

HOUSE BILL NO. 47

INTRODUCED BY Z. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS FOR PARTNERSHIPS WITH AUDIT ADJUSTMENTS MADE BY THE INTERNAL REVENUE SERVICE; PROVIDING REPORTING REQUIREMENTS AND PAYMENT DEADLINES; AMENDING SECTIONS 15-30-2606 AND 15-31-509, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Election for alternative adjustment" refers to the election described in section 6226 of the Internal Revenue Code, 26 U.S.C. 6226.

(2) "Final determination" means a determination that the appeal rights of the internal revenue service and of the partnership and its partners have expired or have been exhausted relative to the tax year.

(3) "Imputed underpayment" has the meaning provided in section 6225 of the Internal Revenue Code, 26 U.S.C. 6225.

(4) "Montana share of the adjustments" means the adjustments determined in [section 2], subject to the allocation and apportionment provisions of 15-1-601 and Title 15, chapter 31, part 3.

(5) "Reviewed year" has the meaning provided in section 6225(d)(1) of the Internal Revenue Code, 26 U.S.C. 6225(d)(1).

NEW SECTION. **Section 2. Partnership returns with federal adjustments.** If a partnership return is adjusted by the internal revenue service and assessed an imputed underpayment or if the partnership makes an election for alternative adjustment, the partnership shall file a return with the department for the reviewed year that shows the federal adjustments and any of the correlative adjustments required under 15-30-2110.

NEW SECTION. **Section 3. Partnership returns with federal adjustments -- filing requirements.**



1 (1) If the adjustment described in [section 2] results in a net increase in Montana taxable income and if subsection  
2 (2) of this section does not apply:

3 (a) the tax must be imposed on the Montana share of the adjustments at the highest tax rate contained  
4 in 15-30-2103;

5 (b) the partnership must pay tax on the adjustments within 90 days after the final determination; and

6 (c) penalties and interest must be computed as provided in 15-1-216 from the original due date of the  
7 partnership return.

8 (2) If the adjustment described in [section 2] results in a net reduction in Montana taxable income or a  
9 net increase in Montana taxable income of a partnership that makes the election for alternative adjustment, the  
10 partnership must furnish, within 90 days after the final determination, to each partner and to the department on  
11 a form prescribed by the department a statement of the partner's share of the adjustments as required in [section  
12 2].

13 (3) The amount reported to each partner is an adjustment to the partner's share of partnership taxable  
14 income. The adjustment is considered a change or correction requiring each partner to file an amended Montana  
15 return within 150 days after the final determination.

16 (4) A partnership that fails to provide statements to its partners within the time period provided for in  
17 subsection (2) must pay the tax provided in subsection (1).

18 (5) The partnership must pay the tax as provided in subsection (1) on the share of adjustments for any  
19 partner that fails to amend a Montana income tax return within the time period provided for in subsection (3).

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21 **NEW SECTION. Section 4. Department to issue deficiency assessment.** If a partnership fails to file  
22 a return required under [section 2], if the department determines the partnership's return is in any essential  
23 respect incorrect, or if the partnership does not pay the tax required under [section 3] in full, the department may  
24 issue a deficiency assessment in accordance with 15-30-2605.

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26 **NEW SECTION. Section 5. Erroneous reporting of adjustments.** (1) If a partnership's erroneous  
27 report of adjustments filed pursuant to [section 2] results in an understatement of the distribution of Montana  
28 taxable income to the partners under [section 3(2)], the partnership shall pay the tax on the understatement by  
29 applying the calculation in [section 3(1)] to the unreported adjustments.

30 (2) If a partnership's erroneous report of adjustments filed pursuant to [section 2] results in an

1 overstatement of Montana taxable income, the adjustment must be handled as follows:

2 (a) If the original adjustments were passed through to the partners pursuant to [section 3(2)], the revised  
3 adjustment must be passed through to the partners. The partnership shall amend the return as described in  
4 [section 2] and amend the statements provided to the partners under [section 3(2)].

5 (b) If the tax on the adjustments was originally paid by the partnership pursuant to [section 3(1)], the  
6 partnership shall amend the return filed pursuant to [section 3(1)] to claim any refund. This subsection (2)(b) does  
7 not allow a partnership to claim a refund for amounts not actually paid by the partnership.

8

9 **Section 6.** Section 15-30-2606, MCA, is amended to read:

10 **"15-30-2606. Tolling of statute of limitations.** The running of the statute of limitations provided for  
11 under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of  
12 federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has  
13 instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1  
14 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619 or [section 3],  
15 the statute of limitations does not apply until 3 years from the date the federal changes become final or the  
16 amended federal return was filed. If the taxpayer omits from gross income an amount properly includable as gross  
17 income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the  
18 statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605."

19

20 **Section 7.** Section 15-31-509, MCA, is amended to read:

21 **"15-31-509. Periods of limitation.** (1) Except as otherwise provided in 15-31-544 and this section, a  
22 deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice  
23 of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the  
24 purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last  
25 day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in  
26 writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period  
27 agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not  
28 apply when:

29 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of  
30 federal tax if the suspension of the limitation set forth in this section lasts:

1 (i) only as long as the suspension of the federal statute of limitation; or  
2 (ii) until 1 year after the federal changes have become final or an amended federal return is filed as a  
3 result of the suspension of the federal statute, whichever is the latest in time; or

4 (b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506 or [section 3], until  
5 3 years after the federal changes become final or the amended federal return was filed, whichever the case may  
6 be.

7 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after  
8 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,  
9 whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the  
10 refund or credit or the department has determined the existence of the overpayment and has approved the refund  
11 or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within  
12 which the department may propose an additional assessment, the period within which a claim for refund or credit  
13 may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

14 (3) If a claim for refund or credit is based ~~upon~~ on an overpayment attributable to a net loss carryback  
15 adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must  
16 be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of  
17 the net loss that results in the carryback.

18 (4) If the year of the net operating loss is open under either state or federal waivers, the year to which  
19 the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the  
20 expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

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22 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified  
23 as an integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to  
24 [sections 1 through 5].

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26 **NEW SECTION. Section 9. Applicability.** [This act] applies to income tax years beginning after  
27 December 31, 2017.

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