

HOUSE BILL NO. 665

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN VOLUNTEER OFFICERS OF A SMALL NONPROFIT CORPORATION ARE NOT INDIVIDUALLY LIABLE FOR THE FAILURE OF THE SMALL NONPROFIT CORPORATION TO WITHHOLD TAXES AND FILE CERTAIN STATEMENTS; LIMITING THE EXEMPTION FROM INDIVIDUAL LIABILITY TO 12 MONTHS; PROVIDING A DEFINITION; AND AMENDING SECTION 15-30-2503, MCA."

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

Section 1. Section 15-30-2503, MCA, is amended to read:

"15-30-2503. Employer liable for withholding taxes and statements. (1) Except as provided in 15-30-2513 and subsection (7) of this section, each employer is liable for the payments required by 15-30-2504, the amounts required to be deducted and withheld under this part, and the annual statements required by 15-30-2506 and 15-30-2507. The payments required by 15-30-2504 and the amounts required to be deducted and withheld, plus interest due, are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing statements to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and
(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the

elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of statements and the remittance of taxes, penalties, and interest owed under this part:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) If the employer fails to deduct and withhold the amounts specified in 15-30-2502 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer.

(7) (a) Subject to subsection (7)(b), each officer or director of a small nonprofit corporation is exempt from the provisions of this section imposing individual liability.

(b) The exemption from individual liability in subsection (7)(a) does not apply if ~~the~~:

(i) ~~the~~ officer or director receives monetary compensation or wages for services to the small nonprofit corporation. For the purposes of this subsection (7)(b)(i), the term "compensation" does not include the reasonable reimbursement of expenses; ~~or~~

(ii) ~~the~~ small nonprofit corporation is out of compliance with the provisions this section for more than 12 months with outstanding unpaid taxes, penalties, and interest; ~~or~~

Amendment - 1st Reading-white - Requested by: Bill Mercer - (H) Judiciary

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Drafter: Rachel Weiss,

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1 (iii) the officer or director is involved in fraud, embezzlement, or intentional misconduct.

2 (8) As used in this section, the term "small nonprofit corporation" has the same meaning as
3 nonprofit corporation provided in 27-1-732, except that the term does not include a corporation or organization
4 that employs more than 10 paid employees at any given time during the calendar year."

5 - END -