



AN ACT CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2504, MCA, is amended to read:

**"15-30-2504. Schedules for remitting income withholding taxes -- records.** (1) Each Subject to the due date provision in 15-30-2604(1)(b), an employer shall remit the taxes withheld from employee wages as follows:

(a) An employer whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on an "annual schedule" for which the remittance due date is on or before February 28 of the year following payment of wages.

(d) An employer who has no withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(4) A new employer or an employer with no filing history is subject to the monthly remittance schedule in subsection (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(5) An employer may elect to remit payments on a more frequent basis than is required by subsection (1).

(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(8) Each employer shall keep accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."

**Section 2.** Section 15-30-2512, MCA, is amended to read:

**"15-30-2512. Estimated tax -- payment -- exceptions -- interest.** (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

- (i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or
- (ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

- (i) the combined tax liability of employer withholding and estimated tax for the current year is less than

\$500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) ~~For~~ Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) ~~For~~ Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the

taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For ~~each~~ a married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

**Section 3.** Section 15-30-2604, MCA, is amended to read:

**"15-30-2604. Time for filing -- extensions of time.** (1) (a) A ~~Except as provided in subsection (1)(b),~~ a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic

or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

~~(2) Each~~ The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. ~~There~~ An affidavit or affirmation must be attached to the return ~~the affidavit or affirmation of~~ from the persons making the return ~~to the effect~~ verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve ~~any~~ the taxpayer of the obligation to make ~~any~~ a return required under this chapter. ~~Each~~ A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

~~(2)(3)~~ (a) Subject to subsections ~~(2)(b)~~ (3)(b) and ~~(2)(e)~~ (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(c) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection ~~(2)(b)~~ (3)(b) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

~~(3)(4)~~ The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

~~(4)(5)~~ The extension of time for filing a return is not an extension of time for the payment of taxes."

**Section 4.** Section 15-30-3302, MCA, is amended to read:

**"15-30-3302. Income or license tax involving pass-through entities -- information returns required.**

(1) Except as otherwise provided:

- (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;
- (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and
- (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided

in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) ~~A~~ Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

- (i) the name, address, and social security or federal identification number of each partner;
- (ii) the partnership's Montana source income;
- (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
- (v) any other information the department prescribes.

(b) ~~An~~ Subject to the due date provision in 15-30-2604(1)(b), an S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The

return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

**Section 5.** Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes an association,



joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, ~~every~~ a corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding ~~taxable tax~~ year at the rate set forth in this chapter. ~~In the case of corporations having~~ If a corporation has income from business activity ~~which that~~ is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502 and subject to the due date provision in 15-31-111(2)(b), ~~this the~~ tax is due and payable on the 15th day of the 5th month following the close of the ~~taxable tax~~ year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the ~~taxable tax~~ year in which the income was earned and is for the privilege of carrying on business in this state for the ~~taxable tax~~ year in which the income was earned.

(4) ~~Every~~ A bank organized under the laws of the state of Montana, of any other state, or of the United States and ~~every~~ a savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For ~~taxable tax~~ years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

**Section 6.** Section 15-31-111, MCA, is amended to read:

**"15-31-111. Return to be filed -- penalty and interest.** (1) Each A corporation subject to the license tax imposed under this chapter shall for each tax period file an accurate return of its net income for the tax period in the manner and form prescribed by the department. The return must contain all of the information that is appropriate and in the opinion of the department necessary to determine the correctness of the net income

disclosed by the return and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) (a) If Except as provided in subsection (2)(b), if the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders."

**Section 7.** Section 15-31-141, MCA, is amended to read:

**"15-31-141. Consolidated returns -- computation and procedure -- penalty and interest.** (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes

a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its tax period in which its income is not included in the consolidated return of the group. The Subject to the due date provision in 15-31-111(2)(b), the separate return must be filed no later than the 15th day of the 5th month following the close of the tax period for which a consolidated return of the affiliated group is filed.

(b) (i) A corporation is allowed an automatic extension of time for filing its tax return of up to 6 months

following the date prescribed for filing its return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists."

**Section 8.** Section 15-31-502, MCA, is amended to read:

**"15-31-502. Assessment and payment of tax -- estimated tax payment -- amount of required installments.** (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable tax period.

(2) (a) ~~Each~~ A corporation shall make estimated tax payments if its annual estimated tax is \$5,000 or more. ~~The~~ Subject to the due date provision in 15-31-111(2)(b), the estimated payments must be made in installments, as follows, if the \$5,000 threshold is met or exceeded:

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:

- 1st ..... April 15
- 2nd ..... June 15
- 3rd ..... September 15
- 4th ..... December 15

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

- 1st ..... 15th day of the 4th month
- 2nd ..... 15th day of the 6th month
- 3rd ..... 15th day of the 9th month
- 4th ..... 15th day of the 12th month

(b) Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:

(i) 80% of the tax shown on the return for the taxable tax year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding ~~taxable~~ tax year if the preceding ~~taxable~~ tax year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to ~~taxable~~ tax years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment."

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010.

- END -

I hereby certify that the within bill,  
SB 0413, originated in the Senate.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 413

INTRODUCED BY J. BALLYEAT, TUTVEDT

AN ACT CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.