

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/29/05

A Bill

SENATE BILL 509

5 By: Senator Hill
6 By: Representative Jackson
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS LAW TO PROVIDE FOR THE
11 WITHHOLDING OF INCOME TAX BY PASS-THROUGH
12 ENTITIES ON NONRESIDENT TAXPAYERS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

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

25 26-51-918. Pass-through entities.

26 (a) As used in this section:

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

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

33 (B) "Member" shall not mean a Subchapter C corporation as
34 defined in Section 1361(a) of the Internal Revenue Code of 1986, in effect
35 January 1, 2005;

36 (3) "Nonresident" means:



1 (A) An individual who is not a resident of or domiciled in
2 Arkansas during any part of the tax year;

3 (B) A business entity that does not have its commercial
4 domicile in Arkansas during any part of the tax year;

5 (C) A trust not organized in Arkansas; and

6 (4) "Pass-through entity" means a business entity that for the
7 applicable tax year is:

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

11 (B) Not taxed as a corporation for federal or Arkansas
12 income tax purposes.

13 (b)(1)(A) A pass-through entity shall withhold Arkansas income tax at
14 the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the
15 share of income of the entity that is derived from or attributable to sources
16 within this state and distributed to each nonresident member. The pass-
17 through entity is liable to the Director of the Department of Finance and
18 Administration for the payment of the tax required to be withheld and is not
19 liable to the member for the amount withheld and paid to the director.

20 (B)(i) A lower-tier pass-through entity shall withhold and
21 pay income tax on the share of income distributed by the lower-tier pass-
22 through entity to each of its nonresident members.

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

26 (2) A pass-through entity shall pay the amount withheld
27 quarterly as follows:

28 (A) The first installment is due on or before the
29 fifteenth day of the fourth month of the pass-through entity's tax year;

30 (B) The second installment is due on or before the
31 fifteenth day of the sixth month of the pass-through entity's tax year;

32 (C) The third installment is due on or before the fifteenth
33 day of the ninth month of the pass-through entity's tax year; and

34 (D) The fourth installment is due on or before the
35 fifteenth day of the first month following the close of the pass-through
36 entity's tax year.

1 (3)(A) On or before February 28 following the close of the pass-
2 through entity's tax year, a pass-through entity shall file an annual return
3 with the director showing the total amount of tax paid or credited to its
4 nonresident members and the amount of tax withheld.

5 (B) The annual return shall be in an electronic format
6 prescribed by the director.

7 (4) A pass-through entity shall annually furnish its nonresident
8 members with a record of the amount of tax withheld on behalf of the
9 nonresident member no later than the fifteenth day of the third month
10 following the end of the pass-through entity's tax year.

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

13 (1) The member has a pro rata or distributive share of income of
14 the pass-through entity from doing business in or deriving income from
15 sources within this state of less than one thousand dollars (\$1,000) per
16 year;

17 (2) The director has determined that the nonresident member's
18 income is not subject to withholding;

19 (3) The nonresident member elects to have the tax due paid as
20 part of a composite return filed by the pass-through entity under subsection
21 (d) of this section; or

22 (4) The entity:

23 (A) Is a publicly traded partnership as defined by Section
24 7704(b) of the Internal Revenue Code, as in effect on January 1, 2005, that
25 is treated as a partnership for the purposes of federal income taxation; and

26 (B) Has agreed to file an annual information return
27 reporting the name, address, and taxpayer identification number of each
28 member with an annual Arkansas income greater than five hundred dollars
29 (\$500) along with any other information requested by the director.

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

36 (2) A nonresident member whose only source of income within this

1 state is from one (1) or more pass-through entities may elect to be included
2 in a composite return filed pursuant to this section.

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

7 (4) The tax due on the composite income tax return shall be due
8 and payable quarterly in accordance with subdivision (b)(2) of this section.

9 (5)(A) On or before the fifteenth day of the fourth month
10 following the close of the pass-through entity's tax year, a pass-through
11 entity shall file an annual composite return with the director showing the
12 total amount of tax paid or credited to its nonresident members and the
13 amount of tax withheld.

14 (B) Any additional tax due remaining on the pass-through
15 entity's composite income tax return shall be remitted with the entity's
16 composite return.

17 (e) The director may promulgate rules necessary to administer this
18 section.

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20 SECTION 2. This act shall become effective for tax years beginning on
21 or after January 1, 2006.

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23 /s/ Hill
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