule be immediately effective to provide adequate time for forms preparation, notice to tax professionals and the tax preparation community, and to allow for the necessary changes by vendors of tax preparation software. Unless this rule is immediately effective, taxpayers and their tax preparers will be faced with tremendous uncertainty concerning the proper treatment of the cost of contribution. This confusion will result in a significant volume of tax return errors, amended returns, delayed refunds, and other related problems that will greatly complicate the tax reporting process for taxpayers and the Department of Finance and Administration. Consequently, it is found that a situation of imminent peril exists to the public health, safety, or welfare, and this rule is necessary to prevent significant hardship for the taxpayers and tax professionals of this state and to prevent significant administrative and tax processing costs for the State of Arkansas.

Original signed by Richard A. Weiss
on August 29, 2003

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration

Original signed by Tim Leathers
on August 29, 2003

Tim Leathers
Arkansas Commissioner of Revenue

EMERGENCY INCOME TAX RULE NO. 2003-4

Treatment of Employee Contributions to Employment-related Retirement Plans

Pursuant to the authority vested in the Director of the Arkansas Department of Finance and Administration and the Arkansas Commissioner of Revenue pursuant to the provisions of Ark. Code Ann. §26-18-301 and in compliance with the provisions of Ark. Code Ann. §§ 25-15-201 *et. seq.*, the Director of the Department of Finance and Administration and the Arkansas Commissioner of Revenue hereby promulgates the following rule for the administration of the Arkansas individual income tax:

1. For tax years beginning January 1, 2003, and thereafter, individual recipients of benefits from a public or private employment-related retirement system, plan or program shall be allowed to deduct or recover their cost of contribution in the plan when computing income for state income tax purposes.
2. The deduction allowed for Arkansas state income tax purposes for cost of contribution for each tax year shall be the same amount as allowed as a deduction for cost of contribution for federal income tax purposes for the same tax year pursuant to Internal Revenue Code Section 72 as in effect on July 1, 2003.
3. The recovery of cost of contribution for state income taxes shall be available only for individual taxpayers who have unrecovered cost in their plan equal to or exceeding the allowable deduction in Paragraphs 1 and 2 of this rule.
4. Nothing in this rule shall be deemed to limit an individual taxpayer's entitlement to any other deduction or exemption allowed by state law with regard to benefits received from public or private employment-related retirement systems, plans, or programs.
5. This rule is hereby promulgated as an emergency rule pursuant to the provisions of Ark. Code Ann. § 25-15-204 and shall be effective on and after the date this rule is approved by the Director of the Arkansas Department of Finance and Administration and the Arkansas Commissioner of Revenue.

Promulgated this 29th day of August, 2003.

Original signed by Richard A. Weiss
on August 29, 2003

Original signed by Tim Leathers
on August 29, 2003

Richard A. Weiss, Director
Arkansas Department of Finance & Administration

Tim Leathers
Arkansas Commissioner of Revenue