

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 S3/30/05 S4/1/05

# 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 member of a pass-  
28 through entity 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; or

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) On or before February 28 following the close of the pass-  
27 through entity's tax year, a pass-through entity shall file an annual return  
28 with the director showing the total amount of income distributed or credited  
29 to its nonresident members and the amount of tax withheld and shall remit the  
30 amount of tax withheld.

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

33                   (3) A pass-through entity shall annually furnish its nonresident  
34 members with a record of the amount of tax withheld on behalf of the  
35 nonresident member no later than the fifteenth day of the third month  
36 following the end of the pass-through entity's tax year.

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

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

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

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

12           (4) The entity:

13           (A) Is a publicly traded partnership as defined by Section  
14 7704(b) of the Internal Revenue Code, as in effect on January 1, 2005, that  
15 is treated as a partnership for the purposes of federal income taxation; and

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

20           (5)(A) The entity has filed with the director on forms  
21 prescribed by the director the nonresident member's signed agreement to  
22 timely file an Arkansas nonresident individual or trust income tax return, to  
23 pay any tax due on the return, and to be subject to the jurisdiction of the  
24 department in the courts of this state for the purpose of determining and  
25 collecting any Arkansas income tax together with interest and penalties owed  
26 by the nonresident member.

27           (B) The department may revoke the exception from the  
28 withholding requirement in subdivision (c)(5)(A) of this section if it is  
29 determined that the nonresident member is not abiding by the terms of the  
30 agreement. At the time of revocation, the department shall notify the entity  
31 that withholding is required for future distributions to the nonresident  
32 member whose exception is revoked; or

33           (6) The income received by the nonresident member is exempt from  
34 Arkansas income tax pursuant to § 26-51-202(e).

35           (d)(1) A pass-through entity may file a composite income tax return on  
36 behalf of electing nonresident members reporting and paying Arkansas income

1 tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the  
2 nonresident members' pro rata or distributive shares of income of the pass-  
3 through entity from doing business in or deriving income from sources within  
4 this state.

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

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

12 (4) On or before the fifteenth day of the fourth month following  
13 the close of the pass-through entity's tax year, a pass-through entity shall  
14 file an annual composite return with the director showing the total amount of  
15 income distributed or credited to its nonresident members and the amount of  
16 tax withheld and shall remit the tax due on the composite income tax 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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