

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Representative Jett
6 By: Senator J. Dismang
7

A Bill

HOUSE BILL 1714

For An Act To Be Entitled

9 AN ACT TO CREATE THE ELECTIVE PASS-THROUGH ENTITY TAX
10 ACT; TO IMPOSE A TAX ON PASS-THROUGH ENTITIES; TO
11 EXCLUDE CERTAIN INCOME FROM GROSS INCOME FOR PASS-
12 THROUGH ENTITIES; AND FOR OTHER PURPOSES.

Subtitle

16 TO CREATE THE ELECTIVE PASS-THROUGH
17 ENTITY TAX ACT; TO IMPOSE A TAX ON PASS-
18 THROUGH ENTITIES; AND TO EXCLUDE CERTAIN
19 INCOME FROM GROSS INCOME FOR PASS-THROUGH
20 ENTITIES.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

26 (a) The General Assembly finds that:

27 (1) The Arkansas Tax Reform and Relief Legislative Task Force
28 was charged with:

29 (A) Examining and identifying areas of potential tax
30 reform within the tax laws; and

31 (B) Recommending legislation to the General Assembly to:
32 (i) Modernize and simplify the Arkansas tax code;
33 (ii) Make Arkansas's tax laws competitive with tax
34 laws in other states;

35 (iii) Create jobs; and
36 (iv) Ensure fairness to all taxpayers;



1 (2) The state’s tax laws should be amended to modernize and
 2 simplify the tax code, increase Arkansas’s competitiveness, create jobs, and
 3 ensure fairness to all taxpayers; and

4 (3) Any savings realized by the state through tax reforms should
 5 be dedicated to reducing the tax burden for Arkansas taxpayers.

6 (b) It is the intent of the General Assembly to:

7 (1) Reform Arkansas tax laws to modernize and simplify the tax
 8 code, increase the state’s competitiveness, create jobs, and ensure fairness
 9 to all taxpayers; and

10 (2) Offset any revenue savings realized through tax reform with
 11 corresponding changes to reduce the tax burden for Arkansas taxpayers.

12
 13 SECTION 2. Arkansas Code § 26-51-404(b), concerning exemptions from
 14 gross income under the Income Tax Act of 1929, is amended to add an
 15 additional subdivision to read as follows:

16 (30)(A) For a person that is subject to the tax imposed under
 17 this chapter and that is a member of an affected business entity, an amount
 18 equal to the product of:

19 (i) The tax paid under the Elective Pass-Through
 20 Entity Tax Act, § 26-64-101 et seq., by an affected business entity of which
 21 the person is a member; and

22 (ii) The person’s pro rata interest, as reported to
 23 the director under § 26-64-108, in the affected business entity of which the
 24 person is a member.

25 (B)(i)(a) A person that is subject to the tax imposed
 26 under this chapter as a resident or part-year resident and that is a member
 27 of an affected business entity may exclude from the taxable income subject to
 28 the tax imposed by this chapter the person’s pro rata share of taxes paid to
 29 another state or the District of Columbia on income of any affected business
 30 entity of which the person is a member, if the taxes paid to the other state
 31 or the District of Columbia result from a tax that is substantially similar
 32 to the tax imposed under the Elective Pass-Through Entity Tax Act, § 26-64-
 33 101 et seq.

34 (b) A tax is substantially similar to the tax
 35 imposed under the Elective Pass-Through Entity Tax Act, § 26-64-101 et seq.,
 36 if it is levied on the aggregate taxable income of each of the persons that

1 have an ownership interest in an entity that is engaged in business for
 2 profit.

3 (ii) The amount excluded under this subdivision
 4 (b)(30) shall be calculated in a manner established by the director, which
 5 shall be consistent with § 26-51-504.

6 (C) With respect to a company that is a member of an
 7 affected business entity, the amount excluded under this subdivision (b)(30)
 8 is applied after all other applicable exclusions under this chapter and is
 9 not subject to any limits otherwise imposed by law.

10 (D) The exclusion under this subdivision (b)(30) does not
 11 apply to taxes imposed under the Arkansas Income Tax Withholding Act of 1965,
 12 § 26-51-901 et seq.

13 (E) As used in this subdivision (b)(30), "affected
 14 business entity" and "member" mean the same as defined in § 26-64-102.

15
 16 SECTION 3. Arkansas Code Title 26 is amended to add an additional
 17 chapter to read as follows:

18 Chapter 64

19 Elective Pass-Through Entity Tax Act

20
 21 26-64-101. Title.

22 This chapter shall be known and may be cited as the "Elective Pass-
 23 Through Entity Tax Act".

24
 25 26-64-102. Definitions.

26 As used in this chapter:

27 (1) "Affected business entity" means a business entity in which
 28 members that hold more than fifty percent (50%) of the voting rights in the
 29 business entity elect before the due date or extended due date of the
 30 business entity's income tax return to be taxed under this chapter;

31 (2) "Business entity" means an entity, including without
 32 limitation a general partnership, limited partnership, limited liability
 33 company, or for federal income tax purposes, an S corporation, that:

34 (A) Is engaged in a business for profit;

35 (B) Is required to file a return under this title; and

36 (C) Does not have multiple classes of membership among its

1 members;

2 (3) "Member" means a:

3 (A) Shareholder of an S corporation;

4 (B) Partner in a general partnership, limited partnership,
5 or limited liability partnership; and

6 (C) Member of a limited liability company;

7 (4) "Net operating loss" means the same as defined in § 26-51-
8 427;

9 (5) "Pro rata interest" means a member's percentage of ownership
10 of the profits of an affected business entity; and

11 (7) "Taxable year" means the same as defined in § 26-51-102.

12
13 26-64-103. Pass-through entity tax.

14 (a) Before the fifteenth day of the fourth month of the taxable year,
15 an affected business entity shall pay to the Director of the Department of
16 Finance and Administration the tax determined under this section.

17 (b)(1)(A) For the tax year beginning January 1, 2020, a tax of six and
18 six-tenths percent (6.6%) is levied on the aggregate net taxable income of
19 each of the members of an affected business entity, as determined under
20 Chapter 51 of this title, to the extent that the income is reported to the
21 director as business income derived from the affected business entity.

22 (B) For tax years beginning on or after January 1, 2021, a
23 tax of five and nine-tenths percent (5.9%) is levied on the aggregate net
24 taxable income of each of the members of an affected business entity, as
25 determined under Chapter 51 of this title, to the extent that the income is
26 reported to the director as business income derived from the affected
27 business entity.

28 (2) If the tax levied under subdivision (b)(1) of this section
29 results in a net operating loss for an affected business entity, the affected
30 business entity may carry forward the net operating loss in the same manner
31 and for the same number of years as provided under § 26-51-427.

32 (3) An affected business entity that is a member of another
33 affected business entity shall subtract its distributive share of the income
34 or add its distributive share of the loss from the other affected business
35 entity to the extent that the income or loss was derived from or connected
36 with sources within this state.

1 (4) A nonresident individual who is a member of an affected
2 business entity is not required to file an individual income tax return if,
3 for the taxable year, the only source of income derived from or connected
4 with sources within this state for the member or, if a joint income tax
5 return is filed, the member and his or her spouse, is from one (1) or more
6 affected business entities and each affected business entity files and pays
7 the taxes due under this section.

8 (5) An affected business entity that files a return in Arkansas
9 and has income from both within and without Arkansas shall apportion income
10 to Arkansas under the Uniform Division of Income for Tax Purposes Act, § 26-
11 51-701 et seq.

12 (c) An affected business entity shall report to the members of the
13 affected business entity, for each taxable year, each member's respective pro
14 rata share of the tax imposed under this section on the affected business
15 entity based on the pro rata interest of each member as reported to the
16 director under § 26-64-108.

17
18 26-64-104. Liability for tax.

19 (a) Except as otherwise provided in this section, an affected business
20 entity is liable for the tax imposed under this chapter.

21 (b) If an affected business entity fails to pay the full amount of tax
22 due under this chapter, the Director of the Department of Finance and
23 Administration, in addition to assessing the affected business entity for the
24 tax liability, may assess the individual members of the affected business
25 entity based on the member's pro rata share of the income as determined by
26 the member's pro rata interest.

27
28 26-64-105. Administration.

29 The Director of the Department of Finance and Administration shall
30 administer and enforce this chapter in accordance with the Arkansas Tax
31 Procedure Act, § 26-18-101 et seq.

32
33 26-64-106. Interest and penalty.

34 The interest and penalty provisions in the Arkansas Tax Procedure Act,
35 § 26-18-101 et seq., apply to the tax imposed under this chapter.

36

1 26-64-107. Required annual payment.

2 (a) As used in this section, "required annual payment" means the
3 lesser of:

4 (1) Ninety percent (90%) of the tax due under this chapter for
5 the taxable year; or

6 (2) If the affected business entity filed a return for the
7 preceding taxable year, one hundred percent (100%) of the tax due under this
8 chapter as reported on that return.

9 (b)(1) An affected business entity that is required to pay tax under
10 this chapter shall make a required annual payment each taxable year in four
11 (4) estimated installments on the fifteenth day of the:

12 (A) Fourth month of the taxable year;

13 (B) Sixth month of the taxable year;

14 (C) Ninth month of the taxable year; and

15 (D) First month of the next succeeding taxable year.

16 (2) An affected business entity may elect to pay a required
17 installment payment under this subsection before the date specified in
18 subdivision (b)(1) of this section.

19 (3) Except as otherwise provided in this section, the amount of
20 each installment payment required under this subsection shall be twenty-five
21 percent (25%) of the required annual payment.

22 (c)(1) If an affected business entity establishes that the affected
23 business entity's annualized income installment calculated under subdivision
24 (c)(3) of this section is less than the required annual payment, the required
25 installment payment under this section is the annualized income installment.

26 (2) However, an affected business entity shall recapture a
27 reduction in a required installment payment resulting under subdivision
28 (c)(1) of this section by increasing:

29 (A) The amount of the next required installment payment by
30 the amount of the reduction; and

31 (B) Subsequent required installment payments to the extent
32 the reduction was not previously recaptured under this subsection.

33 (3) The annualized income installment under this section is the
34 difference between:

35 (A) The product of:

36 (i) The tax imposed under this chapter for the

1 taxable year that would be due if income subject to the tax imposed under
2 this chapter for the months in the taxable year ending before the due date of
3 the installment were annualized; and

4 (ii) The following percentage:

5 (a) For the first required installment
6 payment, twenty-two and five-tenths percent (22.5%);

7 (b) For the second required installment
8 payment, forty-five percent (45%);

9 (c) For the third required installment
10 payment, sixty-seven and five-tenths percent (67.5%); and

11 (d) For the fourth required installment
12 payment, ninety percent (90%); and

13 (B) The aggregate amount of any prior required
14 installments for the taxable year.

15 (d)(1) Except as otherwise provided in this section, if an affected
16 business entity makes an underpayment of estimated tax under this section,
17 there shall be added to the tax imposed under this chapter the penalties and
18 interest provided for under § 26-18-208.

19 (2) The amount of an underpayment under this subsection is the
20 amount by which the required installment exceeds the amount, if any, of the
21 installment paid on or before the due date of the installment.

22 (3) A payment of estimated tax under this section shall be
23 credited against unpaid or underpaid required installments in the order in
24 which the installments are required to be paid.

25 (e) Payment of the estimated tax under this section or any required
26 installment of estimated tax is a payment on account of the tax imposed under
27 this chapter.

28
29 26-64-108. Report of pro rata interests.

30 (a) An affected business entity shall report on a form prescribed and
31 furnished by the Director of the Department of Finance and Administration the
32 pro rata interest of each member of the affected business entity.

33 (b) Unless a member of an affected business entity demonstrates the
34 pro rata interests reported to the director to be fraudulent, the pro rata
35 interests reported to the director are conclusive for purposes of computing a
36 member's tax liability under this chapter and § 26-51-404(b)(30)(A).

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SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this act are effective for tax years beginning on or after January 1, 2020.