



AN ACT ADOPTING THE MULTISTATE TAX COMMISSION PROPOSED MODEL STATUTE FOR REPORTING ADJUSTMENTS TO FEDERAL TAXABLE INCOME AND FEDERAL PARTNERSHIP AUDIT ADJUSTMENTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2605, 15-30-2606, 15-30-2609, 15-30-2619, 15-31-506, 15-31-509, AND 15-31-544, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. For purposes of [sections 1 through 8], Title 15, chapter 30, part 26, and Title 15, chapter 31, part 5, the following definitions apply:

- (1) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under 26 U.S.C. 6227.
- (2) "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.
- (3) "Exempt partner" means a partner that is exempt from taxation under 15-31-102.
- (4) "Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute the Montana income tax owed, regardless of whether that change results from action by the internal revenue service, including a partnership level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer.
- (5) "Federal adjustments report" includes methods or forms required by the department for use by a taxpayer to report final federal adjustments, including an amended Montana tax return, information return, or a uniform multistate report.
- (6) "Federal partnership representative" means the person the partnership designates for the tax year as the partnership's representative, or the person the internal revenue service has appointed to act as the

federal partnership representative, pursuant to 26 U.S.C. 6223(a).

(7) "Final determination date" means:

(a) except as provided in subsections (7)(b) and (7)(c), if the federal adjustment arises from an internal revenue service audit or other action by the internal revenue service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined whether by internal revenue service decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the internal revenue service and the taxpayer, the final determination date is the date on which the last party signed the agreement.

(b) for federal adjustments arising from an internal revenue service audit or other action by the internal revenue service, if the taxpayer filed as a member of a combined report, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in subsection (7)(a), for the entire group; or

(c) if the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to 26 U.S.C. 6225(c), the final determination date means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

(8) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(9) "Indirect partner" means a partner in a partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.

(10) "Partnership level audit" means an examination by the internal revenue service at the partnership level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the Internal Revenue Code, as enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in federal adjustments.

(11) "Reallocation adjustment" means a federal adjustment resulting from a partnership level audit or an administrative adjustment request that changes the shares of one or more items of partnership income, gain, loss, expense, or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal income for one or more direct partners, and a negative

reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one or more direct partners pursuant to regulations under 26 U.S.C. 6225.

(12) "Resident partner" means an individual, trust, or estate partner that is a resident of Montana as defined in 15-30-2101 for the relevant tax period.

(13) "Reviewed year" means the tax year of a partnership that is subject to a partnership level audit from which federal adjustments arise.

(14) "Tiered partner" means any partner that is a partnership or pass-through entity.

Section 2. State partnership representative. (1) With respect to an action required or permitted to be taken by a partnership under [sections 1 through 8] and a proceeding under 15-1-211 with respect to that action, the state partnership representative for the reviewed year has the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners are bound by those actions.

(2) The state partnership representative for the reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative.

(3) The department may establish reasonable qualifications and procedures for designating a person, other than the federal partnership representative, to be the state partnership representative.

Section 3. Reporting and payment requirements for partnerships subject to final federal adjustment and their direct partners. (1) Except for final federal adjustments that are reported under the procedures set forth in [section 4], the final federal adjustments required to be reported by taking those adjustments into account in the partnership return for the year of the adjustment or the distributive share of adjustments that have been reported as required under 15-30-2619, partnerships and direct partners shall report final federal adjustments arising from a partnership level audit or an administrative adjustment request pursuant to this section.

(2) No later than 90 days after the final determination date, the partnership shall:

(a) file a completed federal adjustments report, including information required by the department. 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) notify each of its direct partners of their distributive share of the final federal adjustments, including information required by the department; and

(c) file an amended composite return for the reviewed year if direct partners participated in a composite tax return under 15-30-3312, file an amended information return for direct partners as required under 15-30-2619, and pay the additional amount of composite and withholding tax as required under 15-30-3312 and 15-30-3313 that would have been due had the final federal adjustments been reported properly as required.

(3) No later than 180 days after the final determination date, each direct partner that is taxed under chapter 30 or 31 shall:

(a) file an amended return for the reviewed year reporting their distributive share of the final federal adjustments reported to them under subsection (2)(b) as required under chapters 30 and 31; and

(b) pay any additional amount of tax due as if final federal adjustments had been properly reported, plus any penalty and interest due under 15-1-216, and less any credit for related amounts paid or withheld and remitted on behalf of the direct partner under subsection (2)(c).

Section 4. 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);

(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), 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 [section 5];

(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 [section 3] 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 5. Modified reporting and payment method. Under procedures adopted by and subject to the approval of the department, an audited partnership or tiered partner may enter into an agreement with the department to utilize an alternative reporting and payment method, including applicable time requirements or any other provision of [section 3 or 4], if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties, and interest due under the provisions of [section 3 or 4]. Application for approval of an alternative reporting and payment method must be made by the audited partnership or tiered partner within the time for election as provided in [section 3 or 4], as appropriate.

Section 6. Effect of election by audited partnership or tiered partner and payment of amount due. (1) The election made pursuant to [section 4] is irrevocable, unless the department, in its discretion, determines otherwise.

(2) If properly reported and paid by the audited partnership or tiered partner, the amount determined in [section 4(1)(b)], will be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustment. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of the amount in this state. Nothing in this section shall preclude a direct resident partner from claiming:

- (a) a credit against taxes paid to this state pursuant to 15-30-3313; or
- (b) any amounts paid by the audited partnership or tiered partner on the resident partner's behalf to another state or local tax jurisdiction in accordance with the provisions of 15-30-2302.

(3) Nothing in this section prevents the department from assessing direct partners or indirect partners

for taxes owed, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required by this section for any reason.

Section 7. De minimis exception -- rulemaking. The department may, at its discretion, adopt rules establishing a de minimis amount on which a taxpayer may not be required to comply with [sections 3 and 4].

Section 8. Estimated tax payments during course of federal audit. A taxpayer may make estimated payments to the department, following the process prescribed by the department, of the Montana individual income or corporate income tax expected to result from a pending internal revenue service audit, prior to the due date of the federal adjustments report, without having to file the report with the department. The estimated tax payments must be credited against any tax liability ultimately found to be due to this state and will limit the accrual of further statutory interest on that amount. If the estimated tax payments exceed the final tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit for the excess, provided the taxpayer files a federal adjustments report or claim for refund or credit of tax pursuant to 15-30-2609 or 15-31-509, no later than 1 year following the final determination date.

Section 9. Section 15-30-2605, MCA, is amended to read:

"15-30-2605. Revision of return by department -- statute of limitations -- examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.

(2) If a taxpayer does not file a return as required under this chapter, including a federal adjustments report required under [section 3 or 4], the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-2607 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last

day prescribed for filing.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return, including a federal adjustments report required under [section 3 or 4], that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to the person or persons."

Section 10. Section 15-30-2606, MCA, is amended to read:

"15-30-2606. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619 or a federal adjustments report required under [section 3 or 4], the statute of limitations does not apply until 3 years from the ~~date the federal changes become final~~ determination date or the date the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605."

Section 11. Section 15-30-2609, MCA, is amended to read:

"15-30-2609. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of

income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after expiration of the period provided by 15-30-2606 and 15-30-2607 or after 1 year from the date of the overpayment or filing, whichever is later, unless before the expiration of the period the taxpayer files a claim for refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 3 years from the due date of the return for the year to which the net operating loss is carried back.

(c) Except for a final federal adjustment required to be reported for federal purposes by taking those adjustments into account in the partnership return for the year of the adjustment, a taxpayer may file a claim for refund or credit of tax on or before the later of:

(i) the expiration of the period provided for in subsection (2)(a); or

(ii) 1 year from the date a federal adjustments report described in [sections 3 and 4], was due to the department, including any extensions.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the

succeeding tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(ii) the overpayment results from the carryback of a net operating loss; or

(iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-2604, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 12. Section 15-30-2619, MCA, is amended to read:

"15-30-2619. Furnishing copy of federal return -- copy of share of income, credit, and deductions schedule -- copies of federal corrections -- filing amended return required. Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. ~~If Except as provided for in [section 3 or 4],~~ if the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall file an amended Montana return with the department within ~~90~~ 180 days after ~~receiving notice of the change or correction~~ the final determination date. ~~If Except as provided for in [section 3 or 4],~~ if a taxpayer files an amended federal income tax return changing or correcting the taxpayer's federal taxable income for a tax year, the taxpayer shall also file an amended Montana return with the department within ~~90~~ 180 days after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all forms to the taxpayer after they have been examined by the department."

Section 13. Section 15-31-506, MCA, is amended to read:

"15-31-506. Copy of federal return required -- report of amended federal return. Every corporation shall, upon request of the department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for the taxable year or years that the department may specify in its request. ~~If~~ Except as provided in [section 3 or 4], if the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for a ~~taxable-tax~~ year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall file an amended Montana return with the department within ~~90~~ 180 days after ~~receiving official notice of the change or correction~~ the final determination date. ~~A-Except as provided in [section 4],~~ a corporation filing an amended federal income tax return changing or correcting its taxable income for a ~~taxable-tax~~ year shall also file an amended Montana return with the department within ~~90~~ 180 days after filing an amended federal income tax return."

Section 14. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or
(ii) until 1 year after the ~~federal changes have become final~~ determination date or the date an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506 or a federal adjustments report as provided in [section 3 or 4], until 3 years after the ~~federal changes become final~~

determination date or the date the amended federal return was filed.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment or filing, whichever is later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed is automatically extended.

(3) Except for final federal adjustments required to be reported for federal purposes by taking those adjustments into account in the partnership return for the year of the adjustment, a taxpayer may file a claim for refund or credit of tax on or before the later of:

(a) the expiration of the period provided for in subsection (2), including any extensions; or

(b) 1 year from the date a federal adjustments report described in [section 3 or 4], as applicable, was due to the department, including any extensions.

~~(3)~~(4) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

~~(4)~~(5) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back remains open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

Section 15. Section 15-31-544, MCA, is amended to read:

"15-31-544. Action on false or fraudulent return. Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, including a federal adjustments report under [section 3 or 4], the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment."

Section 16. Codification instruction. [Sections 1 through 8] 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 1 through 8].

Section 17. Effective date. [This act] is effective on passage and approval.

Section 18. Applicability. [This act] applies to tax adjustments made after [the effective date of this act].

- END -

I hereby certify that the within bill,
HB 53, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 53

INTRODUCED BY J. HAMILTON

BY REQUEST OF THE DEPARTMENT OF REVENUE

AN ACT ADOPTING THE MULTISTATE TAX COMMISSION PROPOSED MODEL STATUTE FOR REPORTING ADJUSTMENTS TO FEDERAL TAXABLE INCOME AND FEDERAL PARTNERSHIP AUDIT ADJUSTMENTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2605, 15-30-2606, 15-30-2609, 15-30-2619, 15-31-506, 15-31-509, AND 15-31-544, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.