

1 SENATE BILL NO. 12

2 INTRODUCED BY J. COHENOUR

3 BY REQUEST OF THE REVENUE INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CORPORATE INCOME TAX WATER'S-EDGE
6 ELECTION LAWS; REMOVING THE TAX HAVEN LIST FROM STATUTE AND PROVIDING THAT THE
7 DEPARTMENT OF REVENUE IDENTIFY TAX HAVENS BY ADMINISTRATIVE RULE; DEFINING "TAX
8 HAVEN"; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-31-321 AND 15-31-322, MCA;
9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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13 **Section 1.** Section 15-31-321, MCA, is amended to read:

14 **"15-31-321. Definitions.** As used in 15-31-321 through 15-31-326, unless the context requires
15 otherwise, the following definitions apply:

16 (1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which
17 more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-
18 edge combined group.

19 (2) "Tax haven" means a jurisdiction identified by the department by administrative rule as having no
20 effective tax or nominal effective tax on the relevant income and as:

21 (a) having laws or practices that prevent effective exchange of information for tax purposes with other
22 governments on taxpayers benefiting from the tax regime;

23 (b) having a tax regime that lacks transparency. A tax regime lacks transparency if:

24 (i) the details of legislative, legal, or administrative provisions are not open and apparent or are not
25 consistently applied among similarly situated taxpayers; or

26 (ii) the information needed by tax authorities to determine a taxpayer's correct tax liability, such as
27 accounting records and underlying documentation, is not adequately available.

28 (c) facilitating the establishment of foreign-owned entities without the need for a local substantive

1 presence or prohibiting the entities from having any commercial impact on the local economy;

2 (d) explicitly or implicitly excluding the jurisdiction's resident taxpayers from taking advantage of the
 3 tax regime's benefits or prohibiting enterprises that benefit from the regime from operating in the jurisdiction's
 4 domestic market; or

5 (e) having created a tax regime that is favorable for tax avoidance based on an overall assessment of
 6 relevant factors, including whether the jurisdiction has a significant untaxed offshore financial and other
 7 services sector relative to its overall economy.

8 ~~(2)(3)~~ "United States" means the 50 states of the United States and the District of Columbia.

9 ~~(3)(4)~~ "Water's-edge combined group" means all corporations or entities included in the election of a
 10 taxpayer under 15-31-322."

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

13 **"15-31-322. Water's-edge election -- inclusion of tax havens -- rulemaking.** (1) Notwithstanding
 14 any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its
 15 income under this section. A return under a water's-edge election must include the income and apportionment
 16 factors of the following affiliated corporations only:

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

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

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

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

28 (e) a corporation incorporated outside the United States if over 50% of its voting stock is owned

1 directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is
 2 assignable to a location inside the United States; or

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

10 (2) The department shall adopt a list of tax havens by administrative rule, review the administrative
 11 rule annually, and amend the rule as necessary.

12 ~~(2)(3)~~ The department shall report biennially, in accordance with 5-11-210, to the revenue interim
 13 committee with an update of countries that may be considered a tax haven under subsection (1)(f) on the tax
 14 haven rulemaking process, including changes to the tax haven list and whether the tax haven criteria provided
 15 for in 15-31-321 should be updated."

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

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19 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
 20 meaning of 1-2-109, to tax years beginning after December 31, 2020.

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