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4

As Engrossed: H2/24/21

A Bill

HOUSE BILL 1209

5 By: Representative Jett
6 By: Senator J. Dismang
7

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.
13
14

Subtitle

15 TO CREATE THE ELECTIVE PASS-THROUGH
16 ENTITY TAX ACT; TO IMPOSE A TAX ON PASS-
17 THROUGH ENTITIES; AND TO EXCLUDE CERTAIN
18 INCOME FROM GROSS INCOME FOR PASS-THROUGH
19 ENTITIES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 26-51-404(b), concerning exemptions from
26 gross income under the Income Tax Act of 1929, is amended to add an
27 additional subdivision to read as follows:

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

31 (i) The income subject to the tax paid under the
32 Elective Pass-Through Entity Tax Act, § 26-65-101 et seq., by an affected
33 business entity of which the person is a member; and

34 (ii) The person's pro rata interest, as reported to
35 the secretary under § 26-65-108, in the affected business entity of which the
36 person is a member.



1 (B)(i)(a) A person that is subject to the tax imposed
2 under this chapter as a resident or part-year resident and that is a member
3 of an affected business entity may exclude from the taxable income subject to
4 the tax imposed by this chapter the person's pro rata share of income subject
5 to a tax paid to another state or the District of Columbia on income of any
6 affected business entity of which the person is a member, if the taxes paid
7 to the other state or the District of Columbia result from a tax that is
8 substantially similar to the tax imposed under the Elective Pass-Through
9 Entity Tax Act, § 26-65-101 et seq.

10 (b) A tax is substantially similar to the tax
11 imposed under the Elective Pass-Through Entity Tax Act, § 26-65-101 et seq.,
12 if it is levied on the aggregate taxable income of each of the persons that
13 have an ownership interest in an entity that is engaged in business for
14 profit.

15 (ii) The amount excluded under this subdivision
16 (b)(31) shall be calculated in a manner established by the secretary, which
17 shall be consistent with § 26-51-504.

18 (C) With respect to a company that is a member of an
19 affected business entity, the amount excluded under this subdivision (b)(31)
20 is applied after all other applicable exclusions under this chapter and is
21 not subject to any limits otherwise imposed by law.

22 (D) The exclusion under this subdivision (b)(31) does not
23 apply to taxes imposed under the Arkansas Income Tax Withholding Act of 1965,
24 § 26-51-901 et seq.

25 (E) As used in this subdivision (b)(31), "affected
26 business entity" and "member" mean the same as defined in § 26-65-102.

27
28 SECTION 2. Arkansas Code Title 26 is amended to add an additional
29 chapter to read as follows:

30 Chapter 65

31 Elective Pass-Through Entity Tax Act

32
33 26-65-101. Title.

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

36

1 26-65-102. Definitions.

2 As used in this chapter:

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

7 (2) "Business entity" means an entity, including without
8 limitation a general partnership, limited partnership, limited liability
9 company, or for federal income tax purposes, a Subchapter S corporation,
10 that:

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

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

13 (C) Does not have multiple classes of membership among its
14 members;

15 (3) "Member" means a:

16 (A) Shareholder of a Subchapter S corporation;

17 (B) Partner in a general partnership, limited partnership,
18 or limited liability partnership; and

19 (C) Member of a limited liability company;

20 (4) "Net operating loss" means the same as defined in § 26-51-
21 427;

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

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

25
26 26-65-103. Pass-through entity tax.

27 (a) Before the fifteenth day of the fourth month of the taxable year,
28 an affected business entity shall pay to the Secretary of the Department of
29 Finance and Administration the tax determined under this section.

30 (b)(1) A tax of five and nine-tenths percent (5.9%) is levied on the
31 net taxable income of an affected business entity, as determined under
32 Chapter 51 of this title, to the extent that the income is reported to the
33 secretary as business income derived from the affected business entity.

34 (2) If the tax levied under subdivision (b)(1) of this section
35 results in a net operating loss for an affected business entity, the affected
36 business entity may carry forward the net operating loss in the same manner

1 and for the same number of years as provided under § 26-51-427.

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

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

14 (5) An affected business entity that files a return in Arkansas
15 and has income from both within and without Arkansas shall apportion income
16 to Arkansas under the Uniform Division of Income for Tax Purposes Act, § 26-
17 51-701 et seq.

18 (c) An affected business entity shall report to the members of the
19 affected business entity, for each taxable year, each member's respective pro
20 rata share of the tax imposed under this section on the affected business
21 entity based on the pro rata interest of each member as reported to the
22 secretary under § 26-65-108.

23
24 26-65-104. Liability for tax.

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

27 (b) If an affected business entity fails to pay the full amount of tax
28 due under this chapter, the Secretary of the Department of Finance and
29 Administration, in addition to assessing the affected business entity for the
30 tax liability, may assess the individual members of the affected business
31 entity based on the member's pro rata share of the income as determined by
32 the member's pro rata interest.

33
34 26-65-105. Administration.

35 The Secretary of the Department of Finance and Administration shall
36 administer and enforce this chapter in accordance with the Arkansas Tax

1 Procedure Act, § 26-18-101 et seq.

2
3 26-65-106. Interest and penalty.

4 The interest and penalty provisions in the Arkansas Tax Procedure Act,
5 § 26-18-101 et seq., apply to the tax imposed under this chapter.

6
7 26-65-107. Required annual payment.

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

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

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

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

18 (A) Fourth month of the taxable year;

19 (B) Sixth month of the taxable year;

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

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

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

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

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

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

35 (A) The amount of the next required installment payment by
36 the amount of the reduction; and

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

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

5 (A) The product of:

6 (i) The tax imposed under this chapter for the
7 taxable year that would be due if income subject to the tax imposed under
8 this chapter for the months in the taxable year ending before the due date of
9 the installment were annualized; and

10 (ii) The following percentage:

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

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

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

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

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

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

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

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

31 (e) Payment of the estimated tax under this section or any required
32 installment of estimated tax is a payment on account of the tax imposed under
33 this chapter.

34
35 26-65-108. Report of pro rata interests.

36 (a) An affected business entity shall report on a form prescribed and

1 furnished by the Secretary of the Department of Finance and Administration
2 the pro rata interest of each member of the affected business entity.

3 (b) Unless a member of an affected business entity demonstrates the
4 pro rata interests reported to the secretary to be fraudulent, the pro rata
5 interests reported to the secretary are conclusive for purposes of computing
6 a member's tax liability under this chapter and § 26-51-404(b)(31)(A).

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8 SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this act are effective
9 for tax years beginning on or after January 1, 2022.

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11 /s/Jett
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