

Department of Finance and Administration

Legislative Impact Statement

Bill: SB484

Bill Subtitle: TO CLARIFY THE ALLOCATION OF NONRESIDENT INCOME FOR ARKANSAS INCOME TAX PURPOSES; TO ADOPT THE MODEL MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sponsors: Sen. J. Dismang and Rep. Jett

SB484 provides that nonresidents who earn income from Arkansas sources will only pay tax on the income that the nonresident earns while physically present in Arkansas when performing the work.

SB484 also provides an exemption for income earned from work performed in Arkansas for thirty (30) or fewer days in a calendar year by a nonresident. The exemption only applies if the nonresident's state of residence provides a substantially similar income tax exemption, if the nonresident's state of residence does not impose an individual income tax, or if the nonresident's income is exempt from Arkansas income tax under the United States Constitution or federal statute. The exemption does not apply to work performed by nonresident professional athletes, nonresident professional entertainers, nonresident public figures, and certain nonresident employees involved in the entertainment production industry.

An employer does not have to deduct and withhold state income tax for a nonresident employee to which the exemption applies, but if the nonresident employee works in Arkansas for thirty-one (31) days or more, the employer must deduct and withhold state income tax for the entire period the nonresident employee worked in Arkansas. The bill provides a safe harbor from penalty and interest assessments for an employer who fails to deduct and withhold state income taxes when required but who relies on data from the employer's own multistate time and attendance system, the employer's own records maintained in the regular course of business, or the employee's reasonable determination of the time the employee expected to spend performing duties in Arkansas. The employer's reliance on the employee's own determination will not be a defense if the employer had actual knowledge of fraud on the part of the nonresident employee or if the employer and employee colluded to evade taxation in making the determination.

SB484 also amends the definition of "employer" under the Arkansas Income Tax Withholding Act of 1965 to include a person doing business in or deriving income from sources outside this state who has control of the payment of wages to an individual for services performed within this state.

Revenue Impact :

FY2022 – Undetermined reduction in State General Revenue of up to \$22.4 Million

[Revenue Impact is gathered from wage income reported on 2019 nonresident individual income tax returns. Over 67,000 non-resident returns claiming \$2.1 billion in Arkansas wage income were filed for tax year 2019.]

Taxpayer Impact :

SB484 would clarify the circumstances where compensation paid for work performed outside of Arkansas to nonresident individuals would be subject to or exempt from Arkansas state income tax. SB484 also would clarify that an "employer" for withholding tax purposes includes a person doing

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business in or deriving income from sources outside this state who has control of the payment of wages to an individual for services performed within this state.

Resources Required :

Computer programs, tax forms, and instructions will need to be updated.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Department employees will need to be educated as well as the tax community.

Other Comments :

The U.S. Bureau of Labor Statistics reported that 24.3 percent of all employees teleworked (worked from home) at some point in July of 2020.

Legal Analysis :

Allocation of Nonresident Income --- Under current law, a nonresident must pay income tax on all net income arising from the conduct of a business, trade, or occupation in Arkansas. SB484 provides that a nonresident will only pay Arkansas income tax on income that the nonresident earns while the nonresident is physically in Arkansas performing the work.

This provision is effective for tax years beginning on or after January 1, 2021.

Exemption for Work Performed in Arkansas for 30 Days or Less by a Nonresident --- On page 3, lines 16-17, the meaning of the phrase "substantially similar income tax exemption" is unclear. The substitution of language such as "an income tax exemption that applies to compensation received by the nonresident for performing the same type of work for thirty (30) or fewer days in a calendar year in the nonresident's home state" would help to add clarity and avoid confusion.

On page 4, lines 22-24, the amendment of the phrase "[a]ny portion of the day during which the employee is in transit" to read "[a]ny portion of the day during which the employee is in transit into or out of the State of Arkansas" may help to add clarity and avoid confusion.

This provision is effective for tax years beginning on or after January 1, 2021.

Definition of "Employer" --- SB484 expands the definition of "employer" under the Arkansas Income Tax Withholding Act of 1965 to include a person doing business in or deriving income from sources outside this state who has control of the payment of wages to an individual for services performed within this state. Under current law, every employer making payment of wages to employees must

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deduct and withhold income tax from the employees' wages. Current law limits the definition of "employer" to a person doing business in or deriving income from sources within this state who has control of the payment of wages to an individual for services performed or a person who is the officer or agent of the person having control of the payment of wages. Thus, under current law, if an out-of-state employer controls the payment of wages to an individual who performs services for the employer in Arkansas, the employer does not have to withhold and remit Arkansas withholding wage tax for that employee. Even though an out-of-state employer currently does not have to withhold income tax from its Arkansas employee's wages, the wages earned by the Arkansas employee are still subject to Arkansas income tax.

This bill would require an employer who conducts business in or derives income from sources outside this state to withhold tax for the employer's Arkansas-based employees. Under the amended definition of "employer," out-of-state employers who employ workers in Arkansas would have to follow the same withholding requirements as Arkansas employers.

This provision is effective on the first day of the calendar month following the effective date of the act.

This bill contains an emergency clause. The emergency clause provides that it will become effective on the earliest of the following: (1) the date of its approval by the Governor; (2) if the Governor neither approves nor vetoes the bill, the expiration of the period of time during which the Governor may veto the bill; or, (3) if the Governor vetoes the bill, the date the last house overrides the veto.