

HOUSE BILL NO. 648

INTRODUCED BY D. BARRETT

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN TAX PROVISIONS RELATED TO
5 PASS-THROUGH ENTITIES AND PUBLICLY TRADED PARTNERSHIPS; EXPANDING THE DEFINITION OF
6 MONTANA SOURCE INCOME TO INCLUDE PART OF THE GAIN ON THE SALE OF AN INTEREST IN A
7 PASS-THROUGH ENTITY; REVISING THE TAX AND REPORTING REQUIREMENTS OF CERTAIN PUBLICLY
8 TRADED PARTNERSHIPS; PROVIDING THAT A PUBLICLY TRADED PARTNERSHIP IS EXEMPT FROM
9 COMPOSITE RETURN AND WITHHOLDING REQUIREMENTS FOR PUBLICLY TRADED INTERESTS IF THE
10 PARTNERSHIP FILES AN ANNUAL ELECTRONIC INFORMATION RETURN IDENTIFYING CERTAIN
11 BENEFICIAL OWNERS OF TRADED INTERESTS OF THE PARTNERSHIP; AMENDING SECTIONS 15-30-101
12 AND 15-30-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
13 APPLICABILITY DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **Section 1.** Section 15-30-101, MCA, is amended to read:18 **"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the
19 following definitions apply:

20 (1) "Base year structure" means the following elements of the income tax structure:

21 (a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of
22 the ~~taxable tax~~ year;23 (b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the
24 ~~taxable tax~~ year;25 (c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect
26 on June 30 of the ~~taxable tax~~ year.27 (2) "Consumer price index" means the consumer price index, United States city average, for all items,
28 for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics
29 of the U.S. department of labor.

30 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

- 1 (a) that is treated as an association for federal income tax purposes;
- 2 (b) for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is not
3 in effect; and
- 4 (c) that is not a disregarded entity.
- 5 (4) "Department" means the department of revenue.
- 6 (5) "Disregarded entity" means ~~a business entity~~:
- 7 (a) a business entity that is disregarded as an entity separate from its owner for federal tax purposes,
8 as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR
9 301.7701-3, or as those regulations may be labeled or amended; or
- 10 (b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided
11 in section 1361(b)(3) of the Internal Revenue Code, {26 U.S.C. 1361(b)(3)}.
- 12 (6) "Dividend" means:
- 13 (a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or
14 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and
- 15 (b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.
- 16 (7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,
17 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.
- 18 (8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana,
19 as provided in 15-31-101.
- 20 (9) "Foreign government" means any jurisdiction other than the one embraced within the United States,
21 its territories, and its possessions.
- 22 (10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in
23 section 61 of the Internal Revenue Code, {26 U.S.C. 61}, or as that section may be labeled or amended,
24 excluding unemployment compensation included in federal gross income under the provisions of section 85 of
25 the Internal Revenue Code, {26 U.S.C. 85}, as amended.
- 26 (11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index
27 for June of the tax year by the consumer price index for June 2005.
- 28 (12) "Information agents" includes all individuals and entities acting in whatever capacity, including
29 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all
30 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the

1 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,
2 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,
3 and income with respect to which any person or fiduciary is taxable under this chapter.

4 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be
5 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
6 provisions as they may be otherwise labeled or further amended.

7 (14) "Knowingly" is as defined in 45-2-101.

8 (15) "Limited liability company" means a limited liability company, domestic limited liability company, or
9 a foreign limited liability company as defined in 35-8-102.

10 (16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

11 (17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

12 (a) a resident taxpayer on a lottery ticket; or

13 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

14 (18) (a) "Montana source income" means:

15 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident
16 of the state;

17 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise
18 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation
19 carried on in the state;

20 (iii) gain attributable to the sale or other transfer of:

21 (A) intangible property received or accrued while a resident of the state; or

22 (B) a partnership interest or stock in an S. corporation multiplied by the ratio that the partnership's or S.
23 corporation's business income was apportioned to the state as provided in Article IV(9) of 15-1-601 in the tax year
24 immediately preceding the year of sale or transfer;

25 (iv) interest received or accrued while a resident of the state or from an installment sale of real property
26 or tangible commercial or business personal property located in the state;

27 (v) dividends received or accrued while a resident of the state;

28 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state
29 or while a resident of the state;

30 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the

- 1 state;
- 2 (viii) net rents from real property and tangible personal property located in the state or received or
3 accrued while a resident of the state;
- 4 (ix) net royalties from real property and from tangible real property to the extent the property is used in
5 the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state
6 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical
7 location of the property in the state during the royalty period in the tax year and the denominator of which is the
8 number of days of physical location of the property everywhere during all royalty periods in the tax year. If the
9 physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in
10 which it was located at the time the person paying the royalty obtained possession.
- 11 (x) patent royalties to the extent the person paying them employs the patent in production, fabrication,
12 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are
13 received or accrued while a resident of the state;
- 14 (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties
15 are received or accrued while a resident of the state;
- 16 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:
17 (A) derived from a trade, business, occupation, or profession carried on in the state;
18 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
19 property located in the state; or
20 (C) taken into account while a resident of the state;
- 21 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or
22 item of income, gain, loss, deduction, or credit:
23 (A) derived from a trade, business, occupation, or profession carried on in the state;
24 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
25 property located in the state; or
26 (C) taken into account while a resident of the state;
- 27 (xiv) social security benefits received or accrued while a resident of the state;
- 28 (xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits
29 received while a resident of the state; and
30 (xvi) any other income attributable to the state, including but not limited to lottery winnings, state and

1 federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

2 (b) The term does not include:

3 (i) compensation for military service of members of the armed services of the United States who are not
4 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does
5 not include income derived from their personal property located in the state except with respect to personal
6 property used in or arising from a trade or business carried on in Montana; or

7 (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their
8 domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located
9 in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there
10 is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

11 (19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this
12 chapter.

13 (20) "Nonresident" means a natural person who is not a resident.

14 (21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued
15 or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the
16 method of accounting upon the basis of which the taxable income is computed under this chapter.

17 (22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated
18 as a partner for federal income tax purposes.

19 (23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability
20 company, or other entity, if treated as a partnership for federal income tax purposes.

21 (24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

22 (25) "Pension and annuity income" means:

23 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term
24 is used in section 401 of the Internal Revenue Code, {26 U.S.C. 401}, or systematic payments received as the
25 result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon
26 the cessation of employment;

27 (b) payments received as the result of past service and cessation of employment in the uniformed
28 services of the United States;

29 (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are
30 included in federal adjusted gross income;

1 (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans
 2 recognized under sections 401 through 408 of the Internal Revenue Code, {26 U.S.C. 401 through 408}, to the
 3 extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

4 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular
 5 employment.

6 (26) "Purposely" is as defined in 45-2-101.

7 (27) "Received", for the purpose of computation of taxable income under this chapter, means received
 8 or accrued, and the term "received or accrued" must be construed according to the method of accounting upon
 9 the basis of which the taxable income is computed under this chapter.

10 (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to
 11 the tax imposed by this chapter with reference to the income of any taxable tax year, any person domiciled in the
 12 state of Montana and any other person who maintains a permanent place of abode within the state even though
 13 temporarily absent from the state and who has not established a residence elsewhere.

14 (29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the
 15 Internal Revenue Code, {26 U.S.C. 1362}, is in effect.

16 (30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
 17 proportion to their previous holdings.

18 (31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

19 (32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and
 20 exemptions provided for in this chapter.

21 (33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other
 22 obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

23

24 **Section 2.** Section 15-30-1113, MCA, is amended to read:

25 **"15-30-1113. Consent or withholding.** (1) A Subject to subsection (7), a pass-through entity that is
 26 required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, member, or
 27 other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any
 28 partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or
 29 pass-through entity shall, on or before the due date, including extensions, for the information return:

30 (a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

- 1 (i) file a composite return;
- 2 (ii) file an agreement of the individual nonresident to:
- 3 (A) file a return in accordance with the provisions of 15-30-142;
- 4 (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
- 5 (C) be subject to the personal jurisdiction of the state for the collection of income taxes and related
- 6 interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
- 7 (iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the
- 8 nonresident individual's share of Montana source income reflected on the pass-through entity's information return;
- 9 (b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:
- 10 (i) file a composite return;
- 11 (ii) file the foreign C. corporation's agreement to:
- 12 (A) file a return in accordance with the provisions of 15-31-111;
- 13 (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
- 14 (C) be subject to the personal jurisdiction of the state for the collection of corporation license and income
- 15 taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
- 16 (iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C.
- 17 corporation's share of Montana source income reflected on the pass-through entity's information return; and
- 18 (c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also
- 19 referred to in this section as a "second-tier pass-through entity":
- 20 (i) file a composite return;
- 21 (ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth
- 22 the name, address, and social security or federal identification number of each of that entity's partners,
- 23 shareholders, members, or other owners and information that establishes that its share of Montana source
- 24 income will be fully accounted in individual income or corporation license or income tax returns filed with the state;
- 25 or
- 26 (iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its
- 27 share of Montana source income reflected on the pass-through entity's information return.
- 28 (2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to
- 29 subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income
- 30 tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date,

1 including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through
2 entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

3 (3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to
4 subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the
5 corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the
6 corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before
7 the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the
8 pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

9 (4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant
10 to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C.
11 corporation to which Montana source income is directly or indirectly passed through and must be claimed as the
12 distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner
13 on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through
14 entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier
15 pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

16 (5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii),
17 (1)(b)(iii), or (1)(c)(iii) from the partner, shareholder, member, or other owner on whose behalf the payment was
18 made.

19 (6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C.
20 corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must,
21 with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included
22 in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the
23 nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

24 (7) (a) A publicly traded partnership is not required to file a composite return or to remit any amount on
25 behalf of any beneficial owner of a publicly traded ownership interest even if the owner has not filed an agreement
26 with the publicly traded partnership to file a Montana tax return, to timely pay all taxes imposed with respect to
27 income of the pass-through entity, and to be subject to the personal jurisdiction of the state for the collection of
28 taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity for
29 any tax year for which the publicly traded partnership files:

30 (i) an electronic report in a form prescribed by the department that identifies the name, address, taxpayer

1 identification number, Montana source income, and income from all sources of each beneficial owner of a publicly
2 traded ownership interest that has more than \$500 of Montana source income; and

3 (ii) an electronic copy of the U.S. department of the treasury schedule K-1, form 1065 or 1065-B, as
4 applicable, for each beneficial owner of any ownership interest for which a final schedule K-1 was filed
5 electronically for the year with the internal revenue service.

6 (b) As used in this subsection (7), "publicly traded partnership" means a publicly traded partnership, as
7 defined in 26 U.S.C. 7704, that is not treated as a corporation.

8 ~~(7)(8) Nothing in this~~ This section may not be construed as modifying the provisions of Article IV(18) of
9 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly
10 represent the extent of the taxpayer's business activity in the state."

11

12 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

13

14 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
15 meaning of 1-2-109, to tax years beginning after December 31, 2008.

16

- END -