

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.9.106, 42.9.203, 42.9.301, ) PROPOSED AMENDMENT  
42.9.401, and 42.9.501 pertaining to )  
pass-through entities )

TO: All Concerned Persons

1. On September 28, 2017, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 15, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.9.106 COMPOSITE RETURN, WITHHOLDING, OR WAIVER FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES (1) remains the same.

(2) The department may waive the requirements to remit tax or pay composite tax on behalf of a domestic second-tier pass-through entity for the current tax year, as set forth in (1), if the first-tier pass-through entity obtains from the domestic second-tier pass-through entity a completed Form PT-AGR and files it with the department by the due date of the first-tier pass-through entity's tax return, including extensions. On Form PT-AGR, the domestic second-tier pass-through entity owner must:

(a) remains the same.

(b) establish that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in a resident individual, fiduciary, or corporate income tax return; and

(c) through (4) remain the same.

(5) For the purposes of (2), (3), and (4), ~~and pursuant to 15-30-3313, MCA, a "domestic second-tier pass-through entity" means a second-tier pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals~~ has the same meaning as provided in 15-30-3313, MCA.

(6) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3313, MCA

IMP: ~~15-1-201~~, 15-30-2620, 15-30-3302, 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.106 to implement Senate Bill (SB) 252, L. 2017, which revised the definition and waiver requirements of a "domestic second-tier pass-through entity" as it pertains to pass-through entity withholding.

The department proposes amending (2) to correspond with the revised definition of the term by adding "fiduciary, or corporate" income tax returns in (b), where the rule provides for what the domestic second-tier pass-through entity owner must establish when filing a Form PT-AGR. The department also proposes amending (5) to replace the current definition of "domestic second-tier pass-through entity" with a reference to the definition of the term in 15-30-3313, MCA, instead, because the revised definition in the statute is extensive and unnecessary to repeat in the rule.

The department further proposes striking an unnecessary implementing citation from the rule.

42.9.203 COMPUTATION OF COMPOSITE TAX (1) through (3) remain the same.

(4) Examples of the computations in (3) are as follows:

(a) remains the same.

(b) Example 1b. Participant's share of federal income: Assume that the partnership in Example 1a. has one electing eligible participant in the composite tax return, an individual. To determine the electing partnership's share of federal taxable income, multiply the entity's federal income (as reported on Form PR-1, line 15) by the ratio of the participant's distributive share of Montana source income (~~Form PR-1, Schedule III, column D~~ as reported on the participant's Montana Schedule K-1, part 2) over the entity's total Montana source income (Form PR-1, line 21). Assume the participant's share of Montana source income is \$10,000.

Participant's share of Montana source income ( <del>Form PR-1, line 21</del> )	\$10,000
Divide by total Montana source income ( <u>Form PR-1, line 21</u> ) <del>over the entity's Montana source income</del>	÷ \$20,000
Ratio of participant's share of Montana source income over the entity's <u>total</u> Montana source income	50%
Multiply by the partnership's federal income from all sources (Form PR-1, line 15)	x \$60,000
Participant's share of federal income	\$30,000

(c) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3312, MCA

IMP: 15-30-2103, 15-30-2512, 15-30-3302, 15-30-3312, 15-31-121, MCA

REASON: The department proposes amending ARM 42.9.203 to eliminate references to Schedule III, because it has been eliminated from both Forms PR-1 and CLT-4S beginning with tax year 2017, and is therefore no longer necessary to reference in the rule. The department also proposes minor corrections to the composite tax examples to correct language errors and update form references.

The reference to Schedule III in the example in (4)(b) is proposed to be stricken and replaced with a reference to the Montana Schedule K-1 instead. For the purpose of calculating composite tax, a partner or shareholder's "Montana source income" can now be found on the Montana Schedule K-1.

Also, in the example in (4)(b), line one of the table incorrectly references Form PR-1, line 21, and is therefore proposed to be stricken. That reference actually belongs on line two, where it is proposed to be added. Additionally, the language on line two of the table appeared to direct the taxpayer to divide total Montana source income by total Montana source income, when it should be directing the taxpayer to divide line one by line two, and is therefore proposed to be stricken. Furthermore, line three was missing the word "total" and the department proposes adding it in.

The proposed amendments to this rule are unrelated to new legislation.

42.9.301 PASS-THROUGH ENTITY INFORMATION RETURNS FOR PARTNERSHIPS (1) Every partnership that has Montana source income must file a ~~form~~ Form PR-1, Montana Partnership Information and Composite Tax Return, on or before the 15th day of the ~~fourth~~ third month following the close of its annual accounting period.

~~(2) Approval of an extension to file the partnership's federal Return of Partnership Income or federal Return of Income for Electing Large Partnerships automatically extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana partnership information return in order to receive the Montana extension. A six-month extension of time to file a partnership return is automatically allowed if any tax, penalties, and interest due are paid on or before the date the return is filed.~~

(3) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.301 to update language pertaining to the filing of extensions for partnership returns, and to update the rule to correspond with a change enacted by the passage of House Bill (HB) 42, L. 2017, which revised the filing deadline for partnerships to align it with the federal filing deadline.

As provided in HB 42, the partnership return is now due on or before the 15th day of the third month, instead of the fourth month, following the close of the partnership's annual accounting period. Therefore, the department proposes updating the language in (1) to reflect the new required due date. The department also proposes making a grammatical correction in this section by capitalizing the word "Form," because it is part of a name.

Additionally, the department proposes changing the automatic extension provisions for partnerships in (2). Currently, an extension is allowed to a partnership if they have an approved federal extension. The department proposes making the extension automatic, without regard to the federal extension, provided that any tax, penalties, and interest due are paid on or before the date the return is filed, for consistency with the way individual income tax extensions are handled. The proposed change in this section of the rule is unrelated to the new legislation.

42.9.401 PASS-THROUGH ENTITY INFORMATION RETURNS FOR S CORPORATIONS (1) remains the same.

~~(2) Approval of an extension to file the S corporation's federal income tax return for an S corporation automatically extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana S corporation information return in order to receive the Montana extension. A six-month extension of time to file an S corporation return is automatically allowed if any tax, penalties, and interest due are paid on or before the date the return is filed.~~

(3) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.401 to change the automatic extension provisions for S corporations in (2). Currently, an extension is allowed to an S corporation if they have an approved federal extension. The department proposes making the extension automatic, without regard to the federal extension, provided that any tax, penalties, and interest due are paid on or before the date the return is filed, for consistency with the way individual income tax extensions are handled.

The proposed amendment of this rule is unrelated to new legislation.

42.9.501 PASS-THROUGH ENTITY INFORMATION RETURNS FOR SINGLE-MEMBER LLC TREATED AS DISREGARDED ENTITY (1) through (7) remain the same.

(8) If the single member of the LLC is a partnership, the LLC must file the return on or before the 15th day of the ~~fourth~~ third month following the close of the partnership's annual accounting period.

(9) through (13) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3302, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.501 due to the passage of House Bill (HB) 42, L. 2017, which revised the filing deadline for partnerships to align with the federal filing deadline.

As provided in HB 42, the partnership return is now due on or before the 15th day of the third month, instead of the fourth month, following the close of the partnership's annual accounting period. Therefore, the department proposes updating the language in (8) to reflect this new due date for filing a disregarded entity information report when the single member of a limited liability company is a partnership. No additional amendments are proposed for this rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than October 11, 2017.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov/rules](http://revenue.mt.gov/rules), or through the Secretary of State's web site at [sos.mt.gov/ARM/register](http://sos.mt.gov/ARM/register).

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 42, L. 2017, Representative Kim Abbott, and the primary sponsor of Senate Bill 252, L. 2017, Senator Mark Blasdel, were both contacted by regular mail on June 14, 2017 and August 11, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 4.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State August 28, 2017.