

## SENATE BILL NO. 309

INTRODUCED BY DICK BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE WATER'S-EDGE ELECTION  
5 FOR CORPORATION TAXATION PURPOSES; PROVIDING FOR THE INCLUSION OF ALL DOMESTICALLY  
6 INCORPORATED SUBSIDIARIES IN THE WATER'S-EDGE COMBINED GROUP; ADDING HONG KONG,  
7 IRELAND, THE KINGDOM OF THE NETHERLANDS, SINGAPORE, AND SWITZERLAND TO THE  
8 JURISDICTIONS CONSIDERED AS NONEXEMPT COUNTRIES; ALLOWING IMPACTED TAXPAYERS TO  
9 RESCIND A WATER'S-EDGE ELECTION; AMENDING SECTIONS 15-31-322, 15-31-323, 15-31-324, AND  
10 15-31-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
11 DATE."

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

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15 **Section 1.** Section 15-31-322, MCA, is amended to read:16 **"15-31-322. Water's-edge election -- inclusion of ~~tax havens~~ nonexempt countries.** (1)

17 Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may  
18 apportion its income under this section. A return under a water's-edge election must include the income and  
19 apportionment factors of the following affiliated corporations only:

20 (a) a corporation incorporated in the United States or formed under the laws of any state, the District of  
21 Columbia, or any territory or possession of the United States in a unitary relationship with the taxpayer and  
22 eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 ~~that has more~~  
23 ~~than 20% of its payroll and property assignable to locations inside the United States~~. For purposes of determining  
24 eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership  
25 requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or  
26 indirectly owned or controlled by an includable corporation.

27 (b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign  
28 sales corporations, as described in 26 U.S.C. 921 through 927;

29 (c) export trade corporations, as described in 26 U.S.C. 970 and 971;

30 (d) foreign corporations deriving gain or loss from disposition of a United States real property interest

1 to the extent recognized under 26 U.S.C. 897;

2 (e) a corporation in a unitary relationship with a taxpayer incorporated outside the United States if over  
3 50% of its voting stock is owned directly or indirectly by the taxpayer or common foreign parent and if more than  
4 20% of the average of its payroll and property is assignable to a location inside the United States; or

5 (f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a ~~tax haven~~  
6 nonexempt country, including Andorra, Anguilla, Antigua and Barbuda, ~~Aruba~~, the Bahamas, Bahrain, Barbados,  
7 Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada,  
8 Guernsey-Sark-Alderney, Hong Kong, Ireland, Isle of Man, Jersey, the Kingdom of the Netherlands, Liberia,  
9 Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles,  
10 Niue, Panama, Samoa, San Marino, Seychelles, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the  
11 Grenadines, Switzerland, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

12 (2) The department shall report biennially to the revenue and transportation interim committee with an  
13 update of countries that may be considered a ~~tax haven~~ nonexempt countries under subsection (1)(f)."  
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15 **Section 2.** Section 15-31-323, MCA, is amended to read:

16 "**15-31-323. Apportionment factors -- inclusion of ~~tax havens~~ nonexempt countries.** (1) For  
17 purposes of 15-31-322(1)(a) through (1)(e), the location of payroll and property is determined under the individual  
18 state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes  
19 on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment  
20 is determined under this chapter.

21 (2) For the purposes of 15-31-322(1)(f), income shifted to a ~~tax haven~~ nonexempt country, to the extent  
22 taxable, is considered income subject to apportionment."  
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24 **Section 3.** Section 15-31-324, MCA, is amended to read:

25 "**15-31-324. Water's-edge election period -- consent -- change of election.** (1) A water's-edge  
26 election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes  
27 imposed under this chapter consents to the election. Consent by the common parent of an affiliated group  
28 constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under  
29 this chapter after the water's-edge election is considered to have consented to the election. The election must  
30 disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation

1 incorporated in a ~~tax haven as set forth~~ nonexempt country listed in 15-31-322(1)(f), in which the taxpayer or  
 2 common foreign parent owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.

3 (2) Except as provided in subsections (3) and (4), each water's-edge election must be for 3-year  
 4 renewable periods.

5 (3) A water's-edge election may be changed by a taxpayer before the end of each 3-year period only  
 6 with the permission of the department. In granting a change of election, the department shall impose reasonable  
 7 conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior  
 8 to the change.

9 (4) A taxpayer subject to the provisions of 15-31-322(1)(a) or (1)(f) who has a water's-edge election that  
 10 is in effect for tax periods beginning both before and after ~~October 1, 2003~~ December 31, 2012, may rescind ~~the~~  
 11 that specific election for any tax period beginning after ~~October 1, 2003~~ December 31, 2012."

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13 **Section 4.** Section 15-31-326, MCA, is amended to read:

14 **"15-31-326. Domestic disclosure spreadsheet -- inclusion of ~~tax havens~~ nonexempt countries.**

15 (1) The department may require a taxpayer making a water's-edge election to submit within 6 months after the  
 16 taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the  
 17 income reported to each state for the year, the tax liability for each state, the method used for allocating or  
 18 apportioning income to the states, and the identity of the water's-edge corporate group and those of its United  
 19 States affiliated corporations.

20 (2) The department may require a taxpayer subject to the provisions of 15-31-322(1)(f) to disclose the  
 21 same information for ~~tax havens~~ nonexempt countries as is required for states in subsection (1)."

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23 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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25 NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the  
 26 meaning of 1-2-109, to tax years beginning after December 31, 2012.

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