

HOUSE BILL NO. 511

INTRODUCED BY R. COOK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INCOME TAX LAWS; REVISING THE MULTISTATE TAX
5 COMPACT TO ADOPT REVISIONS RECOMMENDED BY THE MULTISTATE TAX COMMISSION, INCLUDING
6 TO PROVIDE FOR MARKET SOURCING OF SALES; REVISING MONTANA'S CORPORATE INCOME TAX
7 TO ADOPT CHANGES THAT GENERALLY CONFORM WITH REVISIONS TO ARTICLE IV OF THE
8 MULTISTATE TAX COMPACT; REVISING LAWS RELATED TO THE CALCULATION OF MONTANA SOURCE
9 INCOME FOR PARTNERSHIPS, S. CORPORATIONS, AND CERTAIN DISREGARDED ENTITIES; AMENDING
10 SECTIONS 15-1-601, 15-30-3302, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306,
11 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, AND 15-31-312, MCA; AND PROVIDING A DELAYED
12 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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16 **Section 1.** Section 15-1-601, MCA, is amended to read:

17 **"15-1-601. Compact adopted -- text.** The Multistate Tax Compact is enacted into law and entered into
18 with all jurisdictions legally joining in the compact, in the form substantially as set forth in this section. Article VIII
19 of the Multistate Tax Compact relating to interstate audits is specifically adopted.

20 Article I. Purposes

21 The purposes of this compact are to:

- 22 (1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the
23 equitable apportionment of tax bases and settlement of apportionment disputes;
24 (2) promote uniformity or compatibility in significant components of tax systems;
25 (3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax
26 administration;
27 (4) avoid duplicative taxation.

28 Article II. Definitions

29 As used in this compact:

- 30 (1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto

1 Rico, or any territory or possession of the United States;

2 (2) "subdivision" means any government unit or special district of a state;

3 (3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or
4 person acting as a business entity in more than one state;

5 (4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or
6 measured by an amount arrived at by deducting expenses from gross income, one or more forms of which
7 expenses are not specifically and directly related to particular transactions;

8 (5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in
9 its entirety;

10 (6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the
11 gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no
12 deduction is allowed which would constitute the tax an income tax;

13 (7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership,
14 possession, or custody of tangible personal property or the rendering of services measured by the price of the
15 tangible personal property transferred or services rendered and which is required by state or local law to be
16 separately stated from the sales price by the seller or which is customarily separately stated from the sales price
17 but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class
18 of commodities or articles;

19 (8) "use tax" means a nonrecurring tax, other than a sales tax, which:

20 (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible
21 personal property incident to the ownership, possession, or custody of that property or the leasing of that property
22 from another including any consumption, keeping, retention, or other use of tangible personal property; and

23 (b) is complementary to a sales tax;

24 (9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax
25 which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only
26 to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in
27 respect to determinations pursuant to Article IV.

28 Article III. Elements Of Income Tax Laws

29 Taxpayer Option, State and Local Taxes

30 (1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for

1 tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party
 2 states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state
 3 or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and
 4 allocate in accordance with Article IV. This election for any tax year may be made in all party states or
 5 subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the
 6 election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be
 7 considered separately from state taxes and the apportionment and allocation also may be applied to the entire
 8 tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all
 9 apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation
 10 that would be assignable to that state if the apportionment or allocation were being made with respect to a state
 11 income tax.

12 Taxpayer Option, Short Form

13 (2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that
 14 any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do
 15 not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales
 16 made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may
 17 elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall
 18 produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more
 19 than once in 5 years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real
 20 value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure
 21 specifically provided herein. Each party state and subdivision thereof may make the same election available to
 22 taxpayers additional to those specified in this subsection.

23 Coverage

24 (3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

25 Article IV. Division Of Income

26 (1) As used in this article, unless the context otherwise requires:

27 (a) ~~"business income" means income arising from transactions and activity in the regular course of the~~
 28 ~~taxpayer's trade or business and includes income from tangible and intangible property if the acquisition,~~
 29 ~~management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business~~
 30 ~~operations;~~

- 1 (a) "apportionable income" means:
- 2 (i) all income that is apportionable under the Constitution of the United States and is not allocated under
- 3 the laws of this state, including:
- 4 (A) income arising from transactions and activity in the regular course of the taxpayer's trade or business,
- 5 and
- 6 (B) income arising from tangible and intangible property if the acquisition, management, employment,
- 7 development, or disposition of the property is or was related to the operation of the taxpayer's trade or business;
- 8 and
- 9 (ii) any income that would be allocable to this state under the Constitution of the United States but that
- 10 is apportioned rather than allocated pursuant to the laws of this state;
- 11 (b) "commercial domicile" means the principal place from which the trade or business of the taxpayer
- 12 is directed or managed;
- 13 (c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to
- 14 employees for personal services;
- 15 (d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank,
- 16 safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan
- 17 company, sales finance company, investment company, or any type of insurance company;
- 18 (e) ~~"nonbusiness~~ "nonapportionable income" means all income other than ~~business~~ apportionable
- 19 income;
- 20 (f) "public utility" means any business entity:
- 21 (i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of
- 22 communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale,
- 23 delivery, or furnishing of electricity, water, or steam; and
- 24 (ii) whose rates of charges for goods or services have been established or approved by a federal, state,
- 25 or local government or governmental agency;
- 26 ~~(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;~~
- 27 (g) "receipts" means all gross receipts of the taxpayer that are not allocated under paragraphs of this
- 28 article and that are received from transactions and activity in the regular course of the taxpayer's trade or
- 29 business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale,
- 30 exchange, loan, or other disposition of cash or securities shall be excluded;

1 (h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto
2 Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

3 (i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this
4 article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district
5 in which the relevant tax return is filed.

6 (2) Any taxpayer having income from business activity which is taxable both within and without this state,
7 other than activity as a financial organization or public utility or the rendering of purely personal services by an
8 individual, shall allocate and apportion the taxpayer's net income as provided in this article. If a taxpayer has
9 income from business activity as a public utility but derives the greater percentage of the taxpayer's income from
10 activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income
11 as provided in this article.

12 (3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in
13 another state if:

14 (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a
15 franchise tax for the privilege of doing business, or a corporate stock tax; or

16 (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact,
17 the state does or does not do so.

18 (4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent
19 or copyright royalties, to the extent that they constitute ~~nonbusiness~~ nonapportionable income, shall be allocated
20 as provided in subsections (5) through (8) of this article.

21 (5) (a) Net rents and royalties from real property located in this state are allocable to this state.

22 (b) Net rents and royalties from tangible personal property are allocable to this state:

23 (i) if and to the extent that the property is utilized in this state; or

24 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized
25 under the laws of or taxable in the state in which the property is utilized.

26 (c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents
27 and royalties by a fraction, the numerator of which is the number of days of physical location of the property in
28 the state during the rental or royalty period in the taxable year and the denominator of which is the number of
29 days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the
30 physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer,

1 tangible personal property is utilized in the state in which the property was located at the time the rental or royalty
2 payer obtained possession.

3 (6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

4 (b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

5 (i) the property had a situs in this state at the time of the sale; or

6 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which
7 the property had a situs.

8 (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the
9 taxpayer's commercial domicile is in this state.

10 (7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

11 (8) (a) Patent and copyright royalties are allocable to this state:

12 (i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

13 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer
14 is not taxable and the taxpayer's commercial domicile is in this state.

15 (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing,
16 or other processing in the state or to the extent that a patented product is produced in the state. If the basis of
17 receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect
18 states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

19 (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state.
20 If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures
21 do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile
22 is located.

23 (9) All ~~business~~ apportionable income shall be apportioned to this state by multiplying the income by a
24 fraction, the numerator of which is the property factor plus the payroll factor plus the ~~sales~~ receipts factor and the
25 denominator of which is 3.

26 (10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real
27 and tangible personal property owned or rented and used in this state during the tax period and the denominator
28 of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used
29 during the tax period.

30 (11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is

1 valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the
2 taxpayer less any annual rental rate received by the taxpayer from subrentals.

3 (12) The average value of property shall be determined by averaging the values at the beginning and
4 ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax
5 period if reasonably required to reflect properly the average value of the taxpayer's property.

6 (13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during
7 the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid
8 everywhere during the tax period.

9 (14) Compensation is paid in this state if:

10 (a) the individual's service is performed entirely within the state;

11 (b) the individual's service is performed both within and without the state, but the service performed
12 without the state is incidental to the individual's service within the state; or

13 (c) some of the service is performed in the state and:

14 (i) the base of operations or, if there is no base of operations, the place from which the service is directed
15 or controlled is in the state; or

16 (ii) the base of operations or the place from which the service is directed or controlled is not in any state
17 in which some part of the service is performed, but the individual's residence is in this state.

18 (15) The ~~sales~~ receipts factor is a fraction, the numerator of which is the total ~~sales~~ receipts of the
19 taxpayer in this state during the tax period and the denominator of which is the total ~~sales~~ receipts of the taxpayer
20 everywhere during the tax period.

21 (16) ~~Sales Receipts from the sale~~ of tangible personal property are in this state if:

22 (a) the property is delivered or shipped to a purchaser, other than the United States government, within
23 this state regardless of the f.o.b. point or other conditions of the sale; or

24 (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state
25 and:

26 (i) the purchaser is the United States government; or

27 (ii) the taxpayer is not taxable in the state of the purchaser.

28 ~~(17) Sales, other than sales of tangible personal property, are in this state if:~~

29 ~~(a) the income-producing activity is performed in this state; or~~

30 ~~(b) the income-producing activity is performed both in and outside this state and a greater proportion of~~

1 ~~the income-producing activity is performed in this state than in any other state, based on costs of performance.~~

2 (17) (a) Receipts, other than receipts described in subsection (16), are in this state if the taxpayer's
3 market for the sales is in this state. The taxpayer's market for sales is in this state:

4 (i) in the case of sale, rental, lease, or license of real property, if and to the extent the property is located
5 in this state;

6 (ii) in the case of rental, lease, or license of tangible personal property, if and to the extent the property
7 is located in this state;

8 (iii) in the case of sale of a service, if and to the extent the service is delivered to a location in this state;

9 and

10 (iv) in the case of intangible property:

11 (A) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that
12 intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or
13 service is purchased by a consumer who is in this state; and

14 (B) that is sold, if and to the extent the property is used in this state, provided that:

15 (I) a contract right, government license, or similar intangible property that authorizes the holder to
16 conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes
17 all or part of this state;

18 (II) receipts from intangible property sales that are contingent on the productivity, use, or disposition of
19 the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property
20 under subsection (17)(a)(iv)(A); and

21 (III) all other receipts from a sale of intangible property shall be excluded from the numerator and
22 denominator of the receipts factor.

23 (b) If the state or states of assignment under subsection (17)(a) cannot be determined, the state or states
24 of assignment shall be reasonably approximated.

25 (c) If the taxpayer is not taxable in a state to which a receipt is assigned under subsection (17)(a) or
26 (17)(b), or if the state of assignment cannot be determined under subsection (17)(a) or reasonably approximated
27 under subsection (17)(b), such receipt shall be excluded from the denominator of the receipts factor.

28 (d) The tax administrator may prescribe regulations as necessary or appropriate to carry out the
29 purposes of this section.

30 (18) (a) If the allocation and apportionment provisions of this article do not fairly represent the extent of

1 the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require,
 2 in respect to all or any part of the taxpayer's business activity, if reasonable:

3 ~~(a)~~(i) separate accounting;

4 ~~(b)~~(ii) the exclusion of any one or more of the factors;

5 ~~(c)~~(iii) the inclusion of one or more additional factors which will fairly represent the taxpayer's business
 6 activity in this state; or

7 ~~(d)~~(iv) the employment of any other method to effectuate an equitable allocation and apportionment of
 8 the taxpayer's income.

9 (b) (i) If the allocation and apportionment provisions of this article do not fairly represent the extent of
 10 business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity,
 11 the tax administrator may, in addition to the authority provided in section (18)(a), establish appropriate rules or
 12 regulations for determining alternative allocation and apportionment methods for such taxpayers.

13 (ii) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to
 14 any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require,
 15 adjustment pursuant to subsection (18)(a).

16 (c) (i) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an
 17 equitable allocation and apportionment of the taxpayer's income pursuant to subsection (18)(a) must prove by
 18 a preponderance of the evidence:

19 (A) that the allocation and apportionment provisions of this Article do not fairly represent the extent of
 20 the taxpayer's business activity in this state; and

21 (B) that the alternative to such provisions is reasonable.

22 (ii) The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator
 23 is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the
 24 taxpayer's income. Notwithstanding the previous sentence, if the tax administrator can show that in any two of
 25 the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its
 26 allocation or apportionment method or methods used for such other tax years, then the tax administrator shall
 27 not bear the burden of proof in imposing a different method pursuant to (18)(a).

28 (d) If the tax administrator requires any method to effectuate an equitable allocation and apportionment
 29 of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the
 30 tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment

1 provisions of this article.

2 (e) A taxpayer that has received written permission from the tax administrator to use a reasonable
 3 method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that
 4 permission revoked with respect to transactions and activities that have already occurred unless there has been
 5 a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax
 6 administrator reasonably relied.

7 Article V. Elements Of Sales And Use Tax Laws

8 Tax Credit

9 (1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the
 10 combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the
 11 same property to another state and any subdivision thereof. The credit shall be applied first against the amount
 12 of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any
 13 use tax due a subdivision.

14 Exemption Certificates -- Vendors May Rely

15 (2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption
 16 certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing
 17 authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

18 Article VI. The Commission

19 Organization and Management

20 (1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from
 21 each party state who shall be the head of the state agency charged with the administration of the types of taxes
 22 to which this compact applies. If there is more than one such agency, the state shall provide by law for the
 23 selection of the commission member from the heads of the relevant agencies. State law may provide that a
 24 member of the commission be represented by an alternate, but only if there is on file with the commission written
 25 notification of the designation and identity of the alternate. The attorney general of each party state or the attorney
 26 general's designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend
 27 the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall
 28 receive all notices of meetings required under subsection (1)(e) of this article.

29 (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected
 30 by this compact to consult with the commission member from that state.

1 (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the
2 members are present, and no action shall be binding unless approved by a majority of the total number of
3 members.

4 (d) The commission shall adopt an official seal to be used as it may provide.

5 (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may
6 provide and such special meetings as its executive committee may determine. The commission bylaws shall
7 specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual,
8 regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of
9 the items to be considered.

10 (f) The commission shall elect annually, from among its members, a presiding officer, a vice presiding
11 officer, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and
12 it shall fix the executive director's duties and compensation. The executive director shall be secretary of the
13 commission. The commission shall make provision for the bonding of such of its officers and employees as it may
14 deem appropriate.

15 (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive
16 director shall appoint or discharge such personnel as may be necessary for the performance of the functions of
17 the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel
18 policies and programs.

19 (h) The commission may borrow, accept, or contract for the services of personnel from any state, the
20 United States, or any other governmental entity.

21 (i) The commission may accept for any of its purposes and functions any and all donations and grants
22 of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity
23 and may utilize and dispose of the same.

24 (j) The commission may establish one or more offices for the transacting of its business.

25 (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its
26 bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate
27 agency or officer in each of the party states.

28 (l) The commission annually shall make to the governor and legislature of each party state a report
29 covering its activities for the preceding year. Any donation or grant accepted by the commission or services
30 borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and

1 conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The
2 commission may make additional reports as it may deem desirable.

3 **Committees**

4 (2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission
5 shall have an executive committee of seven members, including the presiding officer, vice presiding officer,
6 treasurer, and four other members elected annually by the commission. The executive committee, subject to the
7 provisions of this compact and consistent with the policies of the commission, shall function as provided in the
8 bylaws of the commission.

9 (b) The commission may establish advisory and technical committees, membership on which may
10 include private persons and public officials, in furthering any of its activities. Such committees may consider any
11 matter of concern to the commission, including problems of special interest to any party state and problems
12 dealing with particular types of taxes.

13 (c) The commission may establish such additional committees as its bylaws may provide.

14 **Powers**

15 (3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

16 (a) study state and local tax systems and particular types of state and local taxes;

17 (b) develop and recommend proposals for an increase in uniformity or compatibility of state and local
18 tax laws with a view toward encouraging the simplification and improvement of state and local tax law and
19 administration;

20 (c) compile and publish information as in its judgment would assist the party states in implementation
21 of the compact and taxpayers in complying with state and local tax laws;

22 (d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

23 **Finance**

24 (4) (a) The commission shall submit to the governor or designated officer or officers of each party state
25 a budget of its estimated expenditures for such period as may be required by the laws of that state for
26 presentation to the legislature thereof.

27 (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations
28 of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under
29 any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the
30 remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income

1 taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the
2 commission shall employ such available public sources of information as, in its judgment, present the most
3 equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated
4 expenditures and requests for appropriations shall indicate the sources used in obtaining information employed
5 in applying the formula contained in this subsection.

6 (c) The commission shall not pledge the credit of any party state. The commission may meet any of its
7 obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the
8 commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or
9 in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i),
10 the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet
11 the same.

12 (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and
13 disbursements of the commission shall be subject to the audit and accounting procedures established under its
14 bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified
15 or licensed public accountant, and the report of the audit shall be included in and become part of the annual
16 report of the commission.

17 (e) The accounts of the commission shall be open at any reasonable time for inspection by duly
18 constituted officers of the party states and by any person authorized by the commission.

19 (f) Nothing contained in this article shall be construed to prevent commission compliance with laws
20 relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the
21 commission.

22 Article VII. Uniform Regulations And Forms

23 (1) Whenever any two or more party states or subdivisions of party states have uniform or similar
24 provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission
25 may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction
26 to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV
27 of this compact.

28 (2) Prior to the adoption of any regulation, the commission shall:

29 (a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states
30 and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission

1 for advance notice of its regulation-making proceedings;

2 (b) afford all affected party states and subdivisions and interested persons an opportunity to submit
3 relevant written data and views, which shall be considered fully by the commission.

4 (3) The commission shall submit any regulations adopted by it to the appropriate officials of all party
5 states and subdivisions to which they might apply. Each such state and subdivision shall consider any such
6 regulation for adoption in accordance with its own laws and procedures.

7 Article VIII. Interstate Audits

8 (1) This article shall be in force only in those party states that specifically provide therefor by statute.

9 (2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts,
10 books, papers, records, or other documents may request the commission to perform the audit on its behalf. In
11 responding to the request, the commission shall have access to and may examine, at any reasonable time, such
12 accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The
13 commission may enter into agreements with party states or their subdivisions for assistance in performance of
14 the audit. The commission shall make charges, to be paid by the state or local government or governments for
15 which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs
16 incurred in making the audit.

17 (3) The commission may require the attendance of any person within the state where it is conducting
18 an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with
19 respect to any account, book, paper, document, other record, property, or stock of merchandise being examined
20 in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for
21 such purpose at any time and place fixed by the commission within the state of which the person is a resident,
22 provided that such state has adopted this article.

23 (4) The commission may apply to any court having power to issue compulsory process for orders in aid
24 of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to
25 issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing
26 court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction
27 of the court to which application is made, such application may be to a court in the state or subdivision on behalf
28 of which the audit is being made or a court in the state in which the object of the order being sought is situated.
29 The provisions of this subsection apply only to courts in a state that has adopted this article.

30 (5) The commission may decline to perform any audit requested if it finds that its available personnel or

1 other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of
2 satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit
3 of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number
4 of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient
5 participation therein as determined by the commission.

6 (6) Information obtained by any audit pursuant to this article shall be confidential and available only for
7 tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in
8 accordance with the laws of the states or subdivisions on whose account the commission performs the audit and
9 only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be
10 construed to require any taxpayer to keep records for any period not otherwise required by law.

11 (7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the
12 party states or any of their subdivisions are not superseded or invalidated by this article.

13 (8) In no event shall the commission make any charge against a taxpayer for an audit.

14 (9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or
15 license fee imposed in whole or in part for revenue purposes.

16 Article IX. Arbitration

17 (1) Whenever the commission finds a need for settling disputes concerning apportionments and
18 allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of
19 Article VII.

20 (2) The commission shall select and maintain an arbitration panel composed of officers and employees
21 of state and local governments and private persons who shall be knowledgeable and experienced in matters of
22 tax law and administration.

23 (3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state
24 or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written
25 notice to the commission and to each party state or subdivision thereof that would be affected, may secure
26 arbitration of an apportionment or allocation if the taxpayer is dissatisfied with the final administrative
27 determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject
28 the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state
29 and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

30 (4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency

1 or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable
2 to agree on the person to be selected by them, such person shall be selected by lot from the total membership
3 of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing
4 provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the
5 selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No
6 member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise
7 affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration
8 proceeding shall not constitute affiliation within the meaning of this subsection.

9 (5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's
10 incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds
11 most appropriate for gaining access to evidence relevant to the matter before it.

12 (6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled
13 to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority
14 vote.

15 (7) The board shall have power to administer oaths, take testimony, subpoena and require the
16 attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue
17 commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey
18 a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which
19 the board is sitting or in which the person to whom the subpoena is directed may be found may make an order
20 requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The
21 provisions of this subsection apply only in states that have adopted this article.

22 (8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed
23 and allocated among the parties by the board in such manner as it may determine. The commission shall fix a
24 schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No
25 officer or employee of a state or local government who serves as a member of a board shall be entitled to
26 compensation therefor unless the member is required on account of the service to forego the regular
27 compensation attaching to the member's public employment, but any such board member shall be entitled to
28 expenses.

29 (9) The board shall determine the disputed apportionment or allocation and any matters necessary
30 thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation,

1 but for no other purpose.

2 (10) The board shall file with the commission and with each tax agency represented in the proceeding:
3 the determination of the board, the board's written statement of its reasons therefor, the record of the board's
4 proceedings, and any other documents required by the arbitration rules of the commission to be filed.

5 (11) The commission shall publish the determinations of boards, together with the statements of the
6 reasons therefor.

7 (12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such
8 rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

9 (13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters
10 in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

11 Article X. Entry Into Force And Withdrawal

12 (1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this
13 compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange
14 for notification of all party states whenever there is a new enactment of the compact.

15 (2) Any party state may withdraw from this compact by enacting a statute repealing the same. No
16 withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such
17 withdrawal.

18 (3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which
19 the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal,
20 nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding
21 determination therein.

22 Article XI. Effect On Other Laws And Jurisdiction

23 Nothing in this compact shall be construed to:

24 (1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state
25 shall be obligated to implement Article III, subsection (2), of this compact;

26 (2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel,
27 other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the
28 purposes of that article and the commission's powers of study and recommendation pursuant to Article VI,
29 subsection (3), may apply;

30 (3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with

1 respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is
2 expressly conferred by or pursuant to this compact upon another agency or body;

3 (4) supersede or limit the jurisdiction of any court of the United States.

4 Article XII. Construction And Severability

5 This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this
6 compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be
7 contrary to the constitution of any state or of the United States or if the applicability thereof to any government,
8 agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability
9 thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall
10 be held contrary to the constitution of any state participating therein, the compact shall remain in full force and
11 effect as to the remaining party states and in full force and effect as to the state affected as to all severable
12 matters."

13

14 **Section 2.** Section 15-30-3302, MCA, is amended to read:

15 **"15-30-3302. Income or license tax involving pass-through entities -- information returns required.**

16 (1) Except as otherwise provided:

17 (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

18 (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

19 (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

20 (2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each
21 shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other
22 owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided
23 in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C.
24 corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a
25 pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source
26 income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C.
27 corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed
28 through is subject to the taxes provided in Title 15, chapter 31.

29 (3) Income realized for federal income tax purposes by a financial institution that has elected to be
30 treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its

1 shareholders that is attributable to the financial institution's change from the bad debt reserve method of
2 accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15,
3 chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26
4 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

5 (4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C.
6 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying
7 tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

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

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

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

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

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

18 (v) any other information the department prescribes.

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

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

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

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

29 (iv) any other information the department prescribes.

30 (c) A disregarded entity that has Montana source income shall furnish the information and file the returns

1 the department prescribes. The return must include:

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

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

5 (iii) any other information the department prescribes.

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

12 (ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has
13 10 or fewer partners, shareholders, members, or other owners, each of whom:

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

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

17 (C) has paid all taxes when due.

18 (6) For purposes of this part:

19 (a) a partnership or S. corporation with business activity occurring both within and outside of this state
20 shall calculate its Montana source income pursuant to the allocation and apportionment provisions contained in
21 Title 15, chapter 31, part 3; and

22 (b) a disregarded entity that is not owned by an individual, estate, or trust and that has business activity
23 occurring both within and outside of this state shall calculate its Montana source income pursuant to the allocation
24 and apportionment provisions contained in Title 15, chapter 31, part 3."

25

26 **Section 3.** Section 15-31-301, MCA, is amended to read:

27 **"15-31-301. Corporations subject to allocation and apportionment.** (1) Any corporation having
28 income from business activity which is taxable both within and without this state shall allocate and apportion its
29 net income as provided in this part.

30 (2) A corporation engaged in a unitary business within and without Montana must apportion its ~~business~~

1 apportionable income as provided for under 15-31-305. A business is unitary when the operation of the business
 2 within the state is dependent upon or contributory to the operation of the business outside the state or if the units
 3 of the business within and without the state are closely allied and not capable of separate maintenance as
 4 independent businesses.

5 (3) A corporation not engaged in a unitary business must allocate its ~~business~~ apportionable income by
 6 means of separate accounting methods, provided its books and records are so kept that the income and
 7 expenses attributable to business operations within the state can be properly segregated from total income and
 8 expense. If the corporation's books and records do not permit such proper segregation, its ~~business~~ apportionable
 9 income must be apportioned according to the provisions of 15-31-305."

10

11 **Section 4.** Section 15-31-302, MCA, is amended to read:

12 **"15-31-302. Definitions.** ~~(1) "Business income" means income arising from transactions and activity in~~
 13 ~~the regular course of the taxpayer's trade or business and includes income from tangible and intangible property~~
 14 ~~if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular~~
 15 ~~trade or business operations.~~

16 (1) "Apportionable income" means:

17 (a) all income that is apportionable under the constitution of the United States and is not allocated under
 18 the laws of this state, including:

19 (i) income arising from transactions and activity in the regular course of the taxpayer's trade or business;

20 and

21 (ii) income arising from tangible and intangible property if the acquisition, management, employment,
 22 development, or disposition of the property is or was related to the operation of the taxpayer's trade or business;

23 and

24 (b) any income that would be allocable to this state under the constitution of the United States but that
 25 is apportioned rather than allocated pursuant to the laws of this state.

26 (2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer
 27 is directed or managed.

28 (3) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to
 29 employees for personal services.

30 (4) ~~"Nonbusiness~~ "Nonapportionable income" means all income other than ~~business~~ apportionable

1 income.

2 (5) "~~Sales~~" "Receipts" means all gross receipts of the taxpayer not allocated under 15-31-304.

3 (6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto
4 Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof."

5

6 **Section 5.** Section 15-31-303, MCA, is amended to read:

7 "**15-31-303. When taxable in another state.** For the purposes of allocation and apportionment of
8 income, a corporation is taxable in another state if:

9 ~~———(1) by reason of the corporation's business activities carried on in that state it is subjected to a net~~
10 ~~income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a~~
11 ~~corporate stock tax; or~~

12 ~~———(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact,~~
13 ~~the state does or does not subject the taxpayer to a net income tax as provided in Article IV, subsection (3), of~~
14 ~~15-1-601."~~

15

16 **Section 6.** Section 15-31-304, MCA, is amended to read:

17 "**15-31-304. Allocation of nonbusiness nonapportionable income.** ~~(1)~~ Rents and royalties from real
18 or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that
19 they constitute nonbusiness nonapportionable income, shall must be allocated as provided in ~~subsections (2)~~
20 ~~through (5) of this section.~~

21 ~~———(2) (a) Net rents and royalties from real property located in this state are allocable to this state.~~

22 ~~———(b) Net rents and royalties from tangible personal property are allocable to this state:~~

23 ~~———(i) if and to the extent that the property is utilized in this state; or~~

24 ~~———(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized~~
25 ~~under the laws of or taxable in the state in which the property is utilized.~~

26 ~~———(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents~~
27 ~~and royalties by a fraction the numerator of which is the number of days of physical location of the property in the~~
28 ~~state during the rental or royalty period in the taxable year and the denominator of which is the number of days~~
29 ~~of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the~~
30 ~~physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer,~~

1 tangible personal property is utilized in the state in which the property was located at the time the rental or royalty
2 payer obtained possession:

3 ~~—— (3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.~~

4 ~~—— (b) Capital gains and losses from sales of tangible personal property are allocable to this state if:~~

5 ~~—— (i) the property had a situs in this state at the time of the sale; or~~

6 ~~—— (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which
7 the property had a situs.~~

8 ~~—— (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the
9 taxpayer's commercial domicile is in this state.~~

10 ~~—— (4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.~~

11 ~~—— (5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:~~

12 ~~—— (i) the patent or copyright is utilized by the payer in this state; or~~

13 ~~—— (ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the
14 taxpayer's commercial domicile is in this state.~~

15 ~~—— (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing,
16 or other processing in the state or to the extent that a patented product is produced in the state. If the basis of
17 receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect
18 states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.~~

19 ~~—— (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state.
20 If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures
21 do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile
22 is located Article IV, subsections (4) through (8), of 15-1-601."~~

23

24 **Section 7.** Section 15-31-305, MCA, is amended to read:

25 **"15-31-305. Apportionment of business apportionable income.** All business apportionable income
26 shall must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the
27 property factor plus the payroll factor plus the sales factor and the denominator of which is 3 as provided in Article
28 IV, subsection (9), of 15-1-601."

29

30 **Section 8.** Section 15-31-306, MCA, is amended to read:

1 **"15-31-306. Definition of property factor.** The property factor is a fraction, the numerator of which is
 2 the average value of the taxpayer's real and tangible personal property owned or rented and used in this state
 3 in the production of business income during the tax period and the denominator of which is the average value
 4 of all the taxpayer's real and tangible personal property owned or rented and used in the production of business
 5 income during the tax period provided for in Article IV, subsection (10), of 15-1-601."

6

7 **Section 9.** Section 15-31-307, MCA, is amended to read:

8 **"15-31-307. Values used for property factor.** ~~(4)~~ Property owned by the taxpayer is valued at its
 9 original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental
 10 rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from
 11 subrentals.

12 ~~———— (2) The average value of property shall be determined by averaging the values at the beginning and~~
 13 ~~ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax~~
 14 ~~period if reasonably required to reflect properly the average value of the taxpayer's property as provided in Article~~
 15 ~~IV, subsections (11) and (12), of 15-1-601."~~

16

17 **Section 10.** Section 15-31-308, MCA, is amended to read:

18 **"15-31-308. Definition of payroll factor.** The payroll factor is ~~a fraction, the numerator of which is the~~
 19 ~~total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production~~
 20 ~~of business income and the denominator of which is the total amount paid everywhere during the tax period for~~
 21 ~~compensation attributable to the production of business income~~ provided for in Article IV, subsection (13), of
 22 15-1-601."

23

24 **Section 11.** Section 15-31-309, MCA, is amended to read:

25 **"15-31-309. Payroll factor for compensation in this state.** Compensation is paid in this state if:

26 ~~———— (1) the individual's service is performed entirely within the state;~~

27 ~~———— (2) the individual's service is performed both within and without the state, but the service performed~~
 28 ~~without the state is incidental to the individual's service within the state; or~~

29 ~~———— (3) some of the service is performed in the state and:~~

30 ~~———— (a) the base of operations or, if there is no base of operations, the place from which the service is~~

1 directed or controlled is in the state; or
 2 ~~—— (b) the base of operations or the place from which the service is directed or controlled is not in any state~~
 3 ~~in which some part of the service is performed but the individual's residence is in this state as provided in Article~~
 4 ~~IV, subsection (14), of 15-1-601."~~

5
 6 **Section 12.** Section 15-31-310, MCA, is amended to read:
 7 **"15-31-310. Definition of sales receipts factor.** The sales receipts factor is a fraction, the numerator
 8 of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the
 9 total sales of the taxpayer everywhere during the tax period provided for in Article IV, subsection (15), of
 10 15-1-601."

11
 12 **Section 13.** Section 15-31-311, MCA, is amended to read:
 13 **"15-31-311. Sales Receipts factor for sales receipts in this state.** (1) Sales Receipts from the sale
 14 of tangible personal property are in this state if:
 15 ~~—— (a) the property is delivered or shipped to a purchaser, other than the United States government, within~~
 16 ~~this state regardless of the f.o.b. point or other conditions of the sale; or~~
 17 ~~—— (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state~~
 18 ~~and:~~
 19 ~~—— (i) the purchaser is the United States government; or~~
 20 ~~—— (ii) the taxpayer is not taxable in the state of the purchaser as provided for in Article IV, subsection (16),~~
 21 ~~of 15-1-601.~~

22 (2) Sales Receipts, other than sales of tangible personal property receipts provided for in subsection (1),
 23 are in this state if:
 24 ~~—— (a) the income-producing activity is performed in this state; or~~
 25 ~~—— (b) the income-producing activity is performed both in and outside this state and a greater proportion of~~
 26 ~~the income-producing activity is performed in this state than in any other state, based on costs of performance~~
 27 ~~as provided for in Article IV, subsection (17), of 15-1-601."~~

28
 29 **Section 14.** Section 15-31-312, MCA, is amended to read:
 30 **"15-31-312. Apportionment formula -- unitary business provisions.** (1) If the allocation and

1 apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this
 2 state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the
 3 taxpayer's business activity, if reasonable:

4 ~~(+)(a) separate accounting, provided the taxpayer's activities in this state are separate and distinct from
 5 its operations conducted outside this state and are not a part of a unitary business operation conducted within
 6 and without this state. For purposes of this part, a "unitary business" is one in which the business conducted
 7 within the state is dependent upon or contributory to the business conducted outside this state or if the units of
 8 the business within and without this state are closely allied and not capable of separate maintenance as
 9 independent businesses.~~

10 ~~—— (2) the exclusions of any one or more of the factors;~~

11 ~~—— (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business
 12 activity in this state; or~~

13 ~~—— (4) the employment of any other method to effectuate an equitable allocation and apportionment of the
 14 taxpayer's income; or~~

15 (b) the application of the provisions of Article IV, subsections (18)(a)(ii) through (18)(a)(iv), of 15-1-601.

16 (2) If the allocation and apportionment provisions of this part do not fairly represent the extent of business
 17 activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, Article
 18 IV, subsection (18)(b), of 15-1-601 applies."

19
 20 COORDINATION SECTION. SECTION 15. COORDINATION INSTRUCTION. IF SENATE BILL NO. 317 IS NOT
 21 PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

22
 23 NEW SECTION. Section 16. Effective date. [This act] is effective January 1, 2018.

24
 25 NEW SECTION. Section 17. Applicability. [This act] applies to tax years beginning after December
 26 31, 2017.

27 - END -