

SENATE BILL NO. 179

INTRODUCED BY C. KAUFMANN

BY REQUEST OF THE DEPARTMENT OF REVENUE

1
2
3
4
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FILING AND WITHHOLDING REQUIREMENTS FOR
7 PASS-THROUGH ENTITIES; ELIMINATING NONRESIDENT CONSENT AGREEMENTS SIGNED BY
8 INDIVIDUALS, TRUSTS, ESTATES, PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER OWNERS OF
9 PASS-THROUGH ENTITIES; REQUIRING PARTNERSHIPS WITH MORE THAN 100 MEMBERS TO FILE
10 RETURNS AND REPORTS ELECTRONICALLY; PROVIDING FOR PENALTY AND INTEREST PAYMENTS
11 FOR FAILURE TO FILE; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-3313, MCA;
12 AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 15-30-3313, MCA, is amended to read:

17 **"15-30-3313. ~~Consent or withholding~~ Withholding or composite return filing.** (1) A pass-through
18 entity that is required to file an information return as provided in 15-30-3302 and that ~~has~~ distributes \$1,000 or
19 more of Montana source income to a partner, shareholder, member, or other owner who is a nonresident
20 individual, a nonresident trust, a nonresident estate, a foreign C. corporation, or a pass-through entity that itself
21 has any partner, shareholder, member, or other owner that is a nonresident individual, nonresident trust,
22 nonresident estate, foreign C. corporation, or pass-through entity shall, on or before the due date, including
23 extensions, for the information return:

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

- 26 (i) file a composite return pursuant to 15-30-3312;
- 27 ~~(ii) file an agreement of the individual nonresident to:~~
- 28 ~~(A) file a return in accordance with the provisions of 15-30-2602;~~
- 29 ~~(B) timely pay all taxes imposed with respect to income of the pass-through entity; and~~
- 30 ~~(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related~~

1 interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
 2 (iii)(ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the
 3 nonresident individual's, nonresident trust's, or nonresident estate's share of Montana source income reflected
 4 on the pass-through entity's information return;

5 (b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:
 6 (i) file a composite return pursuant to 15-30-3312;
 7 ~~(ii) file the foreign C. corporation's agreement to:~~
 8 ~~(A) file a return in accordance with the provisions of 15-31-111;~~
 9 ~~(B) timely pay all taxes imposed with respect to income of the pass-through entity; and~~
 10 ~~(C) be subject to the personal jurisdiction of the state for the collection of corporation license and income~~
 11 ~~taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or~~
 12 (iii)(ii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C.
 13 corporation's share of Montana source income reflected on the pass-through entity's information return; and
 14 (c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also
 15 referred to in this section as a "second-tier pass-through entity":
 16 (i) file a composite return pursuant to 15-30-3312;
 17 ~~(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth~~
 18 ~~the name, address, and social security or federal identification number of each of that entity's partners,~~
 19 ~~shareholders, members, or other owners and information that establishes that its share of Montana source~~
 20 ~~income will be fully accounted in individual income or corporation license or income tax returns filed with the state;~~
 21 or
 22 (iii)(ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its
 23 share of Montana source income reflected on the pass-through entity's information return.

24 (2) Any amount paid by a pass-through entity with respect to a nonresident individual, nonresident trust,
 25 or nonresident estate pursuant to subsection ~~(4)(a)(iii)~~ (1)(a)(ii) must be considered as a payment on the account
 26 of the nonresident individual, nonresident trust, or nonresident estate for the income tax imposed on the
 27 nonresident individual, nonresident trust, or nonresident estate for the tax year pursuant to 15-30-2104. On or
 28 before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302,
 29 the pass-through entity shall furnish to the nonresident individual, nonresident trust, or nonresident estate a
 30 record of the amount of tax paid on the ~~individual's~~ taxpayer's behalf.

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

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

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

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

23 ~~(7)~~(6) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information
 24 return reporting the name, address, and taxpayer identification number for each person or entity that has an
 25 interest in the partnership that results in Montana source income or that has sold its interest in the partnership
 26 during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A
 27 publicly traded partnership shall provide the department with the information in an electronic form that is capable
 28 of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its
 29 obligation to pay Montana income taxes.

30 ~~(8)~~(7) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601

1 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the
2 extent of the taxpayer's business activity in the state."

3
4 **NEW SECTION. Section 2. Electronic partnership return required -- waiver -- rulemaking.** (1) Each
5 year, a partnership with more than 100 partners shall transmit to the department, in an electronic format approved
6 by the department, all partnership returns, along with the corresponding U.S. department of treasury schedules
7 K-1 and all other related forms and schedules that are required to be attached.

8 (2) If a partnership fails to file a partnership return electronically in the manner required in subsection
9 (1), the partnership is considered to have failed to file the return and is subject to penalty and interest pursuant
10 to 15-30-3302(5)(d).

11 (3) A partnership has more than 100 partners if, over the course of the partnership's tax year, the
12 partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or
13 whether the partnership had over 100 partners on any particular day in the year.

14 (4) The department may waive the electronic filing if the partnership demonstrates that a hardship will
15 result if it is required to file electronically. A partnership requesting a waiver shall file a written request at least 30
16 days prior to the date the electronic filing is due.

17 (5) The department may adopt rules to administer and enforce the provisions of this section.

18
19 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
20 integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to [section
21 2].

22
23 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are severable from the invalid applications.

26
27 **NEW SECTION. Section 5. Effective date.** [This act] is effective July 1, 2013.

28
29 **NEW SECTION. Section 6. Applicability.** (1) [Section 1] applies to tax years beginning after December
30 31, 2013.

1 (2) [Section 2] applies to tax returns filed after [the effective date of this act].

2 - END -