

1 State of Arkansas  
2 84th General Assembly  
3 Second Extraordinary Session, 2003  
4

# A Bill

Call Item 6

HOUSE BILL 1103

5 By: Representative Jackson  
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## For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW TO PROVIDE FOR THE  
10 WITHHOLDING OF INCOME TAX BY PASS-THROUGH  
11 ENTITIES ON NONRESIDENT TAXPAYERS; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

15 PROVIDES FOR THE WITHHOLDING OF INCOME  
16 TAX BY PASS-THROUGH ENTITIES ON  
17 NONRESIDENT TAXPAYERS.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended  
23 to add a new section to read as follows:

24 26-51-918. Pass-through entities.

25 (a) As used in this section:

26 (1) "Lower-tier pass-through entity" means a pass-through entity  
27 that is itself a pass-through entity;

28 (2)(A) "Member" means a shareholder of a Subchapter S  
29 corporation, a partner in a general partnership, a partner in a limited  
30 partnership, a partner in a limited liability partnership, a member of a  
31 limited liability company, or a beneficiary of a trust.

32 (B) A Subchapter C corporation as defined in Section  
33 1361(a) of the federal Internal Revenue Code of 1986, in effect January 1,  
34 2003, is not a member for the purposes of this section;

35 (3) "Pass-through entity" means a corporation that, for the  
36 applicable tax year, is:



1                   (A) Treated as a Subchapter S corporation under § 26-51-  
 2 409, a general partnership, limited partnership, limited liability  
 3 partnership, a limited liability company, or a trust; and

4                   (B) Not taxed as a corporation for federal or Arkansas tax  
 5 purposes; and

6                   (4) "Nonresident" means:

7                   (A) An individual who is not a resident of or domiciled in  
 8 Arkansas;

9                   (B) A business entity that does not have its commercial  
 10 domicile in Arkansas; and

11                   (C) A trust not organized in Arkansas.

12                   (b)(1)(A) A pass-through entity shall withhold Arkansas income tax at  
 13 the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the  
 14 share of income of the entity distributed to each nonresident member. The  
 15 pass-through entity is liable to the Director of the Department of Finance  
 16 and Administration for the payment of the tax withheld and is not liable to  
 17 the member for the amount withheld and paid to the director.

18                   (B)(i) A member of a lower-tier pass-through entity is  
 19 required to withhold and pay income tax on the share of income distributed by  
 20 the lower-tier pass-through entity to each of its nonresident members.

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

24                   (2)(A) A pass-through entity shall file a return with the  
 25 director showing the total amount of tax paid or credited to its nonresident  
 26 members and the amount of tax withheld. The tax shall be paid when the  
 27 return is filed.

28                   (B) A pass-through entity shall annually furnish its  
 29 nonresident members with a record of the amount of tax withheld on behalf of  
 30 the nonresident member, but no later than the fifteenth day of the third  
 31 month following the end of the pass-through entity's taxable year.

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

34                   (A) The member has a pro rata or distributive share of  
 35 income of the pass-through entity from doing business in or deriving income  
 36 from sources within this state of less than one thousand dollars (\$1,000) per

1 year;

2 (B) The director has determined that the member's income  
3 is not subject to withholding;

4 (C) The member elects to have the tax due paid as part of  
5 a composite return filed by the pass-through entity under subsection (d) of  
6 this section; or

7 (D) The entity:

8 (i) Is a publicly traded partnership as defined by  
9 Section 7704(b) of the federal Internal Revenue Code, as in effect on January  
10 1, 2004, that is treated as a partnership for the purposes of the federal  
11 Internal Revenue Code; and

12 (ii) Has agreed to file an annual information return  
13 reporting the name, address, and taxpayer identification number of each  
14 shareholder with an annual Arkansas income greater than five hundred dollars  
15 (\$500), along with any other information requested by the director.

16 (d)(1) A pass-through entity may file a composite income tax return on  
17 behalf of electing nonresident members reporting and paying Arkansas income  
18 tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the  
19 members' pro rata or distributive shares of income of the pass-through entity  
20 from doing business in, or deriving income from sources within, this state.

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

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

27 (e) The director may promulgate rules necessary to carry out the  
28 provisions of this section.

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30 SECTION 2. This act shall become effective for tax years beginning on  
31 or after January 1, 2004.

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