

Arkansas Department of Finance and Administration – Withholding Pass-through Tax Section

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1. What is a pass-through entity?

A pass-through entity in Arkansas includes a corporation treated as a Subchapter S corporation, general or limited partnerships, limited liability partnerships, limited liability companies, or trusts, which are not taxed as corporations for federal or Arkansas income tax purposes.

2. Which entities are required to withhold Arkansas income tax from distributions to nonresident members?

Any pass-through entities that have Arkansas-sourced income with nonresident members are required to withhold Arkansas income tax. Arkansas Code Ann. 26-51-919 states:

“Pass-through entity” means a business entity that for the applicable year is:

A corporation treated as a Subchapter S corporation under §26-51-409, a general partnership, limited partnership, limited liability partnership, limited liability company, or a trust; and not taxed as a corporation for federal or Arkansas income tax purposes.

3. At what rate must pass-through entities withhold Arkansas income tax?

Pass-through entities must withhold Arkansas income tax at the highest income tax rate levied under Arkansas tax laws on the share of income derived from or attributable to sources within Arkansas and distributed to each nonresident member. The highest applicable corporate or individual income tax rate would apply to each member depending on their entity type.

4. Are there any exceptions to the withholding requirement for pass-through entities?

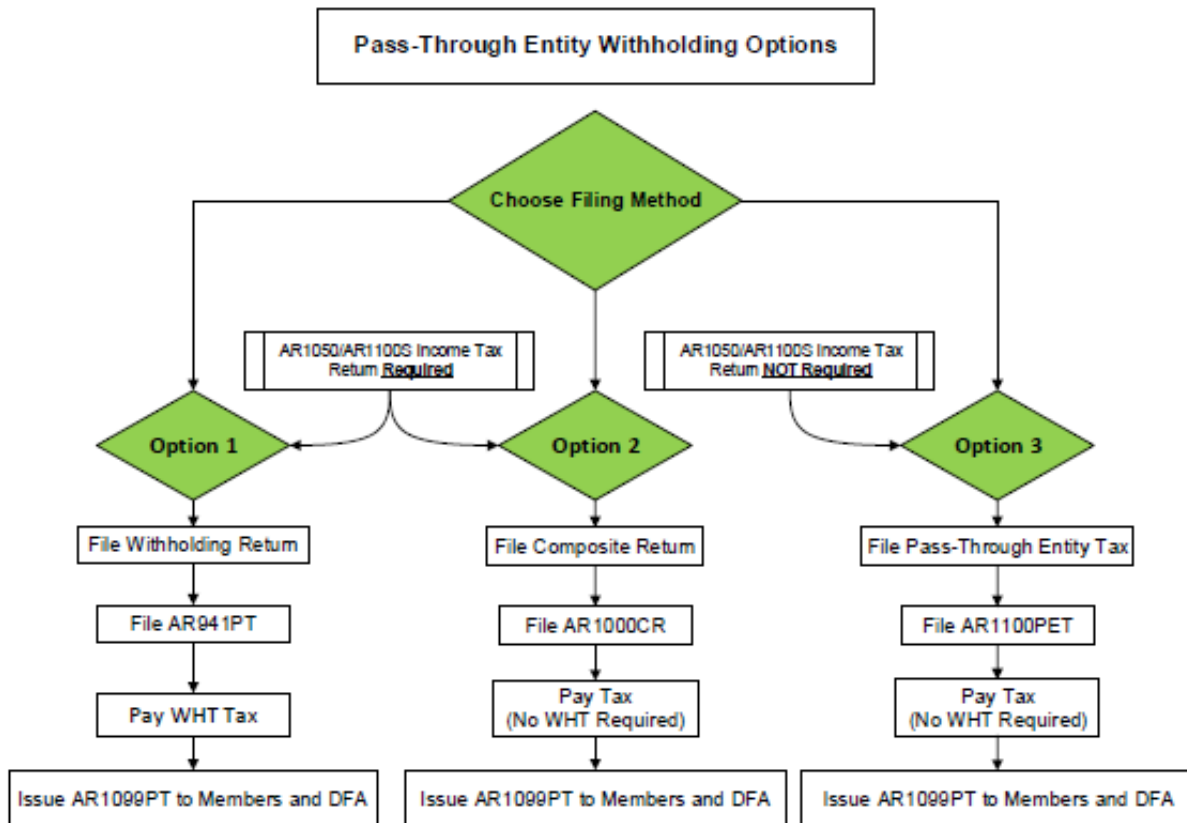
Yes, exceptions include:

- Members who elect to have the tax paid as part of a composite return filed by the pass-through entity.
- Members who elect to file an entity-level pass-through entity tax.
- Nonresident members with less than \$1,000 of income per year from Arkansas sources.
- Members whose income has been determined by the Department not to be subject to withholding.
- Publicly traded partnerships that meet specific reporting requirements.
- Distributions of income not subject to Arkansas income tax.

5. There are other options including pass-through withholding, composite, and pass-through entity tax return filing available, how do I know which one to use?

It depends on the specific situation concerning the entity structure of nonresident members with Arkansas-sourced income or whether an election was made to file an entity-level income tax return. Arkansas Code Ann. 26-51-919 requires pass-through entities to withhold on their nonresident members with Arkansas-sourced income. However, there are additional options available, such as a composite filing or pass-through entity income tax return. The flowchart below provides additional details of each option.

Note: Pass-through entities have the option to file and pay pass-through withholding and/or file a composite or pass-through entity tax return. The withholding paid can be reported as a credit on their applicable income tax return filing. Entities who elect to file a composite income tax return or the entity level pass-through entity tax are not required to withhold on non-resident members.



6. What are the reporting obligations for pass-through entities regarding withholding?

Pass-through entities must file an annual return (Form AR941PT) with the Arkansas Department of Finance and Administration on or before the fifteenth day of the fourth month following the end of the entity's tax year. This return must include schedule(s) AR1099PT, detailing the distributions made, the amount withheld, and other required information such as each member's ARPT if opting out of withholding.

7. What are the ways I can file the annual return?

Form AR941PT will no longer be mailed to businesses that registered for a withholding pass-through tax account. The following options are available:

Modernized E-File (MeF)

Arkansas allows e-filing of withholding pass-through returns beginning tax year 2024. Please reach out to your software provider to inquire if their product supports such filings.

Arkansas Taxpayer Access Point (ATAP)

ATAP is a free and convenient way to e-file your return directly to Arkansas. For more information, visit www.atap.arkansas.gov

Paper

Taxpayers who do not want to file electronically may file by paper. Fillable forms are available on our website under the Corporation Income Tax section. You may also find the forms under the Withholding Tax Branch section.

8. How should pass-through entities provide records of withheld tax to their nonresident members?

Pass-through entities must furnish a record of the amount of tax withheld on behalf of each nonresident member no later than the fifteenth day of the fourth month following the end of the tax year. A copy of schedule AR1099PT is provided to each member reporting their share of income from Arkansas sources, including withholding tax paid on their behalf. Multi-tiered pass-

through entities must provide AR1099PTs to the applicable non-resident members with Arkansas-sourced income.

9. Can additional guidance be provided on distribution and tax withholding/payment information for nonresident members reported on AR1099PT?

AR1099PT is a schedule that the pass-through entity provides its nonresident members when withholding or other payments have been made on their behalf. The recipient member will use the schedule when filing their own individual or corporate income tax return. The member will have the information necessary to identify the Arkansas-sourced income from the pass-through entity, as well as the amount withheld. In addition, taxes paid as part of a composite return filing or pass-through entity tax filing will be provided.

It is also important to note that certain amounts withheld/paid can be reported as withholding on the member's return while some amounts cannot, such as tax paid on AR1100PET.

Part C: Distribution and Tax Withholding or Payment Information for Nonresident Member

Amounts Distributed from Arkansas Sources – The nonresident member's Arkansas-sourced share of income from the pass-through entity.

Arkansas Income Tax Withheld – The nonresident member's share of withholding paid on their behalf from form AR941PT. Amounts reported in this box can be claimed as a withholding credit on the individual/corporate member's income tax return. The member must provide a copy of AR1099PT to substantiate the withholding reported.

Arkansas Income Tax Paid on AR1000CR – The nonresident member's share of income tax paid on their behalf from form AR1000CR. If the pass-through entity is filing a composite return on behalf of the nonresident members, the nonresident members would not need to file their own income tax return unless they have Arkansas income from other sources. The nonresident member can also choose to file a return to receive an additional tax benefit from the upper rate vs. the effective tax rate. Amounts reported in this box can be claimed as a withholding credit on their income tax return. A copy of AR1099PT must be provided to substantiate withholding claims.

Arkansas Income Tax Paid on AR1100PET – The nonresident member's share of income tax paid on their behalf from form AR1100PET. This is an elective tax at the pass-through entity level that differs from composite income tax filing. While amounts are reported in this box, the member cannot claim the tax paid as a withholding credit. This box is for information purposes only. The member will make an income adjustment on their own return for the amount reported to them from the pass-through entity tax filing. They will not be able to claim the tax paid as a credit.

10. Can a nonresident member claim the tax withheld as a credit?

Yes. Any nonresident member from whom Arkansas income tax is withheld can claim the withholding as a credit when filing their own Arkansas income tax return. If the withheld amount exceeds the tax due, the member is entitled to a refund.

Multi-tiered Entities: The Department will apply the tax withheld/paid by an upper-tier pass-through entity to a lower-tier pass-through entity. However, we must have an accurate record of the flow of income/withholding between affected tiers within the business structure. Schedule AR1099PT must be provided clearly showing withholding tax paid to the entity who claims the credit on their behalf. If the Department is unable to verify withholding through AR1099PTs and supplemental schedules, the withholding credit will be disallowed.

11. What happens if a nonresident member has signed an affidavit to waive withholding?

If a nonresident member signs an affidavit (Form AR4PT) agreeing to be subject to Arkansas tax jurisdiction, the pass-through entity does not need to withhold tax for the member. The member must file their own Arkansas return to report and pay any tax due. Attach all Form AR4PTs to the AR941PT filing.

12. If I have additional questions, who do I contact?

If you have any additional questions, DFA's Corporate Income Tax Section would be happy to assist:

Email – withholding.passthrough@dfa.arkansas.gov

Phone – (501) 682-4775

Mailing address – Withholding Pass-through Tax
PO Box 919, Little Rock, AR 72203-0919

Physical Address – 1816 W. 7th Street, Room 2250
Ledbetter Revenue Building, Little Rock, AR 72201

*Office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m.