

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

As Engrossed: H1/16/04
A Bill

Call Item 6

HOUSE BILL 1103

5 By: Representative Jackson
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW TO PROVIDE FOR THE
10 WITHHOLDING OF INCOME TAX BY PASS-THROUGH
11 ENTITIES ON NONRESIDENT TAXPAYERS; AND FOR OTHER
12 PURPOSES.
13

Subtitle

15 PROVIDES FOR THE WITHHOLDING OF INCOME
16 TAX BY PASS-THROUGH ENTITIES ON
17 NONRESIDENT TAXPAYERS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended
23 to add a new section to read as follows:

24 26-51-918. Pass-through entities.

25 (a) As used in this section:

26 (1) "Lower-tier pass-through entity" means a pass-through entity
27 that is itself a pass-through entity;

28 (2)(A) "Member" means a shareholder of a Subchapter S
29 corporation, a partner in a general partnership, a partner in a limited
30 partnership, a partner in a limited liability partnership, a member of a
31 limited liability company, or a beneficiary of a trust.

32 (B) A Subchapter C corporation as defined in Section
33 1361(a) of the federal Internal Revenue Code of 1986, in effect January 1,
34 2003, is not a member for the purposes of this section;

35 (3) "Pass-through entity" means a business entity that, for the
36 applicable tax year, is:



1 (A) A corporation treated as a Subchapter S corporation
2 under § 26-51-409, a general partnership, limited partnership, limited
3 liability partnership, a limited liability company, or a trust; and

4 (B) Not taxed as a corporation for federal or Arkansas tax
5 purposes;

6 (4) "Nonresident" means:

7 (A) An individual who is not a resident of or domiciled in
8 Arkansas;

9 (B) A business entity that does not have its commercial
10 domicile in Arkansas; or

11 (C) A trust not organized in Arkansas.

12 (b)(1)(A) A pass-through entity shall withhold Arkansas income tax at
13 the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the
14 share of income of the entity distributed to each nonresident member. The
15 pass-through entity is liable to the Director of the Department of Finance
16 and Administration for the payment of the tax withheld and is not liable to
17 the member for the amount withheld and paid to the director.

18 (B)(i) A member of a lower-tier pass-through entity is
19 required to withhold and pay income tax on the share of income distributed by
20 the lower-tier pass-through entity to each of its nonresident members.

21 (ii) The director shall apply the tax withheld and
22 paid by a pass-through entity on distributions to a lower-tier pass-through
23 entity to the withholding required of that lower-tier pass-through entity.

24 (2)(A) A pass-through entity shall file a return with the
25 director showing the total amount of tax paid or credited to its nonresident
26 members and the amount of tax withheld. The tax shall be paid when the
27 return is filed.

28 (B) A pass-through entity shall annually furnish its
29 nonresident members with a record of the amount of tax withheld on behalf of
30 the nonresident member, but no later than the fifteenth day of the third
31 month following the end of the pass-through entity's taxable year.

32 (c) A pass-through entity is not required to withhold tax for a
33 nonresident member if:

34 (A) The member has a pro rata or distributive share of
35 income of the pass-through entity from doing business in or deriving income
36 from sources within this state of less than one thousand dollars (\$1,000) per

1 year;

2 (B) The director has determined that the member's income
3 is not subject to withholding;

4 (C) The member elects to have the tax due paid as part of
5 a composite return filed by the pass-through entity under subsection (d) of
6 this section; or

7 (D) The entity:

8 (i) Is a publicly traded partnership as defined by
9 Section 7704(b) of the federal Internal Revenue Code, as in effect on January
10 1, 2004, that is treated as a partnership for the purposes of the federal
11 Internal Revenue Code; and

12 (ii) Has agreed to file an annual information return
13 reporting the name, address, and taxpayer identification number of each
14 shareholder with an annual Arkansas income greater than five hundred dollars
15 (\$500), along with any other information requested by the director.

16 (d)(1) A pass-through entity may file a composite income tax return on
17 behalf of electing nonresident members reporting and paying Arkansas income
18 tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the
19 members' pro rata or distributive shares of income of the pass-through entity
20 from doing business in, or deriving income from sources within, this state.

21 (2) A nonresident member whose only source of income within a
22 state is from one (1) or more pass-through entities may elect to be included
23 in a composite return filed pursuant to this subsection.

24 (3) A nonresident member that has been included in a composite
25 return may file an individual income tax return and shall receive credit for
26 income tax paid on the member's behalf by the pass-through entity.

27 (e) The director may promulgate rules necessary to carry out the
28 provisions of this section.

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30 SECTION 2. This act shall become effective for tax years beginning on
31 or after January 1, 2004.

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33 */s/ Jackson*
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