

SENATE BILL NO. 179

INTRODUCED BY C. KAUFMANN

BY REQUEST OF THE DEPARTMENT OF REVENUE

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

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

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

~~"15-30-3313. Consent or withholding Withholding or composite return filing. (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that has distributes \$1,000 or more of Montana source income to a partner, shareholder, member, or other owner who is a nonresident individual, a nonresident trust, a nonresident estate, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, nonresident trust, nonresident estate, foreign 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, nonresident trust, or nonresident estate:~~

~~(i) file a composite return pursuant to 15-30-3312;~~

~~(ii) file an agreement of the individual nonresident to:~~

~~(A) file a return in accordance with the provisions of 15-30-2602;~~

~~(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 income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or~~



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

4 ~~——— (b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:~~

5 ~~——— (i) file a composite return pursuant to 15-30-3312;~~

6 ~~——— (ii) file the foreign C. corporation's agreement to:~~

7 ~~——— (A) file a return in accordance with the provisions of 15-31-111;~~

8 ~~——— (B) timely pay all taxes imposed with respect to income of the pass-through entity; and~~

9 ~~——— (C) be subject to the personal jurisdiction of the state for the collection of corporation license and income~~
10 ~~taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or~~

11 ~~——— (iii)(ii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C.~~
12 ~~corporation's share of Montana source income reflected on the pass-through entity's information return; and~~

13 ~~——— (c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also~~
14 ~~referred to in this section as a "second-tier pass-through entity":~~

15 ~~——— (i) file a composite return pursuant to 15-30-3312;~~

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

20 ~~or~~

21 ~~——— (iii)(ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its~~
22 ~~share of Montana source income reflected on the pass-through entity's information return.~~

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

30 ~~——— (3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to~~

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

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

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

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

22 ~~————(7)~~(6)~~ A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information
 23 return reporting the name, address, and taxpayer identification number for each person or entity that has an
 24 interest in the partnership that results in Montana source income or that has sold its interest in the partnership
 25 during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A
 26 publicly traded partnership shall provide the department with the information in an electronic form that is capable
 27 of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its
 28 obligation to pay Montana income taxes.~~

29 ~~————(8)~~(7)~~ Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601
 30 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the~~

1 ~~extent of the taxpayer's business activity in the state."~~

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3 **NEW SECTION. Section 1. Electronic partnership return required -- waiver -- rulemaking.** (1) Each
4 SUBJECT TO SUBSECTION (4), EACH year, a partnership with more than 100 partners shall transmit to the
5 department, in an electronic format approved by the department, all partnership returns, along with the
6 corresponding U.S. department of treasury schedules K-1 and all other related forms and schedules that are
7 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 a 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 SOFTWARE THAT
15 SATISFIES THE CONDITIONS OF THIS SECTION IS NOT READILY AVAILABLE OR THAT a hardship will result if it is required
16 to file electronically. A partnership requesting a waiver shall file a written request at least 30 days prior to the date
17 the electronic filing is due.

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

19

20 **NEW SECTION. Section 2. Codification instruction.** [Section ~~2~~ 1] is intended to be codified as an
21 integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to [section
22 ~~2~~ 1].

23

24 **NEW SECTION. Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
26 remains in effect in all valid applications that are severable from the invalid applications.

27

28 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2013.

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30 **NEW SECTION. Section 5. Applicability.** (~~4~~) [Section 1] applies to tax years beginning after ~~December~~

1 ~~31, 2013~~ [THE EFFECTIVE DATE OF THIS ACT].

2 ~~——— (2) [Section 2] applies to tax returns filed after [the effective date of this act];~~

3 ~~- END -~~