

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.

Act 1982 of the Regular Session

As Engrossed: S3/29/05 S3/30/05 S4/1/05

A Bill

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

SENATE BILL 509

4
5 By: Senator Hill
6 By: Representative Jackson

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9 **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
15 **Subtitle**

16 PROVIDES FOR THE WITHHOLDING OF INCOME
17 TAX BY PASS-THROUGH ENTITIES ON
18 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;



1 (3) "Nonresident" means:

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

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

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

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

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

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

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

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

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

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

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

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

1 following the end of the pass-through entity's tax year.

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

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

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

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

13 (4) The entity:

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

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

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

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

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

36 (d)(1) A pass-through entity may file a composite income tax return on

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

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

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

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

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

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

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24 /s/ Hill

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27 APPROVED: 04/11/2005

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