

House Bill 967

By: Representative Knight of the 126th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to current income tax payment, so as to change certain provisions relating to
3 withholding tax on taxable income of nonresident members of certain associations; to
4 provide for related matters; to provide for an effective date and applicability; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
9 current income tax payment, is amended by revising Code Section 48-7-129, relating to
10 withholding tax on distributions to nonresidents, as follows:

11 "48-7-129.

12 (a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which
13 owns property or does business within this state shall be subject to a withholding tax.
14 Such tax shall be withheld from ~~any distributions paid or any distributions credited but~~
15 ~~not paid to members who are not residents of Georgia~~ a nonresident member's share of
16 taxable income sourced to this state, whether distributed or not, except as provided in
17 subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term
18 'taxable income sourced to this state' means the entity's income allocated or apportioned
19 to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

20 (2) The amount of tax to be withheld for each nonresident member shall be determined
21 by multiplying the ~~distribution paid or the distribution credited but not paid~~ nonresident
22 member's share of the taxable income sourced to this state by a rate of 4 percent. To the
23 extent that the partnership, Subchapter 'S' corporation, or limited liability company remits
24 withholding tax during the course of the tax year which exceeds the Georgia income tax
25 liability of a nonresident member, that member shall be entitled to a refund of the excess
26 withholding at the end of the taxable year.

(3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails to withhold and pay over to the commissioner any amount required to be withheld under this Code section may be liable for a penalty equal to 25 percent of the amount not withheld and paid over. Any penalty imposed under this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding taxes imposed by this article.

(4) The partnership, Subchapter 'S' corporation, or limited liability company and its members shall be jointly and severally liable for the withholding tax liability imposed under this subsection and shall be assessed accordingly.

(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term 'composite return' means a return filed by a partnership, Subchapter 'S' corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.

(2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses to file a composite return and meets all the requirements of filing such composite return, such partnership, Subchapter 'S' corporation, or limited liability company shall be exempt from the withholding requirements imposed under subsection (a) of this Code section.

(3) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to remit withholding for a nonresident member and the commissioner determines that such failure is due to a false representation that the member is a resident of Georgia, there shall be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the amount which should have been withheld. The partnership, Subchapter 'S' corporation, or limited liability company and the nonresident member shall be jointly and severally liable for any such penalty imposed.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as withholding tax imposed by this article.

(d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which is required to deduct and withhold the withholding tax imposed by subsection (a) of this

Code section shall remit such tax and file the required return on a form approved by the commissioner as follows:

~~(A) Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S' corporation, or limited liability company to members who are nonresidents shall be due on or before the last day of the calendar month following the calendar month within which the distribution was paid; and~~

~~(B) Taxes deducted and withheld on distributions credited but not paid by a partnership, Subchapter 'S' corporation, or limited liability company to members who are nonresidents~~ a nonresident member's share of the taxable income sourced to this state shall be due on or before the due date for filing the income tax return for the partnership, Subchapter 'S' corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(2) Every partnership, Subchapter 'S' corporation, or limited liability company required to deduct and withhold tax under this article shall furnish a written statement or form approved by the commissioner to each nonresident member. Such statement or form shall include the name and federal tax identification number of the partnership, Subchapter 'S' corporation, or limited liability company, the member's name and federal tax identification number, the total amount of ~~distributions paid to the member~~ the nonresident member's share of the taxable income sourced to this state during the taxable year, the total amount of tax deducted and withheld with respect to such member during the year, and such other information as the commissioner shall prescribe. Such statement or form shall be furnished to the nonresident member and filed in duplicate with the commissioner on or before the earlier of the date the income tax return is filed or the due date for filing the income tax return of such partnership, Subchapter 'S' corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(3) Any partnership, Subchapter 'S' corporation, or limited liability company required to furnish a nonresident member with the written statement required by this subsection which furnishes a false or fraudulent statement or which fails to furnish the statement shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S' corporation, or limited liability company shall not be required to deduct and withhold tax for a nonresident member if:

(A) A composite return is filed on behalf of nonresident members pursuant to the requirements of filing such composite returns as set by the commissioner;

(B) The aggregate ~~annual distributions made to a member are~~ amount of a nonresident member's share of the taxable income sourced to this state is less than \$1,000.00;

(C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit corporate income tax;

(D) Compliance will cause undue hardship on the partnership, Subchapter 'S' corporation, or limited liability company, provided that no partnership, Subchapter 'S' corporation, or limited liability company shall be exempt from complying with the withholding requirements imposed under subsection (a) of this Code section unless the commissioner approves in writing a written petition for exemption from the withholding requirements based on undue hardship. The commissioner may prescribe the form and contents of such a petition and specify standards for when a partnership, Subchapter 'S' corporation, or limited liability company shall not be required to comply with the withholding requirements due to undue hardship;

(E) The partnership is a publicly traded partnership as defined in Section 7704 of the Internal Revenue Code of 1986; or

(F) The member meets one of the exceptions as set forth in the rules and regulations promulgated by the commissioner.

(2) Where ~~distributions paid or distributions credited but not paid, or both, to nonresident members of partnerships, Subchapter 'S' corporations, or limited liability companies are~~ a nonresident member's share of the taxable income sourced to this state is subject to withholding under other provisions of Georgia law ~~or represent a return of such member's investment or a return of capital~~, such ~~distributions~~ amount shall not be subject to withholding under subsection (a) of this Code section.

(f) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2012.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.