Fiscal Note 2015 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	SB0309	**Title:**	Revise tax haven country laws
Primary Sponsor:	Barrett, Dick	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☐ Needs to be included in HB 2
- ☐ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2014 Difference	FY 2015 Difference	FY 2016 Difference	FY 2017 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$1,400,000	$2,800,000	$2,800,000	$2,800,000
Net Impact-General Fund Balance:	$1,400,000	$2,800,000	$2,800,000	$2,800,000

Description of fiscal impact: This bill revises the apportionment of income for members of a group of related corporations that have elected to have income apportioned to Montana based upon the group's United States income, rather than worldwide income. These changes are expected to increase general fund revenue by $1.4 million in FY 2014 and by $2.8 million per fiscal year thereafter.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. Montana taxes the net income of C corporations doing business in the state (Title 15, chapter 31). Under current law, for multi-state or multi-national corporations to calculate the share of total income that is taxable by Montana, these corporations calculate the share of payroll, property, and sales that are in Montana versus all the payroll, property, and sales of the corporation or corporate group. These three factors are equally weighted and the average percentage is applied to total corporate net income in order to derive Montana taxable income.
2. Montana requires corporations with common ownership (one owns another or both are owned by a common corporate parent and are in a common line of business) to file a combined report. The income of the members of the group, called a "unitary group" is apportioned to Montana based on the combined income and apportionment factors of the group. This makes the income apportioned to Montana independent of

financial arrangements between group members, such as valuation of the transfers or sales between members of the group.

3. The normal corporate license tax rate is 6.75%. This rate is applied to the share of a corporation's worldwide income apportioned to Montana.
4. However, a corporation can elect to file as a water's edge corporation and have primarily its domestic income, property, payroll, and sales included in the apportionment process. When a corporation makes a water's edge election, some of its foreign affiliates may be excluded from the apportionment process. If the corporation makes a water's edge election, it pays a rate of 7% rather than 6.75%, on Montana taxable income.
5. SB 309 changes the test for whether an affiliate is included or excluded in the apportionment process when an entity has made a water's edge election. Under current law, domestically incorporated affiliates (incorporated in the United States) are excluded from the combined reporting requirement if less than 20% of their average payroll and property is in the United States. This bill revises the criteria of incorporated in the United States to also include all the states, the District of Columbia, or a possession or territory of the United States, and it eliminates the 20% threshold for inclusion in the calculations. The effect is to include affiliates in the calculation if they are incorporated in the United States or its possessions.
6. SB 309 changes the references in Title 15, chapter 31, from "tax havens" to "nonexempt countries". If a member of a water's edge affiliated group is incorporated in a nonexempt country, it must be included in the combined report. The bill removes one country from the list of nonexempt countries and adds five countries.
7. The department recalculated taxes for the largest companies with water's edge election for the most recent year available as if this bill had been in effect. Tax liability with the provisions of the bill was an estimated $2.8 million higher than without the changes.
8. Corporations generally make the water's edge election because it reduces their tax liability. Some corporations may find that their water's edge tax liability under this bill is more than their regular tax liability. Under current law, corporations making water's edge election can do so for three years. This bill allows a corporation to rescind an existing election beginning with the first tax period that would be affected by this bill. Therefore, some corporations may choose to rescind their water's edge election and will pay less than estimated.
9. SB 309 is effective upon passage and approval and applies to tax years beginning after December 31, 2012. Therefore, these provisions would apply to tax years starting at the beginning of 2013 and these taxpayers will be filing returns in late FY 2014 and in FY 2015. Due to the timing of estimated payments and filing of returns, estimated collections are assumed to be $1,400,000 in the first fiscal year after implementation and $2,800,000 per year thereafter.
10. The department's cost of administering the corporate license tax is not estimated to change due to provisions of this bill.

Fiscal Impact: **Department of Revenue**	**FY 2014 Difference**	**FY 2015 Difference**	**FY 2016 Difference**	**FY 2017 Difference**
Expenditures:				
Operating Expenses	$0	$0	$0	$0
TOTAL Expenditures	$0	$0	$0	$0
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
TOTAL Funding of Exp.	$0	$0	$0	$0
Revenues:				
General Fund (01)	$1,400,000	$2,800,000	$2,800,000	$2,800,000
TOTAL Revenues	$1,400,000	$2,800,000	$2,800,000	$2,800,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$1,400,000	$2,800,000	$2,800,000	$2,800,000

Sponsor's Initials *Date* *Budget Director's Initials* *Date*