

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4  
5 By: Senator J. Dismang  
6 By: Representative Jett  
7

# A Bill

SENATE BILL 484

## For An Act To Be Entitled

9 AN ACT CONCERNING THE TAXATION OF NONRESIDENT INCOME;  
10 TO CLARIFY THE ALLOCATION OF NONRESIDENT INCOME FOR  
11 ARKANSAS INCOME TAX PURPOSES; TO ADOPT THE MODEL  
12 MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT;  
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
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## Subtitle

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17 TO CLARIFY THE ALLOCATION OF NONRESIDENT  
18 INCOME FOR ARKANSAS INCOME TAX PURPOSES;  
19 TO ADOPT THE MODEL MOBILE WORKFORCE STATE  
20 INCOME TAX SIMPLIFICATION ACT; AND TO  
21 DECLARE AN EMERGENCY.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. DO NOT CODIFY. Legislative intent.

27 It is the intent of the General Assembly to:

28 (1) Clarify that nonresident income is allocated based on where  
29 the employee is located when performing the work associated with the income;  
30 and

31 (2) Adopt minimum presence thresholds for nonresident income  
32 taxation that will apply on a reciprocal basis with other states.  
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34 SECTION 2. Arkansas Code § 26-51-202(c), concerning the payment of  
35 income tax by nonresidents, is amended to read as follows:

36 (c)(1) However, the payment of the tax shall be based upon net income



1 properly allocated as net income arising from the ownership of property and  
2 the conduct of a business, trade, or occupation in the State of Arkansas.

3 (2) A nonresident individual who is paid a salary, lump sum  
4 payment, or any other form of payment that encompasses work performed both  
5 inside and outside of Arkansas shall pay Arkansas income tax only on the  
6 portion of the individual's income that reasonably can be allocated to work  
7 performed in Arkansas.

8 (3) A nonresident individual performs work in Arkansas when that  
9 individual is physically located in Arkansas when performing the work.

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11 SECTION 3. Arkansas Code Title 26, Chapter 51, Subchapter 3, is  
12 amended to add an additional section to read as follows:

13 26-51-317. Nonresident exemption – Withholding and reporting  
14 threshold.

15 (a) As used in this section:

16 (1) "Professional athlete" means an athlete who performs  
17 services in a professional athletic event for compensation;

18 (2) "Professional entertainer" means a person who performs  
19 services in the professional performing arts for compensation on a per-event  
20 basis;

21 (3) "Public figure" means a person of prominence who performs  
22 services at discrete events, including without limitation speeches, public  
23 appearances, or similar events, for compensation on a per-event basis;

24 (4) "Qualified production employee" means a person who performs  
25 production services of any nature for compensation directly in connection  
26 with a state-certified production as defined in § 15-4-2003 if the  
27 compensation paid to the person is qualified production costs under the  
28 Digital Product and Motion Picture Industry Development Act of 2009, § 15-4-  
29 2001 et seq.; and

30 (5) "Time and attendance system" means a system:

31 (A) Through which an employee is required to record on a  
32 contemporaneous basis the employee's work location for every day worked  
33 outside the state where the employee's employment duties are primarily  
34 performed; and

35 (B) That is designed to allow the employer to allocate the  
36 employee's compensation for income tax purposes among all states in which the

1 employee performs employment duties for the employer.

2 (b)(1) Compensation paid to a nonresident individual for the  
3 performance of services is exempt from the tax levied under § 26-51-202 if  
4 all of the following apply:

5 (A) The compensation is paid for employment duties  
6 performed by the nonresident individual in this state on thirty (30) or fewer  
7 days in the calendar year;

8 (B) The nonresident individual performed employment duties  
9 in more than one (1) state during the calendar year;

10 (C) The compensation is not paid for employment duties  
11 performed by the nonresident individual in the nonresident individual's  
12 capacity as a professional athlete, professional entertainer, public figure,  
13 or qualified production employee; and

14 (D) Either:

15 (i) The nonresident individual's state of residence:

16 (a) Provides a substantially similar income  
17 tax exemption; or

18 (b) Does not impose an individual income tax;

19 or

20 (ii) The individual's income is exempt from taxation  
21 by this state under the United States Constitution or federal statute.

22 (2)(A) Except as otherwise provided in subdivision (b)(2)(B) of  
23 this section, an employer is not required to withhold taxes under the  
24 Arkansas Income Tax Withholding Act of 1965, § 26-51-901 et seq., from  
25 compensation that is paid to an employee who is a nonresident individual who  
26 meets the requirements stated in subdivision (b)(1) of this section.

27 (B) If, during the calendar year, the number of days an  
28 employee spends performing employment duties in this state exceeds the  
29 thirty-day threshold described in subdivision (b)(1)(A) of this section, an  
30 employer shall withhold and remit tax to this state for every day in that  
31 calendar year, including the first thirty (30) days, on which the employee  
32 performs employment duties in this state.

33 (c) The Department of Finance and Administration shall not require the  
34 payment of any penalties or interest otherwise applicable for failing to  
35 deduct and withhold income taxes as required under the Arkansas Income Tax  
36 Withholding Act of 1965, § 26-51-901 et seq., if, when determining whether or

1 not withholding was required, the employer met either of the following  
2 conditions:

3 (1) The employer at its sole discretion maintains a time and  
4 attendance system specifically designed to allocate employee wages for income  
5 tax purposes among all taxing jurisdictions in which the employee performs  
6 employment duties for the employer, and the employer relied on data from the  
7 time and attendance system; or

8 (2) The employer does not maintain a time and attendance system,  
9 and the employer relied on either:

10 (A) Its own records, maintained in the regular course of  
11 business, of the employee's location; or

12 (B) The employee's reasonable determination of the time  
13 the employee expected to spend performing employment duties in this state if:

14 (i) The employer did not have actual knowledge of  
15 fraud on the part of the employee in making the determination; and

16 (ii) The employer and the employee did not collude  
17 to evade taxation in making the determination.

18 (d)(1) For purposes of this section, an employee shall be considered  
19 present and performing employment duties in this state for a day if the  
20 employee performs more of the employee's employment duties in this state than  
21 in any other state during that day.

22 (2) Any portion of the day during which the employee is in  
23 transit shall not be considered in determining the location of an employee's  
24 performance of employment duties.

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26 SECTION 4. Arkansas Code § 26-51-902(5), concerning the definitions  
27 used under the Arkansas Income Tax Withholding Act of 1965, is amended to  
28 read as follows:

29 (5) "Employer" means a person doing business in or deriving  
30 income from sources within this state who has control of the payment of wages  
31 to an individual for services performed, a person doing business in or  
32 deriving income from sources outside this state who has control of the  
33 payment of wages to an individual for services performed within this state,  
34 or a person who is the officer or agent of the person having control of the  
35 payment of wages;

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SECTION 5. Effective dates.

(a) Sections 2 and 3 of this act are effective for tax years beginning on or after January 1, 2021.

(b) Section 4 of this act is effective on the first day of the calendar month following the effective date of this act.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that employers and employees face unintended income taxation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

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