

SENATE BILL NO. 253

INTRODUCED BY M. BLASDEL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PASS-THROUGH ENTITY WITHHOLDING AND
5 REPORTING FOR INCOME TAX PURPOSES; ELIMINATING CERTAIN FILING AND REPORTING
6 REQUIREMENTS FOR CERTAIN PASS-THROUGH ENTITIES BASED ON WHETHER A STATE INCOME TAX
7 RETURN WAS FILED BY THE PASS-THROUGH ENTITY OWNERS; REQUIRING FILING OF A COMPOSITE
8 RETURN, AN AGREEMENT TO SECURE TAX PAYMENTS, OR WITHHOLDING FOR A FOREIGN
9 PASS-THROUGH OWNER; AMENDING SECTIONS 15-30-2101 AND 15-30-3313, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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14 **Section 1.** Section 15-30-2101, MCA, is amended to read:

15 **"15-30-2101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the
16 following definitions apply:

- 17 (1) "Base year structure" means the following elements of the income tax structure:
 - 18 (a) the tax brackets established in 15-30-2103, but unadjusted by 15-30-2103(2), in effect on June 30
 - 19 of the taxable year;
 - 20 (b) the exemptions contained in 15-30-2114, but unadjusted by 15-30-2114(6), in effect on June 30 of
 - 21 the taxable year;
 - 22 (c) the maximum standard deduction provided in 15-30-2132, but unadjusted by 15-30-2132(2), in effect
 - 23 on June 30 of the taxable year.

24 (2) "Consumer price index" means the consumer price index, United States city average, for all items,
25 for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics
26 of the U.S. department of labor.

- 27 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:
 - 28 (a) that is treated as an association for federal income tax purposes;
 - 29 (b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not
 - 30 in effect; and

1 (c) that is not a disregarded entity.

2 (4) "Department" means the department of revenue.

3 (5) "Disregarded entity" means a business entity:

4 (a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in
5 United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as
6 those regulations may be labeled or amended; or

7 (b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided
8 in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

9 (6) "Dividend" means:

10 (a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or
11 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

12 (b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

13 (7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,
14 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

15 (8) "Foreign C. corporation" means a C. corporation that ~~is not engaged in or doing business in Montana,~~
16 ~~as provided in 15-31-104~~ does not file a Montana corporate income tax return.

17 (9) "Foreign government" means any jurisdiction other than the one embraced within the United States,
18 its territories, and its possessions.

19 (10) "Foreign pass-through owner" means a pass-through entity that does not file a Montana
20 pass-through entity information return pursuant to 15-30-3302 that is a partner, shareholder, member, or other
21 owner of a pass-through entity doing business in Montana or reporting Montana source income pursuant to Title
22 15, chapter 30, part 33.

23 ~~(11)~~ (11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined
24 in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended,
25 excluding unemployment compensation included in federal gross income under the provisions of section 85 of
26 the Internal Revenue Code (26 U.S.C. 85) as amended.

27 ~~(12)~~ (12) "Inflation factor" means a number determined for each tax year by dividing the consumer price
28 index for June of the previous tax year by the consumer price index for June 2015.

29 ~~(13)~~ (13) "Information agents" includes all individuals and entities acting in whatever capacity, including
30 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all

1 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the
2 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,
3 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,
4 and income with respect to which any person or fiduciary is taxable under this chapter.

5 ~~(13)~~(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may
6 be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
7 provisions as they may be otherwise labeled or further amended.

8 ~~(14)~~(15) "Knowingly" is as defined in 45-2-101.

9 ~~(15)~~(16) "Limited liability company" means a limited liability company, domestic limited liability company,
10 or a foreign limited liability company as defined in 35-8-102.

11 ~~(16)~~(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

12 ~~(17)~~(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

13 (a) a resident taxpayer on a lottery ticket; or

14 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

15 ~~(18)~~(19) (a) "Montana source income" means:

16 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident
17 of the state;

18 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise
19 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation
20 carried on in the state;

21 (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a
22 resident of the state;

23 (iv) interest received or accrued while a resident of the state or from an installment sale of real property
24 or tangible commercial or business personal property located in the state;

25 (v) dividends received or accrued while a resident of the state;

26 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state
27 or while a resident of the state;

28 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the
29 state;

30 (viii) net rents from real property and tangible personal property located in the state or received or

1 accrued while a resident of the state;

2 (ix) net royalties from real property and from tangible real property to the extent the property is used in
3 the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state
4 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical
5 location of the property in the state during the royalty period in the tax year and the denominator of which is the
6 number of days of physical location of the property everywhere during all royalty periods in the tax year. If the
7 physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in
8 which it was located at the time the person paying the royalty obtained possession.

9 (x) patent royalties to the extent the person paying them employs the patent in production, fabrication,
10 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are
11 received or accrued while a resident of the state;

12 (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties
13 are received or accrued while a resident of the state;

14 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

15 (A) derived from a trade, business, occupation, or profession carried on in the state;

16 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
17 property located in the state; or

18 (C) taken into account while a resident of the state;

19 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or
20 item of income, gain, loss, deduction, or credit:

21 (A) derived from a trade, business, occupation, or profession carried on in the state;

22 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
23 property located in the state; or

24 (C) taken into account while a resident of the state;

25 (xiv) social security benefits received or accrued while a resident of the state;

26 (xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits
27 received while a resident of the state;

28 (xvi) any other income attributable to the state, including but not limited to lottery winnings, state and
29 federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks; and

30 (xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership

1 doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751,
 2 multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment
 3 factor as provided in this subsection ~~(18)(a)(xvii)~~ (19)(a)(xvii) does not fairly and equitably represent the
 4 nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the
 5 department may require with respect to any and all of the partnership interest, the employment of another method
 6 to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection ~~(18)(a)(xvii)~~
 7 (19)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with
 8 taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

9 (b) The term does not include:

10 (i) compensation for military service of members of the armed services of the United States who are not
 11 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does
 12 not include income derived from their personal property located in the state except with respect to personal
 13 property used in or arising from a trade or business carried on in Montana; or

14 (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their
 15 domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located
 16 in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there
 17 is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

18 ~~(19)(20)~~ "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by
 19 this chapter.

20 ~~(20)(21)~~ "Nonresident" means a natural person who is not a resident.

21 ~~(21)(22)~~ "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued
 22 or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the
 23 method of accounting upon the basis of which the taxable income is computed under this chapter.

24 ~~(22)(23)~~ "Partner" means a member of a partnership or a manager or member of any other entity, if
 25 treated as a partner for federal income tax purposes.

26 ~~(23)(24)~~ "Partnership" means a general or limited partnership, limited liability partnership, limited liability
 27 company, or other entity, if treated as a partnership for federal income tax purposes.

28 ~~(24)(25)~~ "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

29 ~~(25)(26)~~ "Pension and annuity income" means:

30 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term

1 is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the
2 result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon
3 the cessation of employment;

4 (b) payments received as the result of past service and cessation of employment in the uniformed
5 services of the United States;

6 (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are
7 included in federal adjusted gross income;

8 (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans
9 recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the
10 extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

11 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular
12 employment.

13 ~~(26)~~(27) "Purposely" is as defined in 45-2-101.

14 ~~(27)~~(28) "Received", for the purpose of computation of taxable income under this chapter, means
15 received or accrued, and the term "received or accrued" must be construed according to the method of
16 accounting upon the basis of which the taxable income is computed under this chapter.

17 ~~(28)~~(29) "Resident" applies only to natural persons and includes, for the purpose of determining liability
18 to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the
19 state of Montana and any other person who maintains a permanent place of abode within the state even though
20 temporarily absent from the state and who has not established a residence elsewhere.

21 ~~(29)~~(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of
22 the Internal Revenue Code (26 U.S.C. 1362) is in effect.

23 ~~(30)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
24 proportion to their previous holdings.

25 ~~(31)~~(32) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

26 ~~(32)~~(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and
27 exemptions provided for in this chapter.

28 ~~(33)~~(34) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or
29 other obligation imposed by this chapter and unless otherwise specifically provided does not include a C.
30 corporation."

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Section 2. Section 15-30-3313, MCA, is amended to read:

"15-30-3313. Consent or withholding -- rulemaking. (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that reports a distributive share of income of \$1,000 or more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, a foreign pass-through owner, or any other entity, organization, or account whose principal place of business or administration is outside the state of Montana ~~or that is itself a pass-through entity~~ shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-2602;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes, corporate income taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a foreign pass-through entity owner, ~~also referred to in this section as a "second-tier pass-through entity"~~:

(i) file a composite return; ~~or~~

1 (ii) file the foreign pass-through owner's agreement to:
 2 (A) file a return and comply with the provisions of this part; and
 3 (B) be subject to the personal jurisdiction of the state for purposes of application and enforcement of this
 4 part; or
 5 ~~(ii)~~(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its
 6 the foreign pass-through owner's share of Montana source income reflected on the pass-through entity's
 7 information return.

8 (2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to
 9 subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income
 10 tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date,
 11 including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through
 12 entity shall furnish to the nonresident individual a record of the amount of tax paid on the taxpayer's behalf.

13 (3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to
 14 subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the
 15 corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the
 16 alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403.
 17 On or before the due date, including extensions, of the pass-through entity's information return provided in
 18 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid
 19 on its behalf.

20 (4) Any amount paid by a pass-through entity with respect to a ~~second-tier~~ foreign pass-through entity
 21 owner pursuant to subsection ~~(1)(e)(ii)~~ (1)(c)(iii) must be considered as payment on the account of the individual,
 22 trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must
 23 be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder,
 24 member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions,
 25 of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the
 26 second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its
 27 behalf.

28 (5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii),
 29 (1)(b)(iii), or ~~(1)(e)(ii)~~ (1)(c)(iii) from the partner, shareholder, member, or other owner on whose behalf the
 30 payment was made.

1 (6) Following the department's notice to a pass-through entity that a nonresident individual, ~~or~~ foreign
 2 C. corporation, or foreign pass-through owner did not file a return or timely pay all taxes as provided in subsection
 3 (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual, ~~or~~
 4 foreign C. corporation, or foreign pass-through owner is not included in the pass-through entity's composite
 5 return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual, ~~and~~ the amount
 6 described in subsection (1)(b)(iii) for the foreign C. corporation, and the amount described in subsection (1)(c)(iii)
 7 for the foreign pass-through owner.

8 (7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information
 9 return reporting the name, address, and taxpayer identification number for each person or entity that has an
 10 interest in the partnership that results in Montana source income or that has sold its interest in the partnership
 11 during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A
 12 publicly traded partnership shall provide the department with the information in an electronic form that is capable
 13 of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its
 14 obligation to pay Montana income taxes.

15 (b) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) if one or more
 16 publicly traded partnerships has a direct or indirect majority interest in the income distributed by the pass-through
 17 entity. The pass-through entity shall apply to the department in writing for the waiver of the withholding
 18 requirements set forth in subsection (1)(c).

19 (c) Waivers issued by the department prior to January 1, 2016, to pass-through entities in which a
 20 publicly traded partnership has a direct or indirect majority interest will remain in effect in accordance with the law
 21 and rules in effect at the time the waiver was granted.

22 (d) The department shall adopt rules outlining the requirements for the waiver request.

23 ~~—— (8) (a) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) for any~~
 24 ~~partner, shareholder, member, or other owner that is a domestic second-tier pass-through entity if:~~

25 ~~—— (i) the pass-through entity files a statement setting forth the name, address, and social security or federal~~
 26 ~~identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members,~~
 27 ~~or other owners; and~~

28 ~~—— (ii) the information establishes that the domestic second-tier pass-through entity's share of Montana~~
 29 ~~source income should be fully accounted for in a resident individual income tax return.~~

30 ~~—— (b) For purposes of this subsection (8), a "domestic second-tier pass-through entity" is a pass-through~~

1 ~~entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals.~~

2 ~~—— (c) Subsequent to the initial approval of a waiver, the department may revoke the waiver if it determines~~
3 ~~that the partner, shareholder, member, or other owner no longer qualifies.~~

4 ~~(9)(8)~~ Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601
5 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the
6 extent of the taxpayer's business activity in the state.

7 ~~(10)(9)~~ The department may adopt rules to administer and enforce the provisions of this section."
8

9 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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11 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the
12 meaning of 1-2-109, to tax years beginning after December 31, 2016.

13 - END -