

## Form WE-ELECT Instructions

### What's New?

All water's edge election requests must be made through our TransAction Portal (TAP) at <https://tap.dor.mt.gov/>. Any requests received by mail, email, or fax will not be accepted.

### Who can make a water's edge election?

Only multinational corporations subject to the Montana corporate income tax may apportion income under a water's edge, unitary combination method as set forth in [15-31-322, MCA](#). Please refer to [ARM 42.26.301](#).

### When does the election need to be made?

To perfect a water's edge election, a taxpayer must complete this form on TAP at <https://tap.dor.mt.gov/> and file it with the department within the first 90 days of the first period of the three-year tax period for which the election is to become effective. If the first tax period for which the election is to become effective is less than 90 days, the taxpayer will have until the end of the tax period to file the election. Under [ARM 42.26.302](#), if you fail to make a timely election, then you cannot make an election for that particular year. Retroactive elections will not be granted. Please refer to [ARM 42.26.302](#).

### Water's Edge Election Due Dates

Tax Period End Date	Election Due Date
January 31	May 1
January 31–leap year	April 30
February 28 or 29	May 29
March 31	June 29
April 30	July 29
May 31	August 29
June 30	September 28
July 31	October 29
August 31	November 29
September 30	December 29
October 31	January 29
November 30	February 28
December 31	March 31
December 31–leap year	March 30

If your tax year begins on a day other than the first day of a calendar month, the 90 days within which the election must be made begins with the first day of your tax period. For example, if your tax year begins April 17, the first day of the 90-day period is April 17.

### How long is the water's edge election good for?

Each election is binding for a three-year renewable period and may only be revoked upon the department's express written permission. If a taxpayer wants to continue to file on a water's edge basis, the taxpayer must submit Form WE-ELECT at <https://tap.dor.mt.gov/> again with the department within the first 90 days of the first tax year for which the election is to become effective. Please refer to [15-31-324, MCA](#) and [ARM 42.26.302](#).

### How will I know if I have a valid water's edge election?

After submission of your request, the department will either approve or deny your water's edge election request. The department will send a letter either providing information regarding the approval of your water's edge election or an explanation as to why the department denied or modified your water's edge election request. If you do not receive this

confirmation from the department within two weeks or by the deadline to make a valid water's edge election, there may be a problem with your request and you need to contact us by email at [DORWatersEdgeElection@mt.gov](mailto:DORWatersEdgeElection@mt.gov).

### Who can be included in the water's edge combined group?

The water's edge combined return includes only the income and apportionment factors of the members of the unitary group that meet the criteria set forth in [15-31-322, MCA](#), and summarized below. If your affiliated entity meets any one of these criteria and is unitary, it is included in your combined return. If your affiliated entity does not meet any of these criteria, it is excluded from your combined return.

- An affiliated entity that:
  - is incorporated in the United States
  - is in a unitary relationship with you
  - has less than 80% of its average payroll and property assigned to locations outside the United States, and
  - is eligible to be included in a federal consolidated tax return as described in 26 U.S.C. 1501 through 1505, with the exception that the 80% ownership requirement described in 26 U.S.C. 1504 is reduced to ownership of more than 50% of the voting stock directly or indirectly owned or controlled by a member of the water's edge group.
- Domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927.
- Export trade corporations, as described in 26 U.S.C. 970 and 971.
- Foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897.
- A corporation incorporated outside the United States, if more than 50% of its voting stock is owned directly or indirectly by the taxpayer, and if less than 80% of the average of its payroll and property is assignable to a location outside the United States.
- A corporation incorporated in the United States, if the denominator of both the property and payroll factor is zero, is included in a water's-edge return.
- A corporation incorporated outside the United States, if "engaged in business" or "doing business" pursuant to [15-31-101, MCA](#), in this state, is included in a water's-edge return.
- A portion of the after-tax net income of United States corporations that are excluded as 80/20 companies, and the United States possession corporations described in Sections 931 through 934 and Section 936 of the IRC, are considered dividends received from corporations that are incorporated outside of the United States. These deemed dividends are included in the apportionable income and are calculated on the Schedule WE of the CIT. Please refer to [ARM 42.26.311](#).

## What if I am subject to reorganization during the approved 3-year period?

You may be required to file a new Form WE-Elect. Refer to [ARM 42.26.313](#) or contact the department at (406) 444-6900 or [DORWatersEdgeElection@mt.gov](mailto:DORWatersEdgeElection@mt.gov).

## What information do I have to include with my tax return when I have a valid water's edge election?

If you have a valid water's edge election, you need to fill out Schedule WE and include it, and any supporting schedules, with the filing of your return.

## How do I treat net operating losses (NOLs) as a water's edge filer?

A corporation that makes a valid water's edge election or does not renew a prior election is agreeing that unused NOL carryover from a water's edge year may only be carried to a water's edge year, and unused NOL carryover from a non-water's edge year may only be carried to a non-water's edge year. When applying the three-year carryback (not to exceed \$500,000) and ten-year carryforward limitations, provided for in [15-31-119, MCA](#), all taxable periods are included, even though the loss can only be deducted in those periods in which the filing method is the same. Please refer to [ARM 42.23.805](#).

## Instructions

### Where to File

Please submit your request via our TransAction Portal at <https://tap.dor.mt.gov/>. Mailed, emailed, or faxed requests will not be accepted.

### Entity Information

Enter the FEIN, entity name, and address, of the business under which you file or will be filing tax returns in Montana.

### Tax Periods for Water's Edge Election

Enter the begin and end dates of each period of the three-year period for which you are requesting the water's edge election. If your first period is a short-year period, please provide an explanation. If you have not filed a Montana CIT form prior to the first period for which you are requesting an election, please provide an explanation as to why, and include details of any reorganizations, if applicable. If you are submitting the request outside of the 90-day period from the first period, please provide an explanation.

### Domestic Corporations

Include an attachment with the name and FEIN for all domestic corporations owned more than 50%. This includes each member of your U.S. consolidated group, including the parent corporation, and all unconsolidated domestic entities in which you have an ownership of greater than 50%. Please include entities that are owned by your corporation and entities that are owned by each member of your affiliated group. Also, indicate whether the corporation is included in the water's edge group. Federal Form 851 will not be accepted. **This attachment must be included to be considered for approval.**

### Foreign Corporations

Include an attachment with the name and country of incorporation of all foreign corporations in which you have an ownership of greater than 50%. If applicable, list the foreign parent corporation that owns greater than 50% of your corporation. It is necessary to include foreign corporations owned by your corporation and foreign corporations that are

owned by each member of your affiliated group. Also, indicate whether the corporation is included in the water's edge group.

**This attachment must be included to be considered for approval.**

## Explanation of Excluded Companies

For each domestic corporation that is being excluded from the water's edge group as indicated in the domestic corporation attachment, please provide a detailed explanation for the exclusion from the group.

## Contact Information

Provide the Officer name, title, and contact email address for the water's edge election submission. The contact email address provided will be where correspondence about the submission will be sent.

## Department of Revenue Approval/Denial

Upon submission of your request, the department will issue a letter of approval or denial to the email address provided with your request.

The denial letter will explain the reason(s) for the department's decision, a copy of which will also be mailed via U.S. Postal Service to the address on record. If you do not receive this confirmation from the department within two weeks or by the deadline to make a valid water's edge election, there may be a problem with your request and you need to contact us by email at [DORWatersEdgeElection@mt.gov](mailto:DORWatersEdgeElection@mt.gov).

Please note that the periods for which you have been approved for may be different than the ones that you requested. This change would be due to your request not meeting the requirements set forth in MCA and ARM, as indicated above. Please refer to this letter for the periods in which you have a valid water's edge election.

## Questions?

E-mail us at [DORWatersEdgeElection@mt.gov](mailto:DORWatersEdgeElection@mt.gov) or call us at (406) 444-6900, or Montana Relay at 711 for hearing impaired.