

HOUSE BILL NO. 143
INTRODUCED BY R. SOMERVILLE
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE REPORTING OF S. CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, AND OTHER PASS-THROUGH ENTITY INCOME; DEFINING MONTANA SOURCE INCOME FOR THE PURPOSES OF INDIVIDUAL INCOME TAXES; PROVIDING FOR COMPOSITE RETURNS AND BACKUP WITHHOLDING FOR NONRESIDENTS; PROVIDING A PENALTY FOR A PASS-THROUGH ENTITY'S FAILURE TO FILE INFORMATION RETURNS; PROVIDING A RESIDENT SHAREHOLDER CREDIT FOR CERTAIN STATE TAXES PAID BY AN S. CORPORATION; CLARIFYING THAT SHELL AND PASSIVE PASS-THROUGH ENTITIES DO NOT QUALIFY FOR THE QUALIFIED ENDOWMENT CREDIT; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW THE TAXATION OF PASS-THROUGH ENTITIES AND REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-105, 15-30-124, 15-30-133, 15-30-241, 15-31-101, 15-31-162, 15-31-201, AND 15-31-603, MCA; REPEALING SECTIONS 15-31-202 AND 15-31-209, MCA; AND PROVIDING ~~AN~~ EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

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

Section 1. Section 13-37-218, MCA, is amended to read:

"13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than \$1,000 in total combined monetary contributions from all political committees contributing to ~~his~~ the candidate's campaign, and a candidate for the state house of representatives may receive no more than \$600 in total combined monetary contributions from all political committees contributing to ~~his~~ the candidate's campaign. The ~~foregoing~~ limitations ~~shall~~ in this section must be multiplied by the inflation factor as defined in 15-30-101~~(8)~~ for the year in which general elections are held ~~after 1984; the~~ The resulting figure ~~shall~~ must be rounded off to the nearest \$50 increment. The commissioner ~~of political practices~~ shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

Section 2. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) whose separate existence is not disregarded for federal income tax purposes THAT IS NOT A DISREGARDED ENTITY.

~~(3)~~(4) "Department" means the department of revenue.

(5) "DISREGARDED ENTITY" MEANS A BUSINESS ENTITY:

(A) THAT IS DISREGARDED AS AN ENTITY SEPARATE FROM ITS OWNER FOR FEDERAL TAX PURPOSES, AS PROVIDED IN UNITED STATES TREASURY REGULATIONS 301.7701-2 OR 301.7701-3, 26 CFR 301.7701-2 OR 26 CFR 301.7701-3, OR AS THOSE REGULATIONS MAY BE LABELED OR AMENDED; OR

(B) THAT IS A QUALIFIED SUBCHAPTER S. SUBSIDIARY THAT IS NOT TREATED AS A SEPARATE CORPORATION, AS PROVIDED IN SECTION 1361(B)(3) OF THE INTERNAL REVENUE CODE (26 U.S.C. 1361(B)(3)).

~~(4)~~~~(5)~~(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings or and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

~~(5)~~~~(6)~~(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

~~(6)(7)(8)~~ "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(7)(8)(9)~~ "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 (26 U.S.C. 85) as amended.

~~(8)(9)(10)~~ "Inflation factor" means a number determined for each ~~taxable tax~~ year by dividing the consumer price index for June of the ~~taxable tax~~ year by the consumer price index for June 1980.

~~(9)(10)(11)~~ "Information agents" includes all individuals, ~~corporations, associations, and partnerships, and entities~~ acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(11)(12)~~ "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(10)(12)(13)~~ "Knowingly" is as defined in 45-2-101.

~~(13)(14)~~ "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(14)(15)~~ "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(11)(15)(16)~~ ~~Montana lottery~~ "Lottery winnings" means income paid either in lump sum or in ~~annual~~ periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(16)(17)~~ (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation

carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

~~—(xiv) income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit of an estate or trust with nexus with the state;~~

~~(xv)(xiv) social security benefits received or accrued while a resident of the state;~~

(xvi)(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

~~(xvii)(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.~~

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(12)(17)(18)~~ "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(18)(19)~~ "Nonresident" means a natural person who is not a resident.

~~(13)(19)(20)~~ "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(20)(21)~~ "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(24)(22)~~ "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

~~(22)(23)~~ "Pass-through entity" means a partnership, an S. corporation, or ~~an entity whose existence is~~

disregarded for federal income tax purposes A DISREGARDED ENTITY.

~~(14)(23)~~(24) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(15)(24)~~(25) "Purposely" is as defined in 45-2-101.

~~(16)(25)~~(26) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(17)(26)~~(27) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(27)(28)~~(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(18)(28)~~(29) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(19)(29)~~(30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(20)(30)~~(31) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(21)(31)(32)~~ "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include ~~corporations~~ a C. corporation."

NEW SECTION. Section 3. Taxation of partners, shareholders, managers, and members. (1) A partner of a partnership that has Montana source income and a resident who is a partner of a partnership during any part of the tax year shall, in computing net income, include the partner's distributive share of partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit as determined pursuant to section 704 of the Internal Revenue Code (26 U.S.C. 704) and shall furnish a copy of the partner's federal schedule of the partner's share of income, deductions, and credits when filing the Montana tax return.

(2) A shareholder of an S. corporation that has Montana source income and a resident who is a shareholder of an S. corporation during any part of the tax year shall, in computing net income, include the shareholder's pro rata share of separately and nonseparately stated S. corporation income, loss, deduction, or credit as determined pursuant to sections 1366 and 1377 of the Internal Revenue Code (26 U.S.C. 1366 and 1377) and shall furnish a copy of the shareholder's federal schedule of the shareholder's share of income, deductions, and credits when filing the Montana tax return.

(3) A partner, shareholder, manager, member, or other owner of ~~an entity that is disregarded for federal income tax purposes and~~ A DISREGARDED ENTITY THAT has Montana source income and a resident who is a partner, shareholder, manager, member, or other owner of ~~an entity that is disregarded for federal income tax purposes~~ A DISREGARDED ENTITY during any part of the tax year shall, in computing net income, include the disregarded entity's income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit.

NEW SECTION. Section 4. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and

(b) consents to be included in the filing.

(2) (A) Each participant's composite tax liability is the product obtained by:

~~(a)~~(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum

obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(b)(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(B) A PARTICIPANT'S SHARE OF THE ENTITY'S INCOME IS THE AGGREGATE OF THE PARTICIPANT'S SHARE OF THE ENTITY'S INCOME, GAIN, LOSS, OR DEDUCTION OR ITEM OF INCOME, GAIN, LOSS, OR DEDUCTION.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 COMPUTED SEPARATELY FOR EACH PARTICIPANT INCLUDED IN THE FILING OF A COMPOSITE RETURN; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The COMPOSITE return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing a Montana individual income tax THE ENTITY INFORMATION return. THE COMPOSITE RETURN IS IN LIEU OF AN INDIVIDUAL INCOME TAX RETURN REQUIRED UNDER 15-30-142 AND 15-30-144.

(6) The composite tax is in lieu of the tax imposed under 15-30-103 and 15-30-105.

(7) The department may adopt rules that are necessary to implement and administer this section.

NEW SECTION. Section 5. Consent or withholding -- NOTICE. (1) A pass-through entity required to file an information return provided in 15-30-133 that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall;

(A) on or before the due date, including extensions, for the information return:

~~(a)(i)~~ file a composite return with respect to the individual nonresident; OR

~~(b)(ii)~~ file an agreement of the individual nonresident to:

~~(i)(A)~~ file a return in accordance with the provisions of 15-30-142;

~~(ii)(B)~~ timely pay all taxes imposed with respect to income of the pass-through entity; and

~~(iii)(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~~ AND

~~(e)(B)~~ WITHIN THE LATER OF 180 DAYS AFTER THE DUE DATE, INCLUDING EXTENSIONS, FOR THE INFORMATION RETURN OR THE DATE THE NOTICE IS SENT AS PROVIDED IN SUBSECTION (2), remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return OF EACH NONRESIDENT INDIVIDUAL FOR WHOM A COMPOSITE RETURN OR AGREEMENT PROVIDED IN SUBSECTION (1)(A) WAS NOT FILED.

(2) AS SOON AS PRACTICAL, BUT NOT LATER THAN 60 DAYS AFTER THE DUE DATE, INCLUDING EXTENSIONS, FOR THE INFORMATION RETURN, THE DEPARTMENT SHALL SEND NOTICE TO THE PASS-THROUGH ENTITY OF THE NEED TO COMPLY WITH SUBSECTION (1) AND THAT THE PASS-THROUGH ENTITY MAY BE SUBJECT TO PENALTIES UNDER 15-30-133. IF THE DEPARTMENT DOES NOT SEND NOTICE, THE PASS-THROUGH ENTITY IS NOT SUBJECT TO WITHHOLDING.

~~(2)(3)~~ Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection ~~(1)(c)~~ (1)(B) must be considered AS A payment by ON THE ACCOUNT OF the nonresident individual ~~on account of~~ FOR the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(4) A PASS-THROUGH ENTITY IS ENTITLED TO RECOVER A PAYMENT MADE PURSUANT TO SUBSECTION (1)(B) FROM THE PARTNER, SHAREHOLDER, MANAGER, MEMBER, OR OTHER OWNER ON WHOSE BEHALF THE PAYMENT WAS MADE.

~~NEW SECTION. **Section 6. Credit allowed individual resident shareholder for income taxes imposed on S. corporation by foreign state or country.** (1) An individual who is a resident of this state is allowed a credit against the taxes imposed in Title 15, chapter 30, for the individual's pro rata share of income taxes imposed by and paid to another state or country by an S. corporation of which the individual is a shareholder on income taxable under Title 15, chapter 30.~~

~~(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the recipient.~~

~~(3) The credit must be computed by a formula prescribed by the department.~~

~~(4) As used in this section, "income tax" has the same meaning as provided in 15-1-601.~~

NEW SECTION. **SECTION 6. CONSENT OR WITHHOLDING.** (1) A PASS-THROUGH ENTITY THAT IS REQUIRED TO FILE AN INFORMATION RETURN AS PROVIDED IN 15-30-133 AND THAT HAS A PARTNER, SHAREHOLDER, MANAGER, MEMBER,

OR OTHER OWNER WHO IS A NONRESIDENT INDIVIDUAL SHALL, ON OR BEFORE THE DUE DATE, INCLUDING EXTENSIONS, FOR THE INFORMATION RETURN:

(A) FILE A COMPOSITE RETURN WITH RESPECT TO THE INDIVIDUAL NONRESIDENT;

(B) FILE AN AGREEMENT OF THE INDIVIDUAL NONRESIDENT TO:

(I) FILE A RETURN IN ACCORDANCE WITH THE PROVISIONS OF 15-30-142;

(II) TIMELY PAY ALL TAXES IMPOSED WITH RESPECT TO INCOME OF THE PASS-THROUGH ENTITY; AND

(III) 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

(C) REMIT AN AMOUNT EQUAL TO THE HIGHEST MARGINAL TAX RATE IN EFFECT UNDER 15-30-103 MULTIPLIED BY THE NONRESIDENT INDIVIDUAL'S SHARE OF MONTANA SOURCE INCOME REFLECTED ON THE PASS-THROUGH ENTITY'S INFORMATION RETURN.

(2) ANY AMOUNT PAID BY A PASS-THROUGH ENTITY WITH RESPECT TO A NONRESIDENT INDIVIDUAL PURSUANT TO SUBSECTION (1)(C) MUST BE CONSIDERED AS A PAYMENT ON THE ACCOUNT OF THE NONRESIDENT INDIVIDUAL FOR THE INCOME TAX IMPOSED ON THE NONRESIDENT INDIVIDUAL FOR THE TAX YEAR PURSUANT TO 15-30-105.

(3) A PASS-THROUGH ENTITY IS ENTITLED TO RECOVER A PAYMENT MADE PURSUANT TO SUBSECTION (1)(C) FROM THE PARTNER, SHAREHOLDER, MANAGER, MEMBER, OR OTHER OWNER ON WHOSE BEHALF THE PAYMENT WAS MADE.

Section 7. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident. (1) (a) A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana nonresident equal to the tax computed under 15-30-103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident

taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed \$100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

SECTION 8. SECTION 15-30-124, MCA, IS AMENDED TO READ:

"15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries. (1) Subject to the ~~following~~ conditions provided in subsections (2) through (5), residents a resident of this state ~~shall be~~ is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter;
and

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder.

~~(1)(2)~~ (2) The credit ~~shall be~~ is allowed only for taxes paid to ~~such other~~ another state or country on income derived from sources within ~~such the other~~ the other state or country ~~which that~~ is taxable under the laws of ~~such the other~~ the other state or country ~~irrespective~~ regardless of the residence or domicile of the ~~recipient~~ taxpayer.

~~(2)(3)~~ (3) The credit ~~shall~~ is not be allowed if ~~such the~~ the other state or country allows residents of this state a credit against the taxes imposed by ~~such the other~~ the other state or country for taxes paid or payable under this chapter.

~~(3)(4)~~ (4) The allowable credit ~~shall~~ must be computed by a formula ~~to be~~ prescribed by the department.

(5) For the purposes of the credit under subsection (1)(b):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation on income taxable under this chapter."

Section 9. Section 15-30-133, MCA, is amended to read:

"15-30-133. Income or license tax involving partnership pass-through entities -- partnership statements information returns required. (1) ~~Individuals carrying on a business in~~ Except as otherwise

provided:

~~(a) a partnership shall be liable for income tax only in their individual capacity is not subject to taxes imposed in Title 15, chapter 30 or 31; There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.~~

~~(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and~~

~~(c) a pass-through entity whose existence is disregarded for federal income tax purposes DISREGARDED ENTITY is not subject to the taxes imposed in Title 15, chapter 30 or 31.~~

~~(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, manager, member, or other owner of an entity described in subsection (1)(c) is subject to the taxes provided in Title 15, chapter 30, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.~~

~~(3) If a pass-through entity is subject to federal income tax on any of its income:~~

~~(a) the amount that is Montana source income is subject to a tax at the rates provided in 15-31-121; and~~

~~(b) Montana source income is reduced by the amount of any tax imposed on the pass-through entity.~~

~~(3) INCOME REALIZED FOR FEDERAL INCOME TAX PURPOSES BY A FINANCIAL INSTITUTION THAT HAS ELECTED TO BE TREATED AS AN S. CORPORATION UNDER SUBCHAPTER S. OF CHAPTER 1 OF THE INTERNAL REVENUE CODE AND BY ITS SHAREHOLDERS THAT IS ATTRIBUTABLE TO THE FINANCIAL INSTITUTION'S CHANGE FROM THE BAD DEBT RESERVE METHOD OF ACCOUNTING PROVIDED IN SECTION 585 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 585, IS NOT TAXABLE UNDER TITLE 15, CHAPTER 30 OR 31, TO THE EXTENT THAT THE AGGREGATE DEDUCTIONS ALLOWED FOR FEDERAL INCOME TAX PURPOSES UNDER 26 U.S.C. 585 EXCEEDED THE AGGREGATE DEDUCTIONS THAT THE FINANCIAL INSTITUTION IS ALLOWED UNDER 15-31-114(1)(B)(I).~~

~~(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:~~

~~(i) the name, address, and social security or federal identification number of each partner;~~

~~(ii) the partnership's Montana source income;~~

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) ~~An entity whose existence is disregarded for federal income tax purposes~~ A DISREGARDED ENTITY that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each manager, member, or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (I) ~~EXCEPT AS PROVIDED IN SUBSECTION (4)(D)(II)~~, A pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of ~~\$50~~ \$10 multiplied by the number of the entity's partners, shareholders, managers, members, or other owners at the close of the tax year FOR EACH MONTH OR FRACTION OF A MONTH, NOT TO EXCEED 5 MONTHS, THAT THE ENTITY FAILS TO FILE THE INFORMATION RETURN. THE DEPARTMENT MAY WAIVE THE PENALTY IMPOSED BY THIS SUBSECTION (4)(D)(I) AS PROVIDED IN 15-1-206.

(II) THE PENALTY IMPOSED UNDER SUBSECTION (4)(D)(I) MAY NOT BE IMPOSED ON A PASS-THROUGH ENTITY THAT HAS 10 OR FEWER PARTNERS, SHAREHOLDERS, MANAGERS, MEMBERS, OR OTHER OWNERS EACH OF WHOM:

(A) IS AN INDIVIDUAL, AN ESTATE OF A DECEASED INDIVIDUAL, OR A C. CORPORATION;

(B) HAS FILED ANY REQUIRED RETURN OR OTHER REPORT WITH THE DEPARTMENT BY THE DUE DATE, INCLUDING ANY EXTENSION OF TIME, FOR THE RETURN OR REPORT; AND

(C) HAS PAID ALL TAXES WHEN DUE."

Section 10. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax -- payment -- exceptions -- interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

- (i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or
- (ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

- (i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;
- (ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;
- (iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or
- (iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

- (i) the taxpayer pays in full the amount computed on the return as payable; and
- (ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101(7), from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 11. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes ~~associations~~ an association, joint-stock ~~companies~~ company, common-law ~~trusts and trust~~ or business trusts trust ~~which do that~~ does business in an organized capacity, ~~and~~ all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, ~~and any~~ limited liability company, limited liability partnership, partnership, or other entity that is treated as an association ~~whose separate existence is not disregarded~~ AND THAT IS NOT A DISREGARDED ENTITY.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 12. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, if engaged in business CARRYING ON ANY TRADE OR BUSINESS FOR WHICH DEDUCTIONS WOULD BE ALLOWED UNDER SECTION 162 OF THE INTERNAL REVENUE CODE (26 U.S.C. 162) qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is \$10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2001--sec. 9, Ch. 537, L. 1997.)"

Section 13. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definition of "small business corporation". (1) Except as provided in subsection (2), the term "small business corporation" ~~is synonymous~~ SYNONYMOUS with "S. corporation" as defined in 15-30-101 and means a corporation ~~that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.~~ A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

- (a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;
- (b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and
- (c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

Section 14. Section 15-31-603, MCA, is amended to read:

"15-31-603. List of corporations entities furnished by secretary of state. ~~The~~ On or before December 31 of each year, the secretary of state shall direct a list of all corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, ~~chapter~~ chapters 1, 4, 5, 8, 9, 10, and 12, to the department of revenue. The list ~~shall~~ must include the following information:

- (1) the name of the ~~corporation~~ entity;
- (2) the principal office of the ~~corporation~~ entity;
- (3) the name and address of the registered agent of the ~~corporation~~ entity in Montana, if applicable; and
- (4) ~~such other information as that~~ the director of the department of revenue may require."

~~NEW SECTION. Section 14. Pass-through entity committee -- membership -- purpose.~~ (1) There is an interim pass-through entity committee composed of eight members. The members must include:

~~(a) two members from the house of representatives, from different political parties, appointed by the speaker of the house;~~

~~(b) two members from the senate, from different political parties, appointed by the senate committee on committees; and~~

~~(c) the following members appointed by the governor:~~

~~(i) one representative of small businesses in Montana;~~

~~(ii) one representative of larger businesses in Montana;~~

~~(iii) one representative of Montana accountants; and~~

~~(iv) one member from the state executive branch of government.~~

~~(2) The names of the committee members must be certified to the department of administration by July 1, 2001.~~

~~(3) (a) The members of the committee shall select a presiding officer and may appoint other officers as necessary.~~

~~(b) The committee may adopt rules of procedure for conducting meetings.~~

~~(c) The presiding officer of the committee shall schedule meetings and direct the staff of the department of revenue to give notice of the time and place of meetings to the committee members and to the public.~~

~~(4) (a) The purpose of the committee is to conduct a study of the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and to consider recommendations concerning the methodology the state of Montana should use~~

to ensure fair and equitable taxation of income that pass-through entities flow through to other entities:

~~———— (b) (i) The committee shall provide reports to the governor and the leadership of each house of the legislature every 6 months.~~

~~———— (ii) The committee shall submit a written report to the legislature not later than December 1, 2002, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals.~~

~~———— (5) (a) The committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.~~

~~———— (b) The committee is attached to the department of revenue for administrative and staff purposes.~~

~~———— (6) (a) Except as provided in subsection (6)(b), members of the committee must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.~~

~~———— (b) Legislators serving on the committee must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business.~~

NEW SECTION. SECTION 15. REVIEW OF PASS-THROUGH ENTITY TAXATION BY DEPARTMENT. (1) THE DEPARTMENT SHALL REVIEW, WITH THE ASSISTANCE OF INTERESTED PARTIES, THE REPORTING AND TAXATION OF INCOME THAT IS FLOWING THROUGH PASS-THROUGH ENTITIES AND THE METHOD OF REPORTING AND TAXATION OF THIS INCOME IN STATES OTHER THAN MONTANA AND SHALL CONSIDER RECOMMENDATIONS CONCERNING THE METHODOLOGY THAT MONTANA SHOULD USE TO ENSURE FAIR AND EQUITABLE TAXATION OF INCOME THAT FLOWS THROUGH PASS-THROUGH ENTITIES TO OTHER ENTITIES.

(2) THE DEPARTMENT SHALL REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE AT LEAST ONCE EACH YEAR ON THE FINDINGS AND RECOMMENDATIONS OF THE REVIEW CONDUCTED UNDER SUBSECTION (1).

NEW SECTION. Section 16. Codification instruction -- code commissioner instruction. (1) (A) [Sections 3 through 6] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 3 through 6].

(B) THE CODE COMMISSIONER SHALL CODIFY [SECTIONS 5 AND 6] AS THE SAME SECTION NUMBER. [SECTION 5] IS A TEMPORARY SECTION AND TERMINATES AS PROVIDED IN [SECTION 20], AND [SECTION 6] IS A PERMANENT SECTION THAT IS EFFECTIVE AS PROVIDED IN [SECTION 18(3)].

(2) Sections 15-31-201 and 15-31-203 are intended to be renumbered and codified as an integral part

of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 15-31-201 and 15-31-203.

(3) Section 15-30-133 is intended to be renumbered and codified in the same part as [sections 3 through 6], 15-31-201, and 15-31-203.

NEW SECTION. Section 17. Repealer. Sections 15-31-202 and 15-31-209, MCA, are repealed.

NEW SECTION. SECTION 18. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] IS EFFECTIVE OCTOBER 1, 2001.

(2) [SECTION 8 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(3) [SECTION 6] IS EFFECTIVE JANUARY 1, 2003.

NEW SECTION. Section 19. Applicability. (1) ~~[This act]~~ EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] applies to tax years beginning after December 31, 2001.

(2) [SECTION 8] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2000.

(3) [SECTION 6] APPLIES TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2002.

NEW SECTION. SECTION 20. TERMINATION. [SECTION 5] TERMINATES DECEMBER 31, 2002.

- END -

