

SENATE BILL NO. 99

INTRODUCED BY B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN INCOME OF A TAX-EXEMPT ORGANIZATION IS UNRELATED BUSINESS INCOME SUBJECT TO TAXATION; AMENDING SECTIONS 15-30-3404 AND 15-31-102, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 15-30-3404, MCA, is amended to read:

**"15-30-3404. Election -- partnership pays -- rulemaking.** (1) Subject to the limitations in subsection (2), an audited partnership making an election under this section shall:

(a) no later than 90 days after the final determination date, file a completed federal adjustments report, including information required by the department, and notify the department that it is making the election under this section. A partnership that fails to file a timely completed federal adjustments report must be assessed a late file penalty as provided for in 15-30-3302(5)(d).

(b) no later than 180 days after the final determination date, pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect partners:

(i) exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner not subject to tax under 15-31-102(3)(a);

(ii) for the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under 15-31-101 and to direct exempt partners subject to tax under 15-31-102(3)(a), apportion and allocate the adjustments as provided in 15-31-301 and multiply the resulting amount by the appropriate tax rate under 15-31-121;

(iii) for the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to tax under 15-30-3311 or 15-30-2151, determine the amount of the adjustments that are Montana source income under 15-30-3311 and multiply the resulting amount by the highest tax rate under 15-30-2103; and

(iv) for the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(A) determine the amount of the adjustments that would be subject to sourcing to Montana under 15-30-3302(6) and attributable to nonresident partners;

(B) determine the amount of the adjustments not attributable to nonresident partners; and

(C) determine the portion of the amount determined in subsection (1)(b)(iv)(B) that can be established, under regulations issued by the department, to be properly allocable to direct or indirect partners not subject to tax on the adjustments or that can be excluded under procedures for modified reporting and payment methods allowed under 15-30-3405;

(v) multiply the total of the amounts determined in subsections (1)(b)(iv)(A) and (1)(b)(iv)(B) and reduce by the amount determined in subsection (1)(b)(iv)(C) by the highest tax rate under 15-30-2103 or the appropriate tax rate in 15-31-121;

(vi) for the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under 15-30-3311, multiply that amount by the highest tax rate under 15-30-2103; and

(vii) add the amounts determined in subsections (1)(b)(ii) through (1)(b)(vi), including penalty and interest as provided in 15-1-216.

(2) Final federal adjustments subject to the election under this section exclude:

(a) the distributive share of final audit adjustments that under 15-31-301 must be included in the unitary business income of any direct or indirect corporate partner, provided that the audited partnership can reasonably determine this; and

(b) any final federal adjustments resulting from an administrative adjustment request.

(3) The direct and indirect partners of an audited partnership that are tiered partners, and all of the partners of those tiered partners that are subject to tax under chapter 30 or 31, are subject to the reporting and payment requirements of 15-30-3403 and the tiered partners are entitled to make the election provided for in this section. The tiered partners or their partners shall make required reports and payments no later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under 26 U.S.C. 6226 and the regulations thereunder. The department may promulgate regulations to establish

procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making the election under this section."

**Section 2.** Section 15-31-102, MCA, is amended to read:

**"15-31-102. Organizations exempt from tax -- unrelated business income not exempt -- exceptions.** (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;
- (i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller; or

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

(2) In determining the corporate income tax imposed under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) (a) Any Except as provided in subsections SUBSECTION (3)(b) and (3)(c), any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department.

(b) Rental income from the leasing of agricultural property classified under 15-6-133(1)(a) or (1)(c)

1 is considered unrelated business income and taxable under 15-31-121.

2 ~~(c) Income derived from providing an accommodation subject to the tax provided for in 15-65-111~~

3 ~~or 15-68-102 is considered unrelated business income and taxable under 15-31-121."~~

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5 NEW SECTION. **Section 3. Applicability.** [This act] applies to income tax years beginning after

6 December 31, 2025.

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