

HOUSE BILL NO. 705

INTRODUCED BY T. WINTER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CORPORATE INCOME TAX DISCLOSURE ACT TO REQUIRE CORPORATIONS TO FILE CERTAIN TAX INFORMATION WITH THE SECRETARY OF STATE; PROVIDING THE INFORMATION THAT MUST BE FILED; PROVIDING THAT THE INFORMATION FILED IS PUBLIC INFORMATION; PROVIDING FOR A PENALTY; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 15-31-511, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Corporate Income Tax Disclosure Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) (a) "Corporation" means any entity subject to the tax imposed by Title 15, chapter 31, or by 26 U.S.C. 11.

(b) The term does not include qualified personal service corporations as defined in 26 U.S.C. 448.

(2) "Doing business in this state" means:

(a) owning or renting real or tangible personal property physically located in this state;

(b) having employees, agents, or representatives acting on the corporation's behalf in this state;

(c) making sales of tangible personal property to purchasers that take possession of the property in this state;

(d) performing services for customers located in this state;

(e) performing services in this state;

(f) earning income from intangible property that has a business situs in this state;

(g) engaging in regular and systematic solicitation of sales in this state;

(h) being a partner in a partnership engaged in any of the preceding activities in this state; or

(i) being a member of a limited liability company engaged in any of the preceding activities in this state.

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2 **NEW SECTION. Section 3. Tax disclosure statement required.** The following corporations, if doing
3 business in this state, shall file with the secretary of state the statement provided for in [section 4]:

- 4 (1) all publicly traded corporations, including corporations traded on foreign stock exchanges; and
5 (2) all corporations for which 50% or more of the voting stock is owned, directly or indirectly, by a publicly
6 traded corporation.

7
8 **NEW SECTION. Section 4. Content of tax disclosure statement.** (1) The statement required by
9 [section 3] must be filed annually in an electronic format specified by the secretary of state no more than 30 days
10 following the filing of the tax return required by 15-31-111, or, in the case of a corporation not required to file a
11 tax return, within 90 days of the filing of the corporation's federal tax return, including the corporation's inclusion
12 in a federal consolidated return.

13 (2) The statement must contain the following information about the corporation:

14 (a) the name of the corporation and the street address of its principal executive office;

15 (b) if different from the name in subsection (2)(a), the name of any corporation that owns, directly or
16 indirectly, 50% or more of the voting stock of the corporation and the street address of the former corporation's
17 principal executive office;

18 (c) the corporation's 4-digit North American industry classification system code number; and

19 (d) a unique code number, assigned by the secretary of state, to identify the corporation, which will
20 remain constant from year to year.

21 (3) The statement must contain the following information reported on or used in preparing the
22 corporation's tax return filed under the requirements of 15-31-111, or, in the case of a corporation not required
23 to file a tax return under the requirements of 15-31-111, the information that would be required to be reported on
24 or used in preparing the tax return were the corporation required to file such a return:

25 (a) total gross income of the unitary group of which the corporation is a member;

26 (b) total cost of goods sold claimed as a deduction from gross income by the unitary group of which the
27 corporation is a member;

28 (c) taxable income of the unitary group of which the corporation is a member prior to net operating loss
29 deductions or apportionment;

30 (d) property, payroll, and sales apportionment factors of the corporation as calculated on the combined

- 1 report;
- 2 (e) the calculated overall apportionment factor in the state for the corporation as calculated on the
3 combined report;
- 4 (f) total business income of the corporation apportioned to the state;
- 5 (g) the net operating loss deduction, if any, of the corporation apportioned to the state;
- 6 (h) total nonbusiness income of the corporation and the amount of nonbusiness income allocated to the
7 state;
- 8 (i) total taxable income of the corporation;
- 9 (j) total tax before credits;
- 10 (k) tax credits claimed with each credit individually enumerated;
- 11 (l) tax due;
- 12 (m) tax paid;
- 13 (n) the amount of tax due paid under protest, if applicable;
- 14 (o) total deductions for management services fees, for rent, and for royalty, interest, license fee, and
15 similar payments for the use of intangible property paid to any affiliated entity that is not included in the unitary
16 combined group that includes the corporation and the names and principal office addresses of the entities to
17 which the payments were made;
- 18 (p) a description of the source of any nonbusiness income reported on the return and the identification
19 of the state to which such income was reported;
- 20 (q) a listing of all corporations included in the unitary group that includes the corporation, their state
21 identification numbers assigned under the provisions of this section, if applicable, and a listing of all variations
22 in the unitary group that includes the corporation used in filing corporate income or franchise tax returns in any
23 of the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kansas, Maine, Minnesota,
24 Nebraska, New Hampshire, North Dakota, Oregon, Utah, or Vermont;
- 25 (r) full-time equivalent employment of the corporation in the state on the last day of the tax year for which
26 the return is being filed and for the 3 previous tax years;
- 27 (s) in the case of a publicly traded corporation incorporated in the United States or the affiliate of the
28 publicly traded corporation, profits before tax reported on the United States securities and exchange commission
29 Form 10-K for the corporation or the consolidated group of which the corporation is a member for the corporate
30 fiscal year that contains the last day of the tax year for which the return is filed; and

1 (t) accumulated tax credit carryovers, enumerated by credit.

2
3 **NEW SECTION. Section 5. Alternative statement option for corporations not required to file tax**
4 **return.** In lieu of the statement provided for in [section 4], a corporation doing business in this state but not
5 required to file a tax return under the requirements of 15-31-111 may elect to file a statement with the secretary
6 of state containing the following information:

7 (1) the information specified in [section 4(2)];

8 (2) an explanation of why the corporation is not required to file a corporate income tax return in this state,
9 which may take the form of checking one or more possible explanations drafted by the secretary of state;

10 (3) identification of which of the following ranges applies to the corporation's total gross receipts from
11 sales to purchasers in this state in the tax year for which this statement is filed:

12 (a) less than \$10 million;

13 (b) at least \$10 million but less than \$50 million;

14 (c) at least \$50 million but less than \$100 million;

15 (d) at least \$100 million but less than \$250 million; or

16 (e) \$250 million or more.

17
18 **NEW SECTION. Section 6. Supplemental information permitted.** Any corporation submitting a
19 statement required by [sections 1 through 9] must be permitted to submit supplemental information that, in the
20 corporation's sole judgment, could facilitate proper interpretation of the information included in the statement. The
21 mechanisms of public dissemination of the information contained in the statements, as provided in [section 8],
22 must ensure that any supplemental information is publicly available and that notification of its availability is given
23 to any person seeking information contained in a statement.

24
25 **NEW SECTION. Section 7. Amended tax disclosure statements required.** If a corporation files an
26 amended tax return, the corporation shall file a revised statement within 60 calendar days after the amended
27 return is filed. If a corporation's tax liability for a tax year is changed as the result of an uncontested audit
28 adjustment or final determination of liability by the department of revenue or by a court of law, the corporation
29 shall file a revised statement within 60 calendar days of the final determination of liability.

1 **NEW SECTION. Section 8. Public access to tax disclosure statements.** The statements required
2 under [sections 1 through 9] are a public record. The secretary of state shall make all information contained in
3 the statements required under [sections 1 through 9] for all filing corporations available to the public on an
4 ongoing basis in the form of a searchable database accessible through the internet. The secretary of state shall
5 make available and set charges that cover the cost to the state of providing copies on appropriate
6 computer-readable media of the entire database for statements filed during each calendar year and for paper
7 copies of an individual annual statement for a specific corporation. No statement for any corporation for a
8 particular tax year may be publicly available until the first day of the third calendar year that follows the calendar
9 year in which the particular tax year ends.

10
11 **NEW SECTION. Section 9. Enforcing compliance -- penalties -- rulemaking.** (1) The accuracy of
12 the statements required by [sections 1 through 9] must be attested to in writing by the chief operating officer of
13 the corporation and are subject to audit by the department of revenue as the agent of the secretary of state in the
14 course of and under the normal procedures applicable to corporate income tax return audits. Subject to
15 subsection (2), the secretary of state shall develop and implement an oversight and penalty system applicable
16 to both the chief operating officer of the corporation and the corporation itself to ensure that corporations doing
17 business in this state, including those not required to file a return under the provisions of Title 15, chapter 31,
18 provide the required attestation and disclosure statements in a timely and accurate manner. The secretary of
19 state shall publish the name and penalty imposed upon any corporation subject to a penalty.

20 (2) The penalty for a corporation that fails to file a disclosure statement required by [sections 1 through
21 9] is \$10,000 or two times the corporate income taxes assessed in the previous year, whichever is less.

22 (3) Penalties assessed pursuant to this section must be deposited in the general fund.

23 (4) The secretary of state shall promulgate rules to implement the provisions of [sections 1 through 9].

24
25 **Section 10.** Section 15-31-511, MCA, is amended to read:
26 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in [sections 1 through
27 9], in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make
28 known in any manner:

29 (a) the amount of income or any particulars set forth or disclosed in any return or report required under
30 this chapter or any other information relating to taxation secured in the administration of this chapter; or

1 (b) any federal return or information in or disclosed on a federal return or report required by law or rule
2 of the department under this chapter.

3 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may
4 not be ordered to produce any of them or evidence of anything contained in them in any administrative
5 proceeding or action or proceeding in any court, except:

6 (i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

7 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of
8 this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

9 (b) If the production of a return, report, or information contained in them is ordered, the court shall limit
10 production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the
11 action or proceeding.

12 (3) This section does not prohibit:

13 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer
14 who filed the return or report or to the taxpayer's authorized representative;

15 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,
16 reports, or items from returns or reports;

17 (c) the inspection of returns and reports by the attorney general or other legal representative of the state
18 in the course of an administrative proceeding or litigation under this chapter;

19 (d) access to information under subsection (4);

20 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of
21 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer
22 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of
23 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an
24 investigation of the income or return of a corporation. The director of revenue may not furnish that information
25 to a person representing the United States or another state unless the United States or the other state grants
26 substantially similar privileges to an officer of this state charged with the administration of this chapter.

27 (4) On written request to the director or a designee of the director, the department shall:

28 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to
29 the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection
30 (1);

1 (b) provide corporate income tax and alternative corporate income tax information, including any
2 information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided
3 in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111.
4 The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject
5 to the same restrictions on disclosure outside those offices as provided in subsection (1).

6 (c) provide to the department of commerce tax information about a taxpayer whose debt is assigned to
7 the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The
8 information provided to the department of commerce must be used for the purposes of preventing and detecting
9 fraud or abuse and determining eligibility for grants or loans.

10 (d) furnish to the superintendent of public instruction information required under 20-9-905;

11 (e) exchange with the department of labor and industry taxpayer and apprentice information necessary
12 to implement 15-30-2357, 15-31-173, and 39-6-109.

13 (5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or
14 public employee is convicted of violating this section, the person is dismissed from office or employment and may
15 not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case
16 of a former officer or employee, for 1 year after conviction. (Subsection (4)(d) terminates December 31,
17 2023--sec. 33, Ch. 457, L. 2015.)"

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19 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
20 codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 9].

21 - END -