

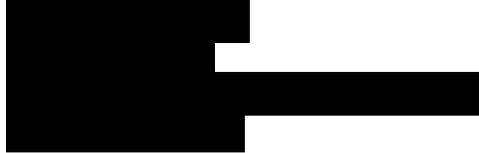


STATE OF ARKANSAS
**Department of Finance
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May 26, 2015



RE: Non-resident professor subject to income tax
Opinion No. 20150202

Dear [REDACTED],

This letter is in response to your letter requesting information regarding the wages of non-resident professors who teach class remotely. Specifically, you asked:

“Are the wages of non-resident professors who teach classes remotely via the internet from locations outside of Arkansas subject to Arkansas state income tax where the students view the lectures and engage with the professor from a classroom located on campus in Arkansas?”

The answer is yes.

Arkansas Code Annotated § 26-51-202(a) imposes an income tax on the entire net income from all property owned and from every business, trade, or occupation carried on in Arkansas by non-resident individuals, corporations, partnerships, trusts or estates. A non-resident individual engaged in a trade, business or occupation in Arkansas is required to file an Arkansas income tax return and pay the tax without distinction, or incident to the laws of the nonresident’s resident state. See Ark. Code Ann. § 26-51-202(b).

Along these lines, Ark. Code Ann. § 26-51-905(a)(1) provides that every employer making payments of wages to employees is required to deduct and withhold from their wages an amount as determined by Arkansas withholding tax tables. “Employer” means 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. See Ark. Code Ann. § 26-51-902(6). Here, the Arkansas school would be an employer of the non-resident professors.

Based on the facts you have presented regarding the representation of your Arkansas university client, the non-resident professors teach classes remotely from locations outside of Arkansas and students view the lectures and engage with the professor in a classroom located on a campus in Arkansas. Therefore, the professors are engaged in an “occupation carried on in Arkansas.”

Although not physically present in Arkansas, the professors are still teaching a course in the State and engaging with students in an organized manner in a classroom provided by the Arkansas school. Based on the foregoing, withholding taxes should be paid by the Arkansas school for employing the non-resident professors, and, consequently, the non-resident professors' wages are subject to Arkansas income tax.

You have requested a letter opinion, therefore, please be aware of GR-75, which provides that requests for letter opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the question. In order to receive a binding opinion, you must submit a request specifically describing the person claiming an exemption, and specifically detailing that person's factual circumstances. A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules, and regulations. Any change in the facts or law could result in a different opinion.

Sincerely,

LeaAnn J. Adams
Revenue Legal Counsel