

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.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1989

4  
5 By: Representative R. Smith  
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## For An Act To Be Entitled

8  
9 AN ACT TO PROVIDE NONRESIDENT MEMBERS OF PASS-  
10 THROUGH ENTITIES OPTIONS FOR REPORTING AND PAYING  
11 ARKANSAS INCOME TAX DUE; AND FOR OTHER PURPOSES.  
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## Subtitle

13  
14 TO PROVIDE NONRESIDENT MEMBERS OF PASS-  
15 THROUGH ENTITIES OPTIONS FOR REPORTING  
16 AND PAYING INCOME TAX.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 4 is amended  
22 to add an additional section to read as follows:

23 26-51-451.

24 (a) As used in this section:

25 (1) "Director" means the Director of the Department of Finance  
26 and Administration;

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

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

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

36 (A) Treated as a Subchapter S corporation under



1 § 26-51-409, a general partnership, limited partnership, limited liability  
2 partnership, or a limited liability company; and

3 (B) Not taxed as a corporation for federal tax purposes.

4 (b)(1) A pass-through entity may file a composite income tax return  
5 based on the taxable year of the entity on behalf of electing nonresident  
6 members reporting and paying income tax at the highest marginal rate under §  
7 26-51-201 on the member's pro rata or distributive share of income of the  
8 pass-through entity from doing business in, or deriving income from sources  
9 within this state.

10 (2) A nonresident member of a pass-through entity whose only  
11 source of income within a state is from pass-through entities may elect to  
12 have the pass-through entities on composite returns filed under this section  
13 report and pay income tax due on the member's pro rata or distributive share  
14 of income passed through to the member by each entity from doing business in,  
15 or deriving income from sources within this state.

16 (3) A nonresident member that has been included in a composite  
17 return may subsequently file its own income tax return and shall receive  
18 credit for tax paid on the member's behalf by the pass-through entity with  
19 the composite return.

20 (c)(1)(A) With respect to each of its nonresident members, a pass-  
21 through entity shall for each tax year:

22 (i) Timely file with the director an agreement as  
23 provided in subdivision (2) of this subsection; and

24 (ii) Make payment to the director as required in  
25 subdivision (3) of this subsection.

26 (B) A pass-through entity that timely files an agreement  
27 as provided in subdivision (2) of this subsection with respect to a  
28 nonresident member for a tax year shall be considered to have timely filed  
29 such an agreement for each subsequent tax year.

30 (2) The agreement referred to in subdivision (c)(1) is an  
31 agreement of the nonresident member:

32 (A) To be subject to the jurisdiction of this state for  
33 purposes of the collection of income taxes owed on the member's pro rata or  
34 distributive share of income from the pass-through entity from doing business  
35 in, or deriving income from sources within this state; and

36 (B) To be included on a composite return that is filed by

1 the pass-through entity accompanied by payment of tax due on the member's  
2 income from the pass-through entity; or

3 (C) To have the pass-through entity withhold and pay over  
4 under § 26-51-812 income tax at the highest marginal rate provided in § 26-  
5 51-201 due from that nonresident member on all distributions of income to  
6 that member by the pass-through entity from doing business in or deriving  
7 income from sources within this state.

8 (3)(A) Each pass-through entity shall for each nonresident  
9 member either file a composite return reporting and paying tax due from the  
10 member for any tax year, or withhold and pay over under § 26-51-812 income  
11 tax at the highest marginal rate provided in § 26-51-201 due from the member  
12 on all distributions of income to that member by the pass-through entity.

13 (B) Any payment by the entity of the member's tax  
14 liability through composite return or withholding shall be credited to the  
15 member and the director may inform the member of any such payment.

16 (d) The director may promulgate rules and regulations necessary to  
17 carry out the provisions of this section.

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

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