



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill #	HB0578	Title:	Eliminate countries listed in waters-edge law
Primary Sponsor:	Miller, Mike	Status:	As Introduced

- | | | |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	(\$4,392,924)	(\$8,816,784)	(\$8,878,841)	(\$8,941,271)
Net Impact-General Fund Balance:	<u>(\$4,392,924)</u>	<u>(\$8,816,784)</u>	<u>(\$8,878,841)</u>	<u>(\$8,941,271)</u>

Description of fiscal impact: HB 578 eliminates the requirement of corporations that make water's-edge elections to include in their corporation license tax returns the activity from units, subsidiaries, or affiliates that are incorporated in tax havens when apportioning the Montana share of their federal taxable income. The bill further eliminates the list of tax havens, and the report by the Department of Revenue to the interim Revenue and Transportation Committee concerning the list of tax haven countries. HB 578 reduces estimated general fund revenue by approximately \$4,400,000 in FY 2014, \$8,800,000 in FY 2015, \$8,900,000 in FY 2016, and \$8,950,000 in FY 2017.

FISCAL ANALYSIS

Assumptions:

Department of Revenue (DOR)

1. Montana is a unitary combined reporting state for corporate license taxpayers. Generally under current law, corporate license taxpayers and the members of their unitary corporate group who conduct business in Montana and other states or other countries must apportion a share of their federal taxable income to Montana based upon their apportionment factor. The apportionment factor is calculated using a weighted average of apportionment factors – the corporation's payroll, sales, and property – for Montana versus the

- corporation's total payroll, sales, and property. The apportionment factor is applied to the corporation's federal taxable income to derive Montana taxable income. The tax rate of 6.75% is then applied to Montana taxable income to calculate Montana tax liability before credits.
2. However, under current law corporate license taxpayers can elect to file as water's-edge corporations and pay a tax rate of 7%. Depending upon the facts, these taxpayers may be able to exclude certain units of their corporate group from reporting. One limitation to the water's-edge election is that a water's-edge corporation must include in its reporting all units, affiliates, or subsidiaries that are incorporated in a tax haven as designated by state statute. The intent is to minimize the effectiveness of financial or accounting strategies to reduce U.S. or state taxable income by shifting income, revenue, or costs to (or from) tax havens, or by manipulating the factors that go into the apportionment calculation.
 3. The current list of tax havens includes Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.
 4. HB 578 eliminates the requirement that water's-edge filers include units, subsidiaries, or affiliates that are incorporated in tax havens. It eliminates the list of tax havens and the report by the department of to the interim revenue and transportation committee concerning the list of tax haven countries.
 5. A review of recent tax returns available through the department's integrated tax system indicates that the revenue loss to the general fund if provisions of this bill had been in effect would have been at least \$6.209 million for TY 2011. These returns are believed to represent most, but not all filers due to the staggered nature of the corporate tax year (which covers a twelve month period starting anytime in 2011), filing extensions allowed under Montana law, and processing time for these larger filers.
 6. In FY 2011, corporate income taxes, not including audit and interest payments, were \$92.927 million. In FY 2014 corporate income taxes, not including audit and interest payments, are forecast to be \$131.494 million per SJ 2. This represents a growth rate of 41.5 percent from FY 2011 to FY 2014. Assuming that the revenue reduction due to elimination of the tax haven limit on water's-edge filers grows at the same rate, estimated revenue loss in FY 2014 is \$8.789 million.
 7. In FY 2015, corporate tax revenue, not including audit and interest payments, is projected to be \$132.420 million, a growth rate of 0.7% over FY 2014. Assuming the same growth rate applies to revenue loss due to elimination of the tax haven limit, estimated revenue loss in FY 2015 is \$8.848 million.
 8. There is no official forecast of corporate tax revenue for FY 2016 and FY 2017. But assuming the same growth rate in total corporate license tax revenue for FY 2016 and FY 2017 and for audit, penalty and interest, yields net total corporate tax revenue, excluding audit, penalty, and interest collections in FY 2016 of \$133.352 million and in FY 2017 of \$134.289 million.
 9. The growth rate derived from the above calculations is 0.7% in FY 2016 and 0.7% in FY 2017. Assuming the same growth rate applies to general fund revenue reduction due to elimination of the tax haven limit, the estimated reduction in FY 2016 is \$8.910 million and in FY 2017 is \$8.973 million.
 10. The number of corporate tax filers electing to file water's-edge has been growing. In TY 2007 there were 161 water's-edge filers, in TY 2008 there were 186, in TY 2009 there were 221, and in TY 2010 there were 230 water's-edge filers. It is unknown if this growth will continue, and what impact this might have on general fund revenue reductions.
 11. Provisions of HB 578 are effective beginning January 1, 2014. HB 578 applies to tax years beginning after December 13, 2013. The reduction in revenue due to HB 578 is assumed to lag the changes in law; therefore, estimated revenue reduction in FY 2014 is half the estimate or \$4,392,924, with the balance of the revenue reduction occurring in FY 2015. The total revenue reduction in FY 2015 is \$8,816,784, or half the reduction in FY 2014 and half in FY 2015 (\$4,392,924 plus \$4,423,860). The total revenue reduction is estimated to be \$8,878,841 in FY 2016 and \$8,941,271 in FY 2017.

12. There are no additional costs estimated for the DOR. Necessary changes to tax return forms and instructions will be made in the course of regular operations of the department.

	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
Department of Revenue				
<u>Expenditures:</u>				
Operating Expenses	\$0	\$0	\$0	\$0
TOTAL Expenditures	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Revenues:</u>				
General Fund (01)	(\$4,392,924)	(\$8,816,784)	(\$8,878,841)	(\$8,941,271)
TOTAL Revenues	<u>(\$4,392,924)</u>	<u>(\$8,816,784)</u>	<u>(\$8,878,841)</u>	<u>(\$8,941,271)</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$4,392,924)	(\$8,816,784)	(\$8,878,841)	(\$8,941,271)

Long-Term Impacts:

1. Over the long term, the revenue impact could be substantially larger than indicated above because of how concentrated corporate taxable income is in relatively few firms.

Sponsor's Initials

Date

Budget Director's Initials

Date