

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

As Engrossed: H3/13/19
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 income subject to the tax paid under the
20 Elective Pass-Through Entity Tax Act, § 26-64-101 et seq., by an affected
21 business entity of which 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 income subject
29 to a tax paid to another state or the District of Columbia on income of any
30 affected business entity of which the person is a member, if the taxes paid
31 to the other state or the District of Columbia result from a tax that is
32 substantially similar to the tax imposed under the Elective Pass-Through
33 Entity Tax Act, § 26-64-101 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 net taxable income of an affected
19 business entity, as determined under Chapter 51 of this title, to the extent
20 that the income is reported to the director as business income derived from
21 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 net taxable
24 income of an affected business entity, as determined under Chapter 51 of this
25 title, to the extent that the income is reported to the director as business
26 income derived from the affected business entity.

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

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

36 (4) A nonresident individual who is a member of an affected

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

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

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

16
17 26-64-104. Liability for tax.

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

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

26
27 26-64-105. Administration.

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

31
32 26-64-106. Interest and penalty.

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

35
36 26-64-107. Required annual payment.

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

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

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

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

11 (A) Fourth month of the taxable year;

12 (B) Sixth month of the taxable year;

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

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

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

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

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

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

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

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

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

34 (A) The product of:

35 (i) The tax imposed under this chapter for the
36 taxable year that would be due if income subject to the tax imposed under

1 this chapter for the months in the taxable year ending before the due date of
2 the installment were annualized; and

3 (ii) The following percentage:

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

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

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

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

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

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

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

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

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

27
28 26-64-108. Report of pro rata interests.

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

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

36

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

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/s/Jett