Montana Department of REVENUE

Water's Edge Schedule

MONTANA
WE-Schedule
New 8-04

Part I. Water's Edge Election

1. Enter tax periods for which a valid water's edge election has been approved ______________

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Part II. Calculation of "Deemed" Dividends Received from Corporations Incorporated Outside the United States

1. Positive income of 80/20 companies.. 1.______________
2. Consolidated 1120 positive income... 2.______________
3. Ratio of 80/20 positive income to consolidated 1120 income
   Divide the amount on line 1 by the amount on line 2....................................... 3.______________
4. Tax liability, net of credits, as reported on consolidated 1120....................... 4.______________
5. Federal tax liability associated with 80/20 companies
   Multiply line 3 by line 4... 5.______________
6. Section 78 gross-up received by 80/20 companies...................................... 6.______________
7. After - tax net income of 80/20 companies
   Subtract line 5 and line 6 from line 1... 7.______________
8. After - tax net income of unconsolidated 80/20 companies........................... 8.______________
9. After - tax net income of U.S. possession companies.................................. 9.______________
10. Total after - tax net income
    Add lines 7, 8, and 9.. 10.______________
11. 20% deemed dividend
    Multiply line 10 by 20%. Enter here and on line 2h. of CLT- 4, page 2........ 11.______________

Part III. List of 80/20 Companies, attach separate sheet if necessary

1. Name	2. FEIN	3. Income/Loss	4. Dividends Received

Part IV. List of Controlled Foreign Corporations, attach separate sheet if necessary

1. Name	2. Country of Incorporation	3. Income/Loss

***You must submit a copy of federal Form 5471 for each company incorporated in a tax haven country for the filing period.**

Instructions for Schedule WE

Part I. Water's Edge Election

Taxpayers may elect to compute income attributable to Montana sources on the basis of a water's edge combined return.

To perfect a water's edge election, a taxpayer must file a written election with the Department of Revenue within the first 90 days of the tax year for which the election is to become effective. Each election is binding for a three-year renewable period and may only be revoked upon express written permission of the Department of Revenue. <u>A written election must be filed for each three-year period</u>. A new election must again be filed within the first 90 days of the tax period for which the subsequent election is to become effective.

On Line 1, enter the tax periods for which a valid water's edge election has been approved by the department.

Part II. Calculation of "Deemed" Dividends Received from Corporations Incorporated Outside the United States

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 of the Montana Code Annotated and summarized in 1-6 below. If an entity meets any one of these criteria and is unitary, it must be included in the combined return. If an entity does not meet any of these criteria, it must be excluded from the combined return.

1. A corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has less than 80% of its payroll and property assigned to locations outside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return, the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by a corporation in the water's edge group.
2. 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.
3. Export trade corporations, as described in 26 U.S.C. 970 and 971.
4. 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.
5. A corporation incorporated outside the United States if over 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.
6. A corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven country. Please refer to Part IV below for additional details.

A corporation incorporated in the United States that has more than 80% of the average of its payroll and property assignable to a location outside the United States is commonly referred to as an "80/20" company. An 80/20 company does not qualify under (1) above and, as such, is excluded from the water's edge filing group.

The after-tax net income of United States corporations excluded from eligibility as affiliated corporations under (1) above (80/20 companies) and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States. These "deemed" dividends are calculated in Part II.

Line 1 – Positive income of 80/20 companies

Using a by-company breakdown of the federal consolidated return, enter the amount of federal line 30 for all 80/20 companies with a positive income. Any 80/20 company reporting a loss on line 30 should be reflected as zero in computing the 80/20 income. Enter this amount on line 1.

Line 2 – Consolidated 1120 positive income

Enter the total of federal line 30 for all companies with a positive income. Any company reporting a loss on line 30 should be reflected as zero income.

Line 3 – Ratio of 80/20 positive income to consolidated 1120 income

Divide the amount on line 1 by the amount on line 2; enter the result on line 3.

Line 4 – Tax liability as reported on consolidated 1120

Enter the federal tax liability reported on the federal consolidated Form 1120, net of any federal credits.

Line 5 – Federal tax liability associated with 80/20 companies
Multiply line 3 by line 4; enter the result on line 5.

Line 6 – Section 78 gross-up received by 80/20 companies
Enter the total Section 78 gross-up, reported on federal Schedule C, received by 80/20 companies during the tax period.

Line 7 – After tax net income of 80/20 companies
Subtract line 5 and line 6 from line 1; enter the result on line 7.

Line 8 – After tax net income of unconsolidated 80/20 companies
For U.S. corporations that qualify as an 80/20 company, owned greater than 50% and not included in the consolidated federal return, calculate the after tax net income. Enter this amount on line 8.

Line 9 – After tax net income of U.S. possession companies
For U.S. possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code, calculate the after tax net income. Enter this amount on line 9.

Line 10 – Total after tax net income
Add lines 7, 8 and 9; enter the total on line 10.

Line 11 – 20% deemed dividend from 80/20 companies
Multiply line 10 by 20%; enter the result on line 8, and line 2h of Form CLT-4, page 2.

Part III. List of 80/20 Companies

Column 1 – Name
Enter the name of each company qualified as an “80/20” company for the filing period.

Column 2 – FEIN
Enter the federal identification number of each company qualified as an “80/20” company for the filing period.

Column 3 – Income/Loss
Enter the income or loss reported on the federal consolidated return, line 30 of each company qualified as an “80/20” company for the filing period.

Column 4 – Dividends Received
Enter the total dividends received by each company qualified as an “80/20” company for the filing period.

Part IV. List of Controlled Foreign Corporations

Column 1 – Name
Enter the name of each company outside the United States owned greater than 50% by the Water’s Edge group.

Column 2 – Country of Incorporation
Enter the country of incorporation for each company listed in (1) above.

Column 3 – Income/Loss
Enter the income or loss reported on federal Form 5471 for each company listed.

You must submit a copy of federal Form 5471 for each company incorporated in a tax haven country for the filing period.

For tax periods beginning after December 31, 2003, a corporation that is in a unitary relationship with the taxpayer and is incorporated in a tax haven country is required to be included in the water’s edge combined return. As set forth in §15-31-322 of the Montana Code Annotated, tax haven countries currently include Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.

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