

SENATE BILL NO. 141

INTRODUCED BY D. BARRETT

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A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE WATER'S-EDGE ELECTION FOR CORPORATE INCOME TAX PURPOSES; ALLOWING A CURRENT WATER'S-EDGE ELECTION TO REMAIN IN EFFECT UNTIL IT EXPIRES; PROHIBITING A NEW WATER'S-EDGE ELECTION; AMENDING SECTIONS 15-31-121, 15-31-322, AND 15-31-324, MCA; REPEALING SECTIONS 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, AND 15-31-326, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax --distribution of revenue. (1) ~~Except as provided in subsection (2), the~~ The percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the tax period.

~~(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the tax period.~~

~~————(3)(2)~~ Each corporation subject to taxation under this part shall pay a minimum tax of not less than \$50."

Section 2. Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election -- inclusion of tax havens. (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section if the water's-edge election is made before [the effective date of this section]. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or

1 indirectly owned or controlled by an includable corporation.

2 (b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign
3 sales corporations, as described in 26 U.S.C. 921 through 927;

4 (c) export trade corporations, as described in 26 U.S.C. 970 and 971;

5 (d) foreign corporations deriving gain or loss from disposition of a United States real property interest
6 to the extent recognized under 26 U.S.C. 897;

7 (e) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly
8 or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a
9 location inside the United States; or

10 (f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven,
11 including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda,
12 British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada,
13 Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands,
14 Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St.
15 Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, U.S. Virgin Islands, and
16 Vanuatu.

17 (2) The department shall report biennially to the revenue and transportation interim committee with an
18 update of countries that may be considered a tax haven under subsection (1)(f)."

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20 **Section 3.** Section 15-31-324, MCA, is amended to read:

21 **"15-31-324. Water's-edge election period -- consent -- change of election.** (1) A water's-edge
22 election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes
23 imposed under this chapter consents to the election. Consent by the common parent of an affiliated group
24 constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under
25 this chapter after the water's-edge election is considered to have consented to the election. The election must
26 disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation
27 incorporated in a tax haven as set forth in 15-31-322(1)(f), in which the taxpayer owns directly or indirectly more
28 than 50% of the voting stock of the affiliated corporation.

29 (2) ~~Except as provided in subsections (3) and (4), each water's-edge election must be for 3-year~~
30 ~~renewable periods.~~ A water's-edge election made before [the effective date of this section] is in effect for 3 years

1 from the date of the election and must be made within the first 90 days of the first tax year of the 3-year period.

2 A water's-edge election may not be made on or after [the effective date of this section].

3 (3) A water's-edge election may be changed by a taxpayer before the end of ~~each~~ the 3-year period only
4 with the permission of the department. In granting a change of election, the department shall impose reasonable
5 conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior
6 to the change.

7 ~~(4) A taxpayer subject to the provisions of 15-31-322(1)(f) who has a water's-edge election that is in~~
8 ~~effect for tax periods beginning both before and after October 1, 2003, may rescind the election for any tax period~~
9 ~~beginning after October 1, 2003."~~

10
11 NEW SECTION. Section 4. Repealer. The following sections of the Montana Code Annotated are
12 repealed:

- 13 15-31-321. Definitions.
14 15-31-322. Water's-edge election -- inclusion of tax havens.
15 15-31-323. Apportionment factors -- inclusion of tax havens.
16 15-31-324. Water's-edge election period -- consent -- change of election.
17 15-31-325. Treatment of dividends.
18 15-31-326. Domestic disclosure spreadsheet -- inclusion of tax havens.

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20 NEW SECTION. Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is
21 effective on passage and approval.

22 (2) [Sections 1 and 4] are effective July 1, 2022.

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