

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 1309 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 543

4
5 By: Senator Miller
6
7

For An Act To Be Entitled

8
9 AN ACT TO REQUIRE WITHHOLDING OF INCOME TAX FROM
10 DEFERRED INCOME; TO REQUIRE ELECTRONIC FILING OF
11 THE ANNUAL WITHHOLDING STATEMENT BY CERTAIN
12 EMPLOYERS; TO AMEND THE DEFINITION OF "WAGES" FOR
13 WITHHOLDING TAX PURPOSES; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO REQUIRE WITHHOLDING OF INCOME TAX
17 FROM DEFERRED INCOME; TO REQUIRE
18 ELECTRONIC FILING OF THE ANNUAL
19 WITHHOLDING STATEMENT BY CERTAIN
20 EMPLOYERS AND TO AMEND THE DEFINITION OF
21 WAGES.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended
27 to add an additional section to read as follows:

28 26-51-918. Withholding – Deferred income.

29 (a)(1) Section 3405 of the Internal Revenue Code of 1986, as in effect
30 on January 1, 2005, regarding withholding from deferred income, is adopted as
31 modified by subdivision (a)(2) of this section.

32 (2) For the purposes of Arkansas withholding tax under this
33 section:

34 (A) The amount of withholding required under 26 U.S.C §
35 3405(b)(1) shall be three percent (3%); and



1 (B) The amount of withholding required under 26 U.S.C. §
 2 3405(c)(1)(B) shall be five percent (5%).

3 (c) This section shall apply only when the payee is an Arkansas
 4 resident.

5 (d) This section shall become effective for tax years beginning on and
 6 after January 1, 2006.

7
 8 SECTION 2. Arkansas Code § 26-51-909(b), concerning the annual
 9 withholding statement, is amended to read as follows:

10 (b)(1) The annual statement of withholding shall be in the form
 11 prescribed by the director.

12 (2)(A) The statement from the employer shall be filed with the
 13 director on or before February 28 following the close of the income year.

14 (B) For tax years beginning on or after January 1, 2006,
 15 an employer who has two hundred fifty (250) or more employees during the
 16 employer's income year shall file the statement either:

17 (i) Electronically;

18 (ii) On magnetic media; or

19 (iii) In any other machine-readable form approved by
 20 the director.

21 (3) The employer shall provide two (2) copies of the statement
 22 to the employee on or before January 31 following the close of the income
 23 year. However, if the employment of the employee is terminated during the
 24 calendar year, the employer shall furnish the statement to the employee at
 25 the time of the termination of employment.

26
 27 SECTION 3. Arkansas Code § 26-51-902(13), concerning the definition of
 28 "wages" for withholding tax purposes, is amended to read as follows:

29 (13) "Wages" means remuneration in cash or other form for
 30 services performed by an employee for an employer, except that it shall not
 31 include remuneration paid:

32 (A) For domestic service in a private home, local college
 33 club, or local chapter of a college fraternity or sorority;

34 (B)(i) For agricultural labor, except that an agricultural
 35 employer, who pays wages, as defined in 26 U.S.C. § 3121(a), as in effect on
 36 January 1, 1993, to four (4) or more employees during any reporting period

1 shall be required to collect, account for, and pay over Arkansas income taxes
2 for that reporting period.

3 (ii) Employers who pay wages for agricultural labor
4 to three (3) or fewer employees during any reporting period shall have the
5 option to collect, account for, and pay over Arkansas income taxes for each
6 reporting period, if they so choose;

7 (C) For services not in the course of the employee's trade
8 or business performed by an employee in any calendar quarter unless the
9 remuneration paid for such services is one hundred fifty dollars (\$150) or
10 more; ~~or~~

11 (D) For services performed by an ordained, commissioned,
12 or licensed minister of a church in the exercise of his ministry or by a
13 member of a religious order performing duties required by the order;

14 (E) For active service performed in a month in which the
15 employee is entitled to the benefits in § 112 of the Internal Revenue Code of
16 1986, adopted by § 26-51-306, to the extent remuneration for the service is
17 excludable from gross income under § 26-51-306;

18 (F) For services performed for an employer by a United
19 States citizen if it is reasonable to believe when the remuneration is paid
20 that the remuneration will be excludable from gross income under § 911 of the
21 Internal Revenue Code of 1986, adopted by § 26-51-310;

22 (G) For services performed by an individual under eighteen
23 (18) years of age delivering or distributing newspapers or shopper's news,
24 excluding the delivery or distribution of the newspapers or shopper's news to
25 a destination for subsequent delivery or distribution;

26 (H) For services performed by an individual selling
27 newspapers or magazines to consumers under an arrangement in which the
28 newspapers or magazines are sold at a fixed price with the individual's
29 compensation equal to the excess of the fixed price over the amount the
30 individual pays for the newspaper or magazines, regardless of whether the
31 individual is guaranteed a minimum amount of compensation or entitled to a
32 credit for the unsold newspapers or magazines returned;

33 (I) For services performed by an individual that are not
34 in the course of the employer's trade or business if the remuneration is paid
35 in any medium other than cash;

36 (J) To an employee or his or her beneficiary;

1 (i) From a trust or to a trust exempt from tax under
2 § 26-51-308 unless the payment is rendered to an employee of the trust as
3 remuneration for services rendered by the employee and not as a beneficiary
4 of the trust;

5 (ii) Under an annuity plan or to an annuity plan
6 under § 403(a) of the Internal Revenue Code of 1986, adopted by § 26-51-414;

7 (iii) Under § 402(h)(1) and (2) of the Internal
8 Revenue Code of 1986, adopted by § 26-51-414, if it is reasonable to believe
9 at the time of payment that the payment will be excluded under § 26-51-414;

10 (iv) Under § 408(p) of the Internal Revenue Code of
11 1986, adopted by § 26-51-414; or

12 (v) Under an eligible deferred compensation plan or
13 paid to an eligible deferred compensation plan under § 457(b) of the Internal
14 Revenue Code of 1986, maintained by an eligible employer under § 457(e)(1)(A)
15 of the Internal Revenue Code of 1986, as those sections are adopted by § 26-
16 51-414;

17 (K) In the form of group-term life insurance on the life
18 of an employee;

19 (L) To or on behalf of an employee if it is reasonable to
20 believe at the time of payment that a corresponding deduction is allowed
21 under § 26-51-423 with the exception of § 274(n) of the Internal Revenue Code
22 of 1986, adopted by § 26-51-423(b);

23 (M)(i) As tips in any medium other than cash; or

24 (ii) As cash tips to an employee received in the
25 course of employment in any calendar month unless the amount of the cash tips
26 is twenty dollars (\$20.00) or more;

27 (N) For any benefit provided to an employee if it is
28 reasonable to believe that the benefit is excluded from income under § 26-51-
29 404(a)(4), § 26-51-404(b)(12), § 26-51-404(b)(19), or § 26-51-404(b)(20);

30 (O) For any medical reimbursement made to an employee or
31 for the benefit of an employee under a self-insured medical reimbursement
32 plan under § 105(h)(6) of the Internal Revenue Code, adopted by § 26-51-404;
33 and

34 (P) For any payment made to
35 an employee or for the benefit of an employee if it is reasonable to believe
36 that the payment is excluded from income under § 106(b) of the Internal

1 Revenue Code of 1986, adopted by § 26-51-404. APPROVED: 3/29/2005