ENROLLED SENATE
BILL NO. 1556

By: Crutchfield of the Senate

and

Pope, Calvey, Askins and Adkins of the House

An Act relating to revenue and taxation; amending Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), which relates to payment of income taxes; providing option for withholding under certain circumstances; providing exemption to certain requirement of pass-through entities; establishing criteria by which pass-through entity is not required to withhold income tax; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), is amended to read as follows:

Section 2385.30 A. A pass-through entity shall withhold income tax at the rate of five percent (5%) of the Oklahoma share of income of the entity distributed to each nonresident member and pay the withheld amount as follows:

1. For distributions made to nonresident members during the months of January, February and March, the withholding amounts shall be due on or before April 30;

2. For distributions made to nonresident members during the months of April, May and June, the withholding amounts shall be due on or before July 31;

3. For distributions made to nonresident members payments made during the months of July, August and September, the withholding amounts shall be due on or before October 31; and

4. For distributions made to nonresident members during the months of October, November and December, the withholding amounts shall be due on or before January 31 of the succeeding calendar year.

The pass-through entity shall file a return with each payment to the Oklahoma Tax Commission. The return, in a form prescribed by

the Tax Commission, shall show the amount of the Oklahoma distribution subject to withholding and the amount withheld.

At its option, a pass-through entity making distributions to a nonresident member more frequently than once per calendar quarter may withhold amounts as infrequently as once in that calendar quarter to cover all such distributions in that calendar quarter. An entity's decision not to withhold from certain distributions within a calendar quarter in reliance on this option will not eliminate the entity's duty to make adequate withholding in that calendar quarter.

B. A pass-through entity shall not be required to withhold income tax on distributions made to any entity exempt pursuant to subsection C of Section 2359 of ~~Title 68 of the Oklahoma Statutes~~ this title or Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

C. Every pass-through entity required pursuant to this section to deduct and withhold income tax shall furnish to its nonresident member and to the Tax Commission annually, but not later than the last day of the second month after the end of its taxable year, a written statement of the amount of distribution made and of the tax withheld on behalf of the nonresident member on forms prescribed by the Tax Commission. The written statement shall show the name of member, the applicable social security number or federal identification number, the amount of the Oklahoma distribution, the amounts withheld, and any such information as may be required by the Tax Commission.

D. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the amount required in subsection A of this section is in jeopardy, the Tax Commission may require a pass-through entity to file a return and pay the withheld amounts at any time.

E. All amounts received by the Tax Commission pursuant to the provisions of Sections ~~23~~ 2385.29 through ~~25~~ 2385.31 of this ~~act~~ title shall be deposited as provided by Section 2385.16 of ~~Title 68 of the Oklahoma Statutes~~ this title.

F. Notwithstanding the provisions of subsection A of this section, a pass-through entity is not required to withhold tax for a nonresident member if:

1. The Tax Commission has determined, by rule, that the income of the nonresident member is not subject to withholding;

2. The nonresident member files an affidavit with the Tax Commission, in the form and manner prescribed by the Tax Commission, whereby such nonresident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. The Tax Commission may revoke an exemption granted by this subsection at any time it determines that the nonresident member is not abiding by the terms of the affidavit; or

3. The entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, which is treated as a partnership for the purposes of the Internal Revenue Code, and which has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the Tax Commission of each unitholder with an income in the state in excess of Five Hundred Dollars ($500.00).

SECTION 2. This act shall become effective July 1, 2004.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 13th day of May, 2004.

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Presiding Officer of the Senate

Passed the House of Representatives the 19th day of May, 2004.

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Presiding Officer of the House
of Representatives