

HOUSE BILL NO. 42

INTRODUCED BY K. ABBOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FILING DEADLINE FOR PARTNERSHIPS TO ALIGN WITH THE FEDERAL FILING DEADLINE; AMENDING SECTION 15-30-3302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE 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, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26

1 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

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

5 (5) (a) Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source
6 income shall on or before the 15th day of the ~~4th~~ 3rd month following the close of its annual accounting period
7 file an information return on forms prescribed by the department and a copy of its federal partnership return. The
8 return must include:

- 9 (i) the name, address, and social security number or federal identification number of each partner;
10 (ii) the partnership's Montana source income;
11 (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item
12 of income, gain, loss, deduction, or credit;
13 (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain,
14 loss, deduction, or credit from all sources; and
15 (v) any other information the department prescribes.

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

- 20 (i) the name, address, and social security number or federal identification number of each shareholder;
21 (ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and
22 nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss,
23 deduction, or credit;
24 (iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss,
25 deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
26 (iv) any other information the department prescribes.

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

- 29 (i) the name, address, and social security number or federal identification number of each member or
30 other owner during the tax year;

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

2 (iii) any other information the department prescribes.

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

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

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

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

14 (C) has paid all taxes when due."
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16 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.
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18 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
19 meaning of 1-2-109, to tax years beginning after December 31, 2016.
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