HOUSE BILL NO. 125

INTRODUCED BY LAMBERT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE UNIFORM PENALTY ASSESSMENT FOR VIOLATION OF TAX PROVISIONS IS 1.5 PERCENT FOR EACH DESIGNATED PERIOD OR FRACTION OF A DESIGNATED PERIOD RATHER THAN 1.5 PERCENT FOR EACH MONTH OR FRACTION OF A MONTH; PROVIDING THAT THE UNIFORM INTEREST ASSESSMENT FOR VIOLATION OF TAX PROVISIONS IS 1 PERCENT FOR EACH DESIGNATED PERIOD OR FRACTION OF A DESIGNATED PERIOD RATHER THAN 1 PERCENT FOR EACH MONTH OR FRACTION OF A MONTH; PROVIDING THAT THE LATE FILING PENALTY ASSESSMENT IMPOSED ON A PASS-THROUGH ENTITY FOR VIOLATION OF TAX PROVISIONS IS BASED ON THE DESIGNATED PERIOD OR FRACTION OF A DESIGNATED PERIOD RATHER THAN ON EACH MONTH OR FRACTION OF A MONTH; DEFINING ~~A~~ DESIGNATED ~~PERIOD~~ PERIODS; AMENDING ~~SECTION~~ SECTIONS 15-1-216 AND 15-30-1102, MCA; AND PROVIDING ~~AN~~ A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% ~~a month~~ FOR EACH DESIGNATED PERIOD or fraction of a ~~month~~ DESIGNATED PERIOD on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% ~~a month~~ for each designated period or fraction of a ~~month~~ designated period, on the unpaid tax. Interest on

delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.

<u>(4) As used in this section, "designated period" means the 1-month period that ends within each subsequent month on the day of the month that the tax was originally due. If the date on which the tax was originally due is the last day of a month, then the designated period is a calendar month.</u>"

<u>SECTION 2.</u> <u>SECTION 15-30-1102, MCA, IS AMENDED TO READ:</u>

"15-30-1102. Income or license tax involving pass-through entities -- information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, ~~manager,~~ member, or other owner of an entity described in subsection (1)(c) is subject to the taxes provided in this chapter, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the

department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each ~~manager,~~ member~~,~~ or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, ~~managers,~~ members, or other owners at the close of the tax year for each ~~month~~ designated period or fraction of a ~~month~~ designated period, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has

10 or fewer partners, shareholders, ~~managers,~~ members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due.

(5) As used in this section, "designated period" means the 1-month period that ends within each subsequent month on the day of the month that the information return was originally due. If the date on which the information return was originally due is the last day of a month, then the designated period is a calendar month."

NEW SECTION. **Section 3. Effective date.** [This act] is effective ~~July 1, 2003~~ JANUARY 1, 2005.

NEW SECTION. **SECTION 4. APPLICABILITY.** [THIS ACT] APPLIES TO PENALTIES AND INTEREST ASSESSED FOR TAX ~~YEARS~~ PERIODS BEGINNING AFTER DECEMBER 31, 2004.

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