



ADMINISTRATIVE RULES OF MONTANA

42.9.106 COMPOSITE RETURN, WITHHOLDING, OR WAIVER FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES

- (1) Except as provided in (2), (6), and (7), a first-tier pass-through entity with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity that receives a distributive share of Montana source income of \$1,000 or more:
 - (a) file a composite return as provided in ARM 42.9.202 and include the second-tier pass-through entity in the filing; or
 - (b) do each of the following:
 - (i) remit to the department an amount equal to the highest marginal rate in effect under 15-30-2103, MCA, multiplied by the second-tier pass-through entity's share of Montana source income with the Forms CLT-4S, PR-1, or DER-1 Pass-Through Entity's Information Return; and
 - (ii) provide Montana Schedule K-1 to the second-tier pass-through entity setting forth the amount remitted to the department that may be claimed as a refundable credit against the Montana income tax liability of the owners who file individual, corporate income, or other income tax returns as explained in (8).
- (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) provide the name, address, and social security or federal employer identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members, or other owners;
 - (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) agree to notify the first-tier pass-through entity and the department if the ownership of the domestic second-tier pass-through entity and, if applicable, the ownership of any higher-tier pass-through entities changes.

- (3) The department may revoke the waiver provided for in (2) if it determines that the partner, shareholder, member, or other owner no longer qualifies as a domestic second-tier pass-through entity. The department will notify the first-tier pass-through entity in writing of its requirement to withhold on the second-tier pass-through entity.
- (4) The pass-through entity is not required to file new agreements each year, but must file a currently effective agreement for each new domestic second-tier pass-through entity owner that does not elect to be included in a composite return or choose to have the pass-through entity remit tax on their behalf.
- (5) For the purposes of (2), (3), and (4), a "domestic second-tier pass-through entity" has the same meaning as provided in 15-30-3313, MCA.
- (6) A publicly traded partnership as defined in section 7704(b) of the IRC, that is treated as a partnership for federal purposes, is exempt from the requirements in (1) for tax years beginning after December 31, 2008, if certain information is provided to the department. This information includes the name, address, taxpayer identification number, and Montana source income of each partner that had an interest in the partnership during the tax year. This information must be provided in an electronic format approved by the department.
- (7) The exemption applicable to a publicly traded partnership (PTP), as described in (6), may be extended to a pass-through entity in which one or more PTPs has a direct or indirect majority interest in the income distributed by the pass-through entity. To receive a waiver, the pass-through entity must submit a written waiver request to the department at least 45 days before the original due date of the first-tier pass-through entity's tax return. Additional information is required if the following conditions exist:
 - (a) if the PTP is the second-tier partner, the PTP must be in compliance with filing requirements;
 - (b) if the PTP is not the second-tier partner, all tiers between the PTP and the first-tier entity must be in compliance with filing requirements, and the first-tier entity must provide the following documentation:
 - (i) an organizational chart;
 - (ii) all agreements that include information about ownership in the pass-through entity and special allocation; and
 - (c) a PTP must have an ultimate majority interest in the income distributed by the pass-through entity, to be determined on a case-by-case basis.
- (8) The amount remitted by the first-tier pass-through entity on behalf of the second-tier pass-through entity is claimed as a refundable credit by the taxpayer who ultimately reports their distributive share of the second-tier pass-through entity's Montana source income. For example:
 - (a) a first-tier pass-through entity remitted tax on behalf of a second-tier pass-through entity, X. X has two owners, an individual and another pass-through entity, Y. The individual owner will report his or her distributive share of the remitted tax as a refundable credit on an individual Montana income tax return. The other owner, Y, will report Y's distributive amount of the remitted tax to its owner. Y has one owner, a trust. The trust will report its distributive share of the remitted tax as a refundable credit on its Montana income tax return for trusts and estates.

- (9) If a pass-through entity fails to withhold on the distributive share of income reported to a second-tier pass-through entity, as required under 15-30-3313, MCA, and the income that is subject to withholding is reported on the tax return of any owner for the correct tax year and all applicable tax is paid, then the tax that the pass-through entity failed to withhold shall not be collected from the pass-through entity; however:
- (a) such payment by the owner does not relieve the pass-through entity from liability for penalties, interest, or additions to the tax applicable because of its failure to deduct and withhold; and
 - (b) the pass-through entity will not be relieved under this rule from its liability of the amounts required to be withheld unless it demonstrates that the income tax against which the required withholdings may be credited has actually been reported and paid.

Authorizing statute(s): 15-1-201, 15-30-2620, 15-30-3313, MCA

Implementing statute(s): 15-30-2620, 15-30-3302, 15-30-3312, 15-30-3313, MCA

History: NEW, 2004 MAR p. 2751, Eff. 11/5/04; AMD, 2010 MAR p. 174, Eff. 1/15/10; AMD, 2011 MAR p. 2679, Eff. 12/9/11; AMD, 2013 MAR p. 428, Eff. 3/29/13; AMD, 2015 MAR p. 2152, Eff. 12/11/15; AMD, 2017 MAR p. 2094, Eff. 11/10/17.