



AN ACT REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; and
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

**Section 2.** Section 15-31-121, MCA, is amended to read:

**"15-31-121. Rate of tax -- minimum tax -- distribution of revenue.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the taxable tax period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the taxable tax period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than \$50.

(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:

(a) \$375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and

(b) the balance in the state general fund."

**Section 3.** Section 15-31-322, MCA, is amended to read:

**"15-31-322. Water's-edge election -- inclusion of tax havens.** (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

~~(+)(a)~~ (a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in ~~sections 26 U.S.C. 1501 through 1505 of the Internal Revenue Code~~ that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of ~~section 26 U.S.C. 1504 of the Internal Revenue Code~~

must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

~~(2)(b)~~ domestic international sales corporations, as described in ~~sections 26 U.S.C. 991 through 994 of the Internal Revenue Code~~, and foreign sales corporations, as described in ~~sections 26 U.S.C. 921 through 927 of the Internal Revenue Code~~;

~~(3)(c)~~ export trade corporations, as described in ~~sections 26 U.S.C. 970 and 971 of the Internal Revenue Code~~;

~~(4)(d)~~ foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under ~~section 26 U.S.C. 897 of the Internal Revenue Code~~;

~~(5)(e)~~ a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxemburg, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.-

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f)."

**Section 4.** Section 15-31-323, MCA, is amended to read:

**"15-31-323. Apportionment factors -- inclusion of tax havens.** ~~(1)~~ For purposes of 15-31-322~~(4)~~ and ~~(5)(1)(a) through (1)(e)~~, the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

(2) For the purposes of 15-31-322(1)(f), income shifted to a tax haven, to the extent taxable, is considered income subject to apportionment."

**Section 5.** Section 15-31-324, MCA, is amended to read:

**"15-31-324. Water's-edge election period -- consent -- change of election.** (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter ~~subsequent to~~ after the water's-edge election is considered to have consented to the election. The election must disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation incorporated in a tax haven as set forth in 15-31-322(1)(f), in which the taxpayer owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.

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

(a) ~~No water's-edge election may be made for an income year beginning before October 1, 1987.~~

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

(4) A taxpayer subject to the provisions of 15-31-322(1)(f) who has a water's-edge election that is in effect for tax periods beginning both before and after [the effective date of this act] may rescind the election for any tax period beginning after [the effective date of this act]."

**Section 6.** Section 15-31-326, MCA, is amended to read:

**"15-31-326. Domestic disclosure spreadsheet -- inclusion of tax havens.** (1) The department of revenue may require ~~taxpayers~~ a taxpayer making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

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

**Section 7. Applicability.** [This act] applies to tax periods beginning after December 31, 2003.

- END -

I hereby certify that the within bill,  
HB 0721, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 721  
INTRODUCED BY ERICKSON

AN ACT REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE.

