



ADMINISTRATIVE RULES OF MONTANA

42.9.104 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS WHO ARE NONRESIDENT INDIVIDUALS, ESTATES, OR TRUSTS

- (1) A partnership and S corporation with one or more nonresident individual, estate, or trust owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual, estate, or trust 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 nonresident individual, estate, or trust in the filing;
 - (b) obtain from the nonresident individual, estate, or trust and file Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana individual or fiduciary income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction; or
 - (c) remit an amount on the partner's or shareholder's behalf, determined as provided in (5), with the Pass-Through Entity Information Return, Forms CLT-4S or PR-1 and provide Montana Schedule K-1 to the nonresident individual, estate, or trust. The Montana Schedule K-1 must set forth the amount of withholding remitted to the department which can be used as a refundable credit against the tax liability of the nonresident individual, estate, or trust upon filing a Montana individual or fiduciary income tax return.
- (2) A disregarded entity with one or more nonresident individual, estate, or trust owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual, estate, or trust:
 - (a) obtain from the nonresident individual, estate, or trust and file Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana individual or fiduciary income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction; or
 - (b) remit an amount on the partner or shareholder's behalf, determined as provided in (5), with Form DER-1, Disregarded Entity Information Return and provide Montana Schedule K-1 to the nonresident individual, estate, or trust. The Montana Schedule K-1 must set forth the amount of withholding remitted to the department which can be used as a refundable credit against the tax liability of the nonresident individual, estate, or trust upon filing a Montana individual or fiduciary income tax return.
- (3) The pass-through entity is not required to file new agreements each year, but must file a currently effective agreement for each new nonresident individual, estate, or trust 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.

- (4) A nonresident owner may file Form PT-AGR with the department directly. The nonresident owner must notify and provide a copy of the completed Form PT-AGR to the partnership, S corporation, or disregarded entity. The Form PT-AGR is due on or before the due date, including extensions, of the pass-through entity's return. If the nonresident owner files Form PT-AGR, the partnership, S corporation, or disregarded entity is still subject to the filing requirements as provided in (1).
- (5) The amount that must be remitted by the due date described in (6) is the highest marginal rate in effect under 15-30-2103, MCA, multiplied by the share of Montana source income of the nonresident individual, estate, or trust reflected on the pass-through entity's information return.
- (6) The due date for the remittance described in (1)(c) and (2)(b) is the due date of the entity's information return.
- (7) If a pass-through entity fails to withhold on the distributive share of income reported to a nonresident individual, estate, or trust, as required under 15-30-3313, MCA, and the income that is subject to withholding is subsequently 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 applicable tax because of its failure to deduct and withhold; and
 - (b) the pass-through entity will not be relieved under this rule from its liability for 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.
- (8) 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.

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

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

History: NEW, 2002 MAR p. 3708, Eff. 12/27/02; AMD, 2004 MAR p. 2751, Eff. 11/5/04; AMD, 2010 MAR p. 174, Eff. 1/15/10; AMD, 2013 MAR p. 428, Eff. 3/29/13; AMD, 2015 MAR p. 2152, Eff. 12/11/15.