

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

# A Bill

SENATE BILL 543

4  
5 By: Senator Miller  
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7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE WITHHOLDING OF INCOME TAX FROM  
10 DEFERRED INCOME; TO REQUIRE ELECTRONIC FILING OF  
11 THE ANNUAL WITHHOLDING STATEMENT BY CERTAIN  
12 EMPLOYERS; TO AMEND THE DEFINITION OF "WAGES" FOR  
13 WITHHOLDING TAX PURPOSES; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 TO REQUIRE WITHHOLDING OF INCOME TAX  
16 FROM DEFERRED INCOME; TO REQUIRE  
17 ELECTRONIC FILING OF THE ANNUAL  
18 WITHHOLDING STATEMENT BY CERTAIN  
19 EMPLOYERS AND TO AMEND THE DEFINITION OF  
20 WAGES.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended  
27 to add an additional section to read as follows:

28 26-51-918. Withholding – Deferred income.

29 (a)(1) Section 3405 of the Internal Revenue Code of 1986, as in effect  
30 on January 1, 2005, regarding withholding from deferred income, is adopted as  
31 modified by subdivision (a)(2) of this section.

32 (2) For the purposes of Arkansas withholding tax under this  
33 section:

34 (A) The amount of withholding required under 26 U.S.C §  
35 3405(b)(1) shall be three percent (3%); and

36 (B) The amount of withholding required under 26 U.S.C. §



1 3405(c)(1)(B) shall be five percent (5%).

2 (c) This section shall apply only when the payee is an Arkansas  
3 resident.

4 (d) This section shall become effective for tax years beginning on and  
5 after January 1, 2006.

6  
7 SECTION 2. Arkansas Code § 26-51-909(b), concerning the annual  
8 withholding statement, is amended to read as follows:

9 (b)(1) The annual statement of withholding shall be in the form  
10 prescribed by the director.

11 (2)(A) The statement from the employer shall be filed with the  
12 director on or before February 28 following the close of the income year.

13 (B) For tax years beginning on or after January 1, 2006,  
14 an employer who has two hundred fifty (250) or more employees during the  
15 employer's income year shall file the statement either:

16 (i) Electronically;

17 (ii) On magnetic media; or

18 (iii) In any other machine-readable form approved by  
19 the director.

20 (3) The employer shall provide two (2) copies of the statement  
21 to the employee on or before January 31 following the close of the income  
22 year. However, if the employment of the employee is terminated during the  
23 calendar year, the employer shall furnish the statement to the employee at  
24 the time of the termination of employment.

25  
26 SECTION 3. Arkansas Code § 26-51-902(13), concerning the definition of  
27 "wages" for withholding tax purposes, is amended to read as follows:

28 (13) "Wages" means remuneration in cash or other form for  
29 services performed by an employee for an employer, except that it shall not  
30 include remuneration paid:

31 (A) For domestic service in a private home, local college  
32 club, or local chapter of a college fraternity or sorority;

33 (B)(i) For agricultural labor, except that an agricultural  
34 employer, who pays wages, as defined in 26 U.S.C. § 3121(a), as in effect on  
35 January 1, 1993, to four (4) or more employees during any reporting period  
36 shall be required to collect, account for, and pay over Arkansas income taxes

1 for that reporting period.

2 (ii) Employers who pay wages for agricultural labor  
3 to three (3) or fewer employees during any reporting period shall have the  
4 option to collect, account for, and pay over Arkansas income taxes for each  
5 reporting period, if they so choose;

6 (C) For services not in the course of the employee's trade  
7 or business performed by an employee in any calendar quarter unless the  
8 remuneration paid for such services is one hundred fifty dollars (\$150) or  
9 more; ~~or~~

10 (D) For services performed by an ordained, commissioned,  
11 or licensed minister of a church in the exercise of his ministry or by a  
12 member of a religious order performing duties required by the order;

13 (E) For active service performed in a month in which the  
14 employee is entitled to the benefits in § 112 of the Internal Revenue Code of  
15 1986, adopted by § 26-51-306, to the extent remuneration for the service is  
16 excludable from gross income under § 26-51-306;

17 (F) For services performed for an employer by a United  
18 States citizen if it is reasonable to believe when the remuneration is paid  
19 that the remuneration will be excludable from gross income under § 911 of the  
20 Internal Revenue Code of 1986, adopted by § 26-51-310;

21 (G) For services performed by an individual under eighteen  
22 (18) years of age delivering or distributing newspapers or shopper's news,  
23 excluding the delivery or distribution of the newspapers or shopper's news to  
24 a destination for subsequent delivery or distribution;

25 (H) For services performed by an individual selling  
26 newspapers or magazines to consumers under an arrangement in which the  
27 newspapers or magazines are sold at a fixed price with the individual's  
28 compensation equal to the excess of the fixed price over the amount the  
29 individual pays for the newspaper or magazines, regardless of whether the  
30 individual is guaranteed a minimum amount of compensation or entitled to a  
31 credit for the unsold newspapers or magazines returned;

32 (I) For services performed by an individual that are not  
33 in the course of the employer's trade or business if the remuneration is paid  
34 in any medium other than cash;

35 (J) To an employee or his or her beneficiary:

36 (i) From a trust or to a trust exempt from tax under

1 § 26-51-308 unless the payment is rendered to an employee of the trust as  
2 remuneration for services rendered by the employee and not as a beneficiary  
3 of the trust;

4 (ii) Under an annuity plan or to an annuity plan  
5 under § 403(a) of the Internal Revenue Code of 1986, adopted by § 26-51-414;

6 (iii) Under § 402(h)(1) and (2) of the Internal  
7 Revenue Code of 1986, adopted by § 26-51-414, if it is reasonable to believe  
8 at the time of payment that the payment will be excluded under § 26-51-414;

9 (iv) Under § 408(p) of the Internal Revenue Code of  
10 1986, adopted by § 26-51-414; or

11 (v) Under an eligible deferred compensation plan or  
12 paid to an eligible deferred compensation plan under § 457(b) of the Internal  
13 Revenue Code of 1986, maintained by an eligible employer under § 457(e)(1)(A)  
14 of the Internal Revenue Code of 1986, as those sections are adopted by § 26-  
15 51-414;

16 (K) In the form of group-term life insurance on the life  
17 of an employee;

18 (L) To or on behalf of an employee if it is reasonable to  
19 believe at the time of payment that a corresponding deduction is allowed  
20 under § 26-51-423 with the exception of § 274(n) of the Internal Revenue Code  
21 of 1986, adopted by § 26-51-423(b);

22 (M)(i) As tips in any medium other than cash; or

23 (ii) As cash tips to an employee received in the  
24 course of employment in any calendar month unless the amount of the cash tips  
25 is twenty dollars (\$20.00) or more;

26 (N) For any benefit provided to an employee if it is  
27 reasonable to believe that the benefit is excluded from income under § 26-51-  
28 404(a)(4), § 26-51-404(b)(12), § 26-51-404(b)(19), or § 26-51-404(b)(20);

29 (O) For any medical reimbursement made to an employee or  
30 for the benefit of an employee under a self-insured medical reimbursement  
31 plan under § 105(h)(6) of the Internal Revenue Code, adopted by § 26-51-404;  
32 and

33 (P) For any payment made to an employee or for the benefit  
34 of an employee if it is reasonable to believe that the payment is excluded  
35 from income under § 106(b) of the Internal Revenue Code of 1986, adopted by §  
36 26-51-404.