

SENATE BILL NO. 252

INTRODUCED BY M. BLASDEL

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A WAIVER FROM FILING OF A COMPOSITE RETURN OR WITHHOLDING OF TAX FOR CERTAIN DOMESTIC SECOND-TIER PASS-THROUGH ENTITIES; REVISING DEFINITIONS; AMENDING SECTION 15-30-3313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 15-30-3313, MCA, is amended to read:

**"15-30-3313. Consent or withholding -- rulemaking.** (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that reports a distributive share of income of \$1,000 or more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or any other entity, organization, or account whose principal place of business or administration is outside the state of Montana or that is itself a pass-through entity shall, on or before the due date, including extensions, for the information return:

- (a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:
  - (i) file a composite return;
  - (ii) file an agreement of the individual nonresident to:
    - (A) file a return in accordance with the provisions of 15-30-2602;
    - (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
    - (C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
  - (iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;
- (b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:
  - (i) file a composite return;
  - (ii) file the foreign C. corporation's agreement to:
    - (A) file a return in accordance with the provisions of 15-31-111;

- 1 (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
- 2 (C) be subject to the personal jurisdiction of the state for the collection of income taxes, corporate income  
3 taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to  
4 the income of the pass-through entity; or
- 5 (iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C.  
6 corporation's share of Montana source income reflected on the pass-through entity's information return; and
- 7 (c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also  
8 referred to in this section as a "second-tier pass-through entity":
- 9 (i) file a composite return; or
- 10 (ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its  
11 share of Montana source income reflected on the pass-through entity's information return.
- 12 (2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to  
13 subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income  
14 tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date,  
15 including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through  
16 entity shall furnish to the nonresident individual a record of the amount of tax paid on the taxpayer's behalf.
- 17 (3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to  
18 subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the  
19 corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the  
20 alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403.  
21 On or before the due date, including extensions, of the pass-through entity's information return provided in  
22 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid  
23 on its behalf.
- 24 (4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant  
25 to subsection (1)(c)(ii) must be considered as payment on the account of the individual, trust, estate, or C.  
26 corporation to which Montana source income is directly or indirectly passed through and must be claimed as the  
27 distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner  
28 on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through  
29 entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the second-tier  
30 pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

1 (5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii),  
2 (1)(b)(iii), or (1)(c)(ii) from the partner, shareholder, member, or other owner on whose behalf the payment was  
3 made.

4 (6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C.  
5 corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must,  
6 with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included  
7 in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the  
8 nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

9 (7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information  
10 return reporting the name, address, and taxpayer identification number for each person or entity that has an  
11 interest in the partnership that results in Montana source income or that has sold its interest in the partnership  
12 during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A  
13 publicly traded partnership shall provide the department with the information in an electronic form that is capable  
14 of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its  
15 obligation to pay Montana income taxes.

16 (b) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) if one or more  
17 publicly traded partnerships has a direct or indirect majority interest in the income distributed by the pass-through  
18 entity. The pass-through entity shall apply to the department in writing for the waiver of the withholding  
19 requirements set forth in subsection (1)(c).

20 (c) Waivers issued by the department prior to January 1, 2016, to pass-through entities in which a  
21 publicly traded partnership has a direct or indirect majority interest will remain in effect in accordance with the law  
22 and rules in effect at the time the waiver was granted.

23 (d) The department shall adopt rules outlining the requirements for the waiver request.

24 (8) (a) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) for any  
25 partner, shareholder, member, or other owner that is a domestic second-tier pass-through entity if:

26 (i) the pass-through entity files a statement setting forth the name, address, and social security or federal  
27 identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members,  
28 or other owners; and

29 (ii) the information establishes that the domestic second-tier pass-through entity's share of Montana  
30 source income should be fully accounted for in a resident individual an income tax return required under Title 15,

1 chapter 30 or 31.

2 (b) For purposes of this subsection (8), ~~a~~ the following definitions apply:

3 (i) "Domestic C. corporation" is a corporation that is engaged in or doing business in the state, as  
4 provided in 15-31-101.

5 (ii) ~~"domestic "~~Domestic second-tier pass-through entity" is a pass-through entity whose interest is entirely  
6 held, either directly or indirectly, by one or more resident individuals, domestic C. corporations, or any other  
7 entities, organizations, or accounts whose principal place of business or administration is located in the state of  
8 Montana or any combination of interests held by resident individuals, domestic C. corporations, or any other  
9 entities, organizations, or accounts whose principal place of business or administration is located in the state of  
10 Montana.

11 (c) Subsequent to the initial approval of a waiver, the department may revoke the waiver if it determines  
12 that the partner, shareholder, member, or other owner no longer qualifies.

13 (9) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601  
14 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the  
15 extent of the taxpayer's business activity in the state.

16 (10) The department may adopt rules to administer and enforce the provisions of this section."  
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18 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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20 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the  
21 meaning of 1-2-109, to tax years beginning after December 31, 2016.

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