

SENATE BILL NO. 486  
INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FRANCHISE TAX ON ASSETS IN MONTANA OF CORPORATIONS WITH WORLDWIDE ASSETS GREATER THAN \$1 BILLION; DEFINING ASSETS; PROVIDING FOR THE ADMINISTRATION OF THE TAX; PROVIDING THAT THE COLLECTIONS OF THE TAX ARE TO BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING PENALTIES; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Taxation of assets -- rate.** (1) In addition to the license tax under Title 15, chapter 31, each corporation with worldwide assets in excess of \$1 billion shall pay a franchise tax equal to 0.33% of the value of the corporation's assets in Montana. The tax is due and payable to the department with a report prescribed by the department 30 days after the corporation is required to report corporation license tax liability under 15-31-111.

(2) For the purposes of [sections 1 through 7], assets are the property reported as the property factor for apportionment of income under Title 15, chapter 31, part 3. The taxable value of assets is the value of all of a taxpayer's real and tangible property owned or rented in Montana in the production of business income, and the worldwide value of assets is the value of all of the taxpayer's real and tangible property owned or rented in Montana in the production of business income.

(3) The department shall, in accordance with the provisions of 15-1-501, deposit the collected taxes in the state general fund.

(4) Taxes not paid on the due date are delinquent, and penalty and interest must be added to the delinquent taxes as provided in 15-1-216.

NEW SECTION. **Section 2. Deficiency assessment -- review -- interest.** (1) When the department determines that the amount of franchise tax due is greater than the amount disclosed by a report, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment must be computed as provided in 15-1-216.

**NEW SECTION. Section 3. Credit for overpayment -- interest on overpayment.** (1) If the department determines that the amount of franchise tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as provided in 15-1-216 due from the due date of the report or from the date of overpayment, whichever is later, to the date on which the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the report is due or from the date on which the report is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this chapter may not be considered an overpayment with respect to which interest is allowable.

**NEW SECTION. Section 4. Procedure to compute tax in absence of statement -- waiver of penalty.**

(1) If a corporation fails to file the report required by [section 1] within the time required, the department shall, after the time has expired, determine the value of assets in the state and compute the amount of taxes due to the state from the corporation for the year and add penalty and interest as required by 15-1-216. The department shall mail to the corporation required to file a report and pay the tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must contain a statement that if payment is not made, a warrant for distraint may be filed.

(2) A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206.

**NEW SECTION. Section 5. Warrant for distraint.** If all or part of the franchise tax imposed by [sections 1 through 7] is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and

recorded.

**NEW SECTION. Section 6. Penalty for violation -- enforcement.** A corporation subject to the franchise tax in [section 1] that violates any of the provisions of [sections 1 through 7] or who fails to pay the asset tax or any part of the tax when due is liable for three times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction in the name of the state of Montana, and in the suit, upon application of the state, an injunction may be issued, without requiring any bond, restraining the defendant from conducting business in the state as long as the tax due remains delinquent.

**NEW SECTION. Section 7. Statute of limitations.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a report is filed unless the notice of additional franchise tax proposed to be assessed is mailed within 5 years from the date on which the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless, before the expiration of the period, the taxpayer files a claim for a refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a refund or credit allowed if no claim is filed is automatically extended.

(3) If a report is required to be filed and the taxpayer fails to file the report, the tax may be assessed or an action to collect the tax may be brought at any time. If a report is required to be filed and the taxpayer files a fraudulent report, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

**NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

NEW SECTION. **Section 9. Applicability.** [This act] applies to corporate license tax periods beginning after December 31, 2003.

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