

Form WE-ELECT

Who can make a water's edge election?

Only multinational corporations subject to the Montana corporate license 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 and file it with the department within the first 90 days of the tax year 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 do not make a timely election then you cannot make an election for that particular year. Retroactive elections are not permissible. Please refer to ARM 42.26.302.

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 express written permission of the department. If a taxpayer wishes to continue to file on a water's edge basis, a Form WE-ELECT must again be filed with the department within the first 90 days of the 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?

Upon receipt of this form, the department will either approve or deny your water's edge election request by marking the appropriate box, indicating the date of approval or denial, and providing the signature and name of the person who approved or denied your request. Your form will be sent back to you with a letter from the department either providing additional information regarding your valid water's edge election or an explanation as to why your water's edge election request has been denied. 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 will need to contact us.

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.
- An affiliated entity that is in a unitary relationship with you and that is incorporated in a tax haven country. Please see 15-31-322, MCA. Tax haven countries currently include Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, U.S. Virgin Islands and Vanuatu. This list has been updated and is effective for periods beginning after December 31, 2008.
- 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 CLT-4.

Please refer to ARM 42.26.311.

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 will 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 and seven-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

Part I. Entity Information.

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

Enter the name, phone number and email address of the person we may contact if we have questions regarding your water's edge election.

Part II. Tax Periods for Water's Edge Election.

Enter the tax periods for which you are requesting the water's edge election.

Part III. Department of Revenue Approval/Denial.

Upon receipt of this form, the department will either approve or deny your water's edge election request by marking the appropriate box, the periods which the water's edge election has been approved for, indicating the date of approval or denial, and providing the signature and name of the person who approved or denied your request. Your form will be sent back to you with a letter from the department either providing additional information regarding your valid water's edge election or an explanation as to why your water's edge election request has been denied. 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 will need to contact us.

Please note that the periods in 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 part for the periods in which you have a valid water's edge election.

Part IV. Domestic Corporations.

Enter 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. Attach a separate sheet if necessary.

Part V. Foreign Corporations.

Enter 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. Attach a separate sheet if necessary.

Part VI. Explanation of Excluded Companies.

For each domestic corporation that is being excluded from the water's edge group as indicated in Part III above, please provide a detailed explanation for the exclusion from the group. For each foreign corporation incorporated in a tax haven country pursuant to 15-31-322, MCA that is being excluded from the water's edge group as indicated in Part IV above, please provide a detailed explanation for the exclusion from the group.

Part VII. Officer's Information.

An officer of the company must print, sign and date this form. Please also include the phone number of the officer.

Please send this form by mail to:

Montana Department of Revenue
Attn: Corporate Tax Unit
PO Box 7149
Helena, MT 59604-7149

You may also fax it to: (406) 444-2900.

Questions?

Please e-mail us at DORWatersEdgeElection@mt.gov or call us toll free at (866) 859-2254 (in Helena, 444-6900).