

1 SENATE BILL NO. 35

2 INTRODUCED BY STANG

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT A CORPORATION
6 APPLY FOR AN AUTOMATIC EXTENSION OF TIME FOR FILING A CORPORATION LICENSE TAX OR
7 INCOME TAX RETURN; CLARIFYING THAT THE CORPORATION LICENSE TAX OR INCOME TAX IS DUE
8 WHEN THE RETURN IS FILED; REQUIRING THAT INTEREST MUST BE ADDED TO THE TAX DUE WHEN
9 THE RETURN IS FILED DURING THE PERIOD OF EXTENSION; AMENDING SECTIONS 15-31-111 AND
10 15-31-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
11 APPLICABILITY DATE."

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

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15 **Section 1.** Section 15-31-111, MCA, is amended to read:

16 "15-31-111. **Return to be filed.** (1) ~~Every~~ Each corporation subject to the license ~~fee~~ tax imposed
17 under this chapter shall for each ~~taxable~~ tax period ~~render~~ file a true and accurate return of its net income
18 for the ~~taxable~~ tax period in the manner and form ~~to be~~ prescribed by the department of revenue, ~~and~~
19 ~~containing such~~ The return must contain all of the facts, data, and information ~~as that~~ are appropriate and
20 in the opinion of the department necessary to determine the correctness of the net income returned and
21 to carry out the provisions of this chapter. The return ~~shall~~ must be signed by ~~one of the following:~~ the
22 president, the ~~vice-president~~ vice president, the treasurer, the assistant treasurer, or the chief accounting
23 officer.

24 (2) If the corporation is reporting on a calendar year basis, the return ~~shall~~ must be filed with the
25 department on or before May 15 following the close of the calendar year, ~~and if.~~ If the corporation is
26 reporting on a fiscal year basis, the return ~~shall~~ must be filed with the department on or before the 15th
27 day of the 5th month following the close of its fiscal year.

28 (3) (a) ~~Upon application, a~~ A corporation ~~shall be~~ is allowed an automatic extension of time for filing
29 its return of ~~4 to~~ up to 6 months following the date prescribed for filing of its tax return. ~~The application~~
30 ~~is to be made on such forms as the department shall prescribe.~~ The tax is due when the return is filed.

1 Interest must be added to the tax due as provided in 15-31-510(3).

2 ~~(3)(b)~~ The department may grant an additional extension of time for the filing of a return whenever
3 in its judgment good cause exists.

4 (4) ~~In cases wherein receivers~~ Receivers, trustees in bankruptcy, or assignees ~~are~~ operating the
5 property or business of a corporation subject to the license ~~fee~~ tax imposed by this chapter, ~~such receiver,~~
6 ~~trustee, or assignee~~ shall make the return in the same manner and form as ~~such~~ the corporation is
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8 return ~~made by the receiver, trustee, or assignee shall be~~ is assessed and collected in the same manner as
9 if assessed directly against the corporation of whose business or property ~~they have~~ the receiver, trustee,
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11 the tax out of the property of the ~~company in his hands~~ corporation, prior to the claims of creditors or
12 stockholders."
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14 **Section 2.** Section 15-31-510, MCA, is amended to read:

15 **"15-31-510. Estimated payments -- interest penalty -- tax returns -- penalty -- interest.** (1) For
16 corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there
17 is assessed a 20% ~~per~~ a year underpayment interest penalty calculated as follows:

18 (a) ~~For purposes of this subsection (a), the~~ The amount of underpayment is the amount of the
19 required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or
20 before the last date prescribed for payment.

21 (b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an
22 underpayment of any installment may not be imposed if the total amount of all payments of estimated tax
23 made on or before the last date prescribed for the payment of the installment equals or exceeds the amount
24 that would have been required to be paid on or before that date if the estimated tax were an amount equal
25 to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

26 (i) for the first 3 months of the taxable year in the case of the installment required to be paid in the
27 4th month;

28 (ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment
29 required to be paid in the 6th month;

30 (iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment

- 1 required to be paid in the 9th month; and
- 2 (iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment
3 required to be paid in the 12th month of the taxable year.
- 4 (c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis
5 by:
- 6 (i) multiplying by 12 the taxable income referred to in subsection (1)(b); and
- 7 (ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11,
8 as the case may be) referred to in subsection (1)(b).
- 9 (d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), the interest penalty with
10 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
11 estimated tax made on or before the last date prescribed for the payment of the installment equals or
12 exceeds 80% of the amount determined under subsection (1)(e).
- 13 (e) To determine the amount ~~under this subsection (e)~~ for any installment:
- 14 (i) take the taxable income for all months during the taxable year preceding the filing month;
- 15 (ii) divide the amount by the base period percentage for all months during the taxable year preceding
16 the filing month;
- 17 (iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and
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19 month and all months during the taxable year preceding the filing month.
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22 income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income
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- 24 (ii) the term "filing month" means the month in which the installment is required to be paid;
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26 the taxable year equals or exceeds 70%; and
- 27 (iv) the department of revenue may by rule provide for the determination of the base period
28 percentage in the case of reorganizations, new corporations, and other similar circumstances.
- 29 (2) If the tax for any corporation is not paid on or before the due date of the return as provided in
30 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3),

1 there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was
2 due to reasonable cause and not to neglect.

3 (3) If any tax due under this ~~section~~ chapter is not paid when due, by reason of extension ~~granted~~
4 or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid."

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6 NEW SECTION. **Section 3. Effective date -- retroactive applicability.** [This act] is effective on
7 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
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24 (2) If the corporation is reporting on a calendar year basis, the return ~~shall~~ must be filed with the
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15 **"15-31-510. Estimated payments -- interest penalty -- tax returns -- penalty -- interest.** (1) For
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17 is assessed a 20% ~~per~~ a year underpayment interest penalty calculated as follows:

18 (a) ~~For purposes of this subsection (a), the~~ The amount of underpayment is the amount of the
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20 before the last date prescribed for payment.

21 (b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an
22 underpayment of any installment may not be imposed if the total amount of all payments of estimated tax
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3 required to be paid in the 12th month of the taxable year.

4 (c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis
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6 (i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

7 (ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11,
8 as the case may be) referred to in subsection (1)(b).

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10 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
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12 exceeds 80% of the amount determined under subsection (1)(e).

13 (e) To determine the amount ~~under this subsection (e)~~ for any installment:

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29 (2) If the tax for any corporation is not paid on or before the due date of the return as provided in
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10 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
11 estimated tax made on or before the last date prescribed for the payment of the installment equals or
12 exceeds 80% of the amount determined under subsection (1)(e).

13 (e) To determine the amount ~~under this subsection (e)~~ for any installment:

14 (i) take the taxable income for all months during the taxable year preceding the filing month;

15 (ii) divide the amount by the base period percentage for all months during the taxable year preceding
16 the filing month;

17 (iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

18 (iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing
19 month and all months during the taxable year preceding the filing month.

20 (f) For purposes of this subsection (1):

21 (i) the base period percentage for any period of months is the average percentage that the taxable
22 income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income
23 of the 3 preceding years;

24 (ii) the term "filing month" means the month in which the installment is required to be paid;

25 (iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of
26 the taxable year equals or exceeds 70%; and

27 (iv) the department of revenue may by rule provide for the determination of the base period
28 percentage in the case of reorganizations, new corporations, and other similar circumstances.

29 (2) If the tax for any corporation is not paid on or before the due date of the return as provided in
30 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3).

1 there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was
2 due to reasonable cause and not to neglect.

3 (3) If any tax due under this ~~section~~ chapter is not paid when due UNDER 15-31-111(2), by reason
4 of extension ~~granted~~ or otherwise, interest is added to the tax due at the rate of 12% a year from the due
5 date until paid."

6

7 NEW SECTION. **Section 3. Effective date -- retroactive applicability.** [This act] is effective on
8 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
9 December 31, 1994.

10

-END-