

1 SENATE BILL NO. 142

2 INTRODUCED BY D. BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE WATER'S-EDGE ELECTION
5 FOR CORPORATE INCOME TAX PURPOSES; ADDING GUATEMALA, HONG KONG, THE KINGDOM OF THE
6 NETHERLANDS, SWITZERLAND, AND TRINIDAD AND TOBAGO TO THE JURISDICTIONS CONSIDERED
7 TAX HAVENS; REMOVING ARUBA, MONACO, AND NETHERLANDS ANTILLES FROM THE JURISDICTIONS
8 CONSIDERED TAX HAVENS; ALLOWING IMPACTED TAXPAYERS TO RESCIND A WATER'S-EDGE
9 ELECTION; AMENDING SECTIONS 15-31-322 AND 15-31-324, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **Section 1.** Section 15-31-322, MCA, is amended to read:

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

19 (a) a corporation incorporated in the United States or formed under the laws of any state, the District of
20 Columbia, or any territory or possession of the United States in a unitary relationship with the taxpayer and
21 eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more
22 than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining
23 eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership
24 requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or
25 indirectly owned or controlled by an includable corporation.

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

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

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

1 (e) a corporation in a unitary relationship with a taxpayer incorporated outside the United States if over
 2 50% of its voting stock is owned directly or indirectly by the taxpayer or common foreign parent and if more than
 3 20% of the average of its payroll and property is assignable to a location inside the United States; or

4 (f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven,
 5 including Andorra, Anguilla, Antigua and Barbuda, ~~Aruba~~, the Bahamas, Bahrain, Barbados, Belize, Bermuda,
 6 British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guatemala,
 7 Guernsey-Sark-Alderney, Hong Kong, Isle of Man, Jersey, the Kingdom of the Netherlands, Liberia,
 8 Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, ~~Monaco~~, Montserrat, Nauru, ~~Netherlands Antilles~~,
 9 Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines,
 10 Switzerland, Trinidad and Tobago, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

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

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14 **Section 2.** Section 15-31-324, MCA, is amended to read:

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

23 (2) Except as provided in subsections (3) and (4), each water's-edge election must be for 3-year
 24 renewable periods.

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

29 (4) A taxpayer subject to the provisions of 15-31-322(1)(f) who has a water's-edge election that is in
 30 effect for tax periods beginning both before and after ~~October 1, 2003~~ December 31, 2018, may rescind ~~the that~~

1 specific election for any tax period beginning after ~~October 1, 2003~~ December 31, 2018."

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3 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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5 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
6 meaning of 1-2-109, to tax years beginning after December 31, 2018.

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