

SENATE BILL NO. 121  
INTRODUCED BY B. GLASER  
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF PASS-THROUGH ENTITIES AND THEIR OWNERS; TO CLARIFY THAT ALL OWNERS OF PASS-THROUGH ENTITIES WITH MONTANA SOURCE INCOME ARE SUBJECT TO TAX; TO EXTEND THE CONSENT, COMPOSITE RETURN, AND WITHHOLDING PROVISIONS TO C. CORPORATIONS AND OTHER PASS-THROUGH ENTITY OWNERS; TO PROVIDE A REFUNDABLE CREDIT FOR SECOND-TIER PASS-THROUGH ENTITY OWNERS FOR WITHHELD AMOUNTS REMITTED ON THEIR BEHALF; TO CLARIFY AN INTENT THAT THE PASS-THROUGH ENTITY PROVISIONS NOT OVERRIDE THE MULTISTATE TAX COMPACT; AND AMENDING SECTIONS 15-30-1102, 15-30-1112, AND 15-30-1113, MCA."

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

**Section 1.** Section 15-30-1102, MCA, is amended to read:

**"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, ~~trust, or estate~~, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is a pass-through entity, any individual, trust, or estate to which Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(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 or fraction of a month, 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."

**Section 2.** Section 15-30-1112, MCA, is amended to read:

**"15-30-1112. Composite returns and tax.** (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, ~~manager, or member, or other owner~~ who:

(a) is a nonresident individual, a C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, ~~manager, or member, or other owner~~; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

- (4) The electing entity:
- (a) shall remit the composite tax to the department;
  - (b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;
  - (c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;
  - (d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and
  - (e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.
- (5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144.
- (6) The composite tax is in lieu of the ~~tax~~ taxes imposed under:
- (a) 15-30-103 and 15-30-105;
  - (b) 15-31-101 and 15-31-121; and
  - (c) 15-31-403.
- (7) The department may adopt rules that are necessary to implement and administer this section."

**Section 3.** Section 15-30-1113, MCA, is amended to read:

**"15-30-1113. Consent or withholding.** (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, ~~manager~~, member, or other owner who is a nonresident individual, a C. corporation, or a pass-through entity that has any partner, shareholder, member, or other owner that is a nonresident individual, C. corporation, or 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 ~~with respect to the individual nonresident;~~
  - ~~(b)~~(ii) file an agreement of the individual nonresident to:
    - ~~(i)~~(A) file a return in accordance with the provisions of 15-30-142;
    - ~~(ii)~~(B) timely pay all taxes imposed with respect to income of the pass-through entity; and
    - ~~(iii)~~(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

~~(e)(iii)~~ remit an amount equal to the highest marginal tax rate in effect under 15-30-103 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 C. corporation:

(i) file a composite return;

(ii) file the 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 corporation license and 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 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 pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income is fully accounted in individual income or corporation license or income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection ~~(1)(e)~~ (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the C. corporation for the corporation license tax imposed on the C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of

the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

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

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

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

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