

SENATE BILL NO. 386

INTRODUCED BY J. COHENOUR

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FILING AND WITHHOLDING REQUIREMENTS FOR PASS-THROUGH ENTITIES AND LIMITING THE LATE FILING PENALTY; PROVIDING SIMPLIFICATION OF PASS-THROUGH ENTITY COMPLIANCE REQUIREMENTS; ELIMINATING CONSENT AGREEMENTS BY SECOND-TIER PASS-THROUGH ENTITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-3302 AND 15-30-3313, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 15-30-3302, MCA, is amended to read:

**"15-30-3302. 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, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, 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 itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's 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,



1 chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26  
2 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

3 (4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C.  
4 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying  
5 tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

6 (5) (a) Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source  
7 income shall on or before the 15th day of the 4th month following the close of its annual accounting period file  
8 an information return on forms prescribed by the department and a copy of its federal partnership return. The  
9 return must include:

10 (i) the name, address, and social security or federal identification number of each partner;

11 (ii) the partnership's Montana source income;

12 (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item  
13 of income, gain, loss, deduction, or credit;

14 (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain,  
15 loss, deduction, or credit from all sources; and

16 (v) any other information the department prescribes.

17 (b) Subject to the due date provision in 15-30-2604(1)(b), an S. corporation that has Montana source  
18 income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file  
19 an information return on forms prescribed by the department and a copy of its federal S. corporation return. The  
20 return must include:

21 (i) the name, address, and social security or federal identification number of each shareholder;

22 (ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and  
23 nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss,  
24 deduction, or credit;

25 (iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss,  
26 deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

27 (iv) any other information the department prescribes.

28 (c) A disregarded entity that has Montana source income shall furnish the information and file the returns  
29 the department prescribes. The return must include:

30 (i) the name, address, and social security or federal identification number of each member or other owner

1 during the tax year;

2 (ii) the entity's Montana source income; and

3 (iii) any other information the department prescribes.

4 (d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information  
5 return required by this section by the due date, including any extension, must be assessed a late filing penalty  
6 of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of  
7 the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the  
8 information return. The penalty may not exceed \$2,500 for any one tax period. The department may waive the  
9 penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

10 (ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has  
11 10 or fewer partners, shareholders, members, or other owners, each of whom:

12 (A) is an individual, an estate of a deceased individual, or a C. corporation;

13 (B) has filed any required return or other report with the department by the due date, including any  
14 extension of time, for the return or report; and

15 (C) has paid all taxes when due."

16

17 **Section 2.** Section 15-30-3313, MCA, is amended to read:

18 **"15-30-3313. Consent or withholding -- RULEMAKING.** (1) A pass-through entity that is required to file  
19 an information return as provided in 15-30-3302 and that ~~has~~ reports a distributive share of income of \$1,000 or  
20 more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is  
21 a nonresident individual, a foreign C. corporation, any other entity, organization, or account whose principal place  
22 of business or administration is outside the state of Montana, or that is itself a pass-through entity ~~that itself has~~  
23 ~~any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or~~  
24 ~~pass-through entity~~ shall, on or before the due date, including extensions, for the information return:

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

26 (i) file a composite return;

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) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the
- 3 nonresident individual's share of Montana source income reflected 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;
- 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 income taxes, corporate income
- 10 taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to
- 11 the income of the pass-through entity; or
- 12 (iii) 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; or
- 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 tax, corporate income tax, or alternative corporate income tax~~
- 21 ~~returns filed with the state; or~~
- 22 ~~——(iii) 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 pursuant to
- 25 subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income
- 26 tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date,
- 27 including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through
- 28 entity shall furnish to the nonresident individual a record of the amount of tax paid on the ~~individual's~~ taxpayer's
- 29 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) must be considered as a payment on the account of the foreign C. corporation for the  
 2 corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the  
 3 alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403.  
 4 On or before the due date, including extensions, of the pass-through entity's information return provided in  
 5 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid  
 6 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),  
 16 (1)(b)(iii), or ~~(1)(e)(iii)~~ (1)(c)(ii) from the partner, shareholder, member, or other owner on whose behalf the  
 17 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) (A) 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 (B) A PASS-THROUGH ENTITY MAY BE ALLOWED A WAIVER OF THE PROVISIONS OF SUBSECTION (1)(C) IF ONE OR

1 MORE PUBLICLY TRADED PARTNERSHIPS HAS A DIRECT OR INDIRECT MAJORITY INTEREST IN THE INCOME DISTRIBUTED BY  
 2 THE PASS-THROUGH ENTITY. THE PASS-THROUGH ENTITY SHALL APPLY TO THE DEPARTMENT IN WRITING FOR THE WAIVER  
 3 OF THE WITHHOLDING REQUIREMENTS SET FORTH IN SUBSECTION (1)(C).

4 (C) WAIVERS ISSUED BY THE DEPARTMENT PRIOR TO JANUARY 1, 2016, TO PASS-THROUGH ENTITIES IN WHICH  
 5 A PUBLICLY TRADED PARTNERSHIP HAS A DIRECT OR INDIRECT MAJORITY INTEREST WILL REMAIN IN EFFECT IN  
 6 ACCORDANCE WITH THE LAW AND RULES IN EFFECT AT THE TIME THE WAIVER WAS GRANTED.

7 (D) THE DEPARTMENT SHALL ADOPT RULES OUTLINING THE REQUIREMENTS FOR THE WAIVER REQUEST.

8 (8) (A) A PASS-THROUGH ENTITY MAY BE ALLOWED A WAIVER OF THE PROVISIONS OF SUBSECTION (1)(C) FOR  
 9 ANY PARTNER, SHAREHOLDER, MEMBER, OR OTHER OWNER THAT IS A DOMESTIC SECOND-TIER PASS-THROUGH ENTITY  
 10 IF:

11 (I) THE PASS-THROUGH ENTITY FILES A STATEMENT SETTING FORTH THE NAME, ADDRESS, AND SOCIAL SECURITY  
 12 OR FEDERAL IDENTIFICATION NUMBER OF EACH OF THE DOMESTIC SECOND-TIER PASS-THROUGH ENTITY'S PARTNERS,  
 13 SHAREHOLDERS, MEMBERS, OR OTHER OWNERS; AND

14 (II) THE INFORMATION ESTABLISHES THAT THE DOMESTIC SECOND-TIER PASS-THROUGH ENTITY'S SHARE OF  
 15 MONTANA SOURCE INCOME SHOULD BE FULLY ACCOUNTED FOR IN A RESIDENT INDIVIDUAL INCOME TAX RETURN.

16 (B) FOR PURPOSES OF THIS SUBSECTION (8), A "DOMESTIC SECOND-TIER PASS-THROUGH ENTITY" IS A PASS-  
 17 THROUGH ENTITY WHOSE INTEREST IS ENTIRELY HELD, EITHER DIRECTLY OR INDIRECTLY, BY ONE OR MORE RESIDENT  
 18 INDIVIDUALS.

19 (C) SUBSEQUENT TO THE INITIAL APPROVAL OF A WAIVER, THE DEPARTMENT MAY REVOKE THE WAIVER IF IT  
 20 DETERMINES THAT THE PARTNER, SHAREHOLDER, MEMBER, OR OTHER OWNER NO LONGER QUALIFIES.

21 (8)(9) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601  
 22 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the  
 23 extent of the taxpayer's business activity in the state.

24 (10) THE DEPARTMENT MAY ADOPT RULES TO ADMINISTER AND ENFORCE THE PROVISIONS OF THIS SECTION."

25  
 26 NEW SECTION. Section 3. Applicability. [This act] applies to tax years beginning after December 31,  
 27 2015.

28 - END -