Form DER-1 General Information

What's New for 2015?

You can now e-file Form DER-1 through Taxpayer Access Point (TAP). For more information regarding electronic filing, visit *revenue.mt.gov* Online Services..

What is a disregarded entity?

A disregarded entity is a business entity that is disregarded as a separate entity from its business owner for federal tax purposes. If an entity is disregarded as a separate entity for federal income tax purposes, it is also disregarded as a separate entity for Montana income tax purposes.

Examples of disregarded entities include a domestic single member limited liability company (SMLLC) that does not elect to be classified as a corporation for federal tax purposes, a corporation that is a qualified REIT subsidiary, and a corporation that is a qualified subchapter S subsidiary.

Who is required to file Form DER-1?

Single member limited liability company: An SMLLC treated as a disregarded entity, whether formed in Montana or in another state or country, is required to file Form DER-1, Montana Disregarded Entity Information Return, each year the entity is engaged in business in Montana or has Montana source income.

Exception: Form DER-1 is not required if the disregarded entity is an SMLLC whose sole member is an individual, estate or trust who has been a full-time Montana resident during the applicable reporting period.

IRC § 761 electing partnership: Form DER-1 is required to be filed on or before 90 days after the date a partnership elects under section 761 of the Internal Revenue Code to be excluded from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code. A section 761 electing partnership also has to file another Form DER-1 within 90 days after: (1) its 761 election is changed or revoked for federal tax purposes; (2) any capital or profit interest of any partner, member, or other owner is transferred, liquidated, or redeemed; (3) it is dissolved, liquidated, merged, or consolidated with another entity; (4) it sells substantially all its assets; or (5) it files an application for a certificate of withdrawal with the Montana Secretary of State. A section 761 electing partnership is required to file Form DER-1, Montana Disregarded Entity Information Return, each year the entity is engaged in business in Montana or has Montana source income.

Qualified subchapter S subsidiary as defined in IRC § 1361(b)(3): Any corporation described in IRC § 1361(b)(3) whose parent elects to have the subsidiary be treated as a qualified subchapter S subsidiary and that has Montana source income or is engaged in business in Montana, must file Form DER-1 on or before 90 days after the election is made. Another Form DER-1 must also be filed within 90 days after the date: (1) its qualified subchapter S subsidiary status is changed or revoked for federal tax purposes; (2) its stock is transferred or redeemed; (3) it is dissolved, liquidated, merged, or consolidated with another entity; (4) it sells substantially all its assets; or (5) it files an application for a certificate of withdrawal with the Montana Secretary of State. A qualified subchapter S subsidiary is required to file Form DER-1, Montana Disregarded Entity Information Return, each year the entity is engaged in business in Montana or has Montana source income.

Qualified real estate investment trust subsidiary as defined in IRC § 856(i)(2) (REIT): Any corporation defined as a qualified REIT subsidiary in IRC § 856(i)(2) that has Montana source income and has assets, liabilities, and items of income, deductions, and credits that are included in the federal income tax return of its parent REIT, must file Form DER-1 on or before the due date of its parent REIT's information return.

Real estate mortgage investment conduit as defined in IRC § 860D (REMIC): Every unincorporated REMIC described in IRC § 860D that has Montana source income must file a copy of its federal Form 1066 (Real Estate Mortgage Investment Conduit Income Tax Return) on or before the federal due date (including extensions). Generally, REMICs must file the Form 1066 by April 15. However, if the entity is filing its final return, Form 1066 is due by the 15th day of the fourth month following the date the REMIC ceased to exist.

What is Montana Source Income?

In general, Montana source income is the separately and non-separately stated income, gain, loss, deduction or credit, or items of income, gain, loss, deduction or credit that you have derived from a trade, business, occupation or profession carried on in Montana or that was derived from the sale or other transfer, or the rental, lease, or other commercial exploitation of property located in Montana.

What is the due date of Form DER-1?

If the Disregarded Entity is a:	Then the Form DER-1 is due:
Single Member Limited Liability Company whose single member owner is a:	
• C corporation, • S corporation, • Real Estate Investment Trust (REIT)	On or before the 15th day of the third month following the close of the owner's annual accounting period.
Qualified Subchapter S Subsidiary	On or before the due date of the parent S corporation's information return.
Qualified REIT Subsidiary	On or before the due date of the parent REIT's information return.
• Individual • Estate • Non-Grantor Trust • Partnership • Real Estate • Mortgage Investment Conduit (REMIC)	On or before the 15th day of the fourth month following the close of the owner's annual accounting period.
Electing IRC § 761 Partnership	On or before April 15, 2016
Any other single member LLC not described above.	On or before August 31, 2016

If the Disregarded Entity is a:	Then the Form DER-1 is due:
Entity Type Other than Single Member Limited Liability Company	
• IRC § 761 Electing Partnership (Syndicate, Group, Pool, Joint Venture, or other Unincorporated Organization) • Qualified Subchapter S Subsidiary as defined in IRC § 1361(b)(3) • Qualified Real Estate Investment Trust Subsidiary as defined in IRC § 856(i)(2) (REIT) • Real Estate Mortgage Investment Conduit as defined in IRC § 860D (REMIC)	See "Who is required to file Form DER-1?" regarding due dates.

► If the due date falls on a holiday that defers a filing date as recognized by the IRS, the return may be filed on the first business day after the holiday.

Where to File

See online options at *revenue.mt.gov*

File Form DER-1 FREE through our website. For more information, please visit *revenue.mt.gov* and click on Taxpayer Access Point (TAP).

Or mail the Form DER-1 to:

Montana Department of Revenue
P.O. Box 8021
Helena, MT 59604-8021

Extension of Time to File

The disregarded entity can obtain an automatic extension of time to file its information return if its owner has a valid extension of time. The extended due date is the same as the owner's federal extended due date. The disregarded entity is allowed an automatic extension to file its information return of up to six months if the owner is not required to file a federal information return.

What forms have to be filed?

Additional filing requirements are listed below for a disregarded entity that has a nonresident individual, nonresident estate, nonresident trust, foreign C corporation or a partnership, S corporation or disregarded entity as its owner during the year. These filing requirements are:

- Schedule I (Montana Disregarded Entity Owner Information) identifies the owner or owners of the disregarded entity. If one of the owners is a nonresident individual, nonresident estate, nonresident trust, foreign C corporation, or second tier pass-through entity, the entity may be required to pay tax to the Montana Department of Revenue on behalf of the owner as provided in Montana Code Annotated 15-30-3313.
- Form PT-AGR (Montana Pass-Through Entity Owner Tax Agreement) is completed by the nonresident individual, nonresident estate, nonresident trust or foreign C corporation that agrees to timely file a Montana tax return, pay all taxes and be subject to the personal jurisdiction of Montana. A new Form PT-AGR is not required to be filed each year. The Form PT-AGR must be filed by the due date of the disregarded entity's return. The Form PT-AGR is filed separately; it is not attached to the Form DER-1. A disregarded entity needs to retain the agreements as part of its tax records.
- Form PT-STM (Montana Second Tier Pass-Through Entity Owner Statement) is filed by either the first-tier pass-through entity or the second-tier pass-through entity. This form identifies the owners of the second-tier pass-through entity and additional tiers if applicable and establishes that the second-tier pass-through entity's distributive share of Montana source income will be fully accounted for in Montana individual or corporation tax returns. We require Form PT-STM to be filed each year that the disregarded entity has an owner that is a pass-through entity unless the disregarded entity had previously obtained a multiple year waiver. The Form PT-STM must be submitted 45 days before the original due date of the disregarded entity's return.

The entity is unable to obtain a signed Form PT-AGR or Form PT-STM from the owner of the disregarded entity. What does it have to do?

If the entity is unable to obtain a signed Form PT-AGR or Form PT-STM, the entity is required to remit an amount based on the owner's share of Montana source income reported on Schedule I, Column D.

If the owner is a foreign C corporation, multiply the foreign C corporation's Montana source income by 6.75% to determine the amount of the remittance.

If the owner is a nonresident individual, nonresident estate, nonresident trust, or a second-tier pass-through entity, multiply the owner's Montana source income by 6.9% to determine the amount of the remittance.

What happens if the disregarded entity is late in filing Form DER-1?

The entity is charged a late filing penalty if Form DER-1 is filed after the due date, including the automatic extension, unless the entity can show reasonable cause for not filing on time. For a disregarded entity that does not have a tax year, the penalty is based on the number of owners on December 31 of the preceding year. This penalty is calculated for up to five months.

Form DER-1 Instructions

Heading

Name and Address. Enter the entity's true name (as set forth in the charter or other legal document creating it) and mailing address.

FEIN or SSN. Enter the FEIN (Federal Employer Identification Number) or SSN (Social Security Number) of the disregarded entity. If the FEIN or SSN is the same as the owner's FEIN or SSN reported on Schedule I, mark the box.

Lines 1 through 5 – Complete lines 1 through 5 as they relate to the disregarded entity and not the owner of the disregarded entity.

Lines 2 and 3 – Complete either line 2 or 3. If the disregarded entity was incorporated or formed in Montana (a domestic entity), complete line 2. If the disregarded entity was incorporated or formed in a jurisdiction other than Montana (a foreign entity) complete line 3.

Line 4 – Enter the letter and number of the organizational ID assigned by the Montana Secretary of State.

Line 6 – Disregarded Entity Type. First determine if the disregarded entity is a single member limited liability company (mark box 6A) OR another entity type (mark box 6B).

6A. Single Member Limited Liability Company (SMLLC). If you marked the box indicating the disregarded entity is an SMLLC, the next step is to mark the appropriate box corresponding with the type of owner listed. For example, if the owner of the SMLLC is an S corporation, line 6A would show one mark in box A and another mark in the S corporation box.

6B. Entity Type Other than SMLLC. If you marked the box indicating an entity type other than SMLLC, see the instructions for "Who is required to file Form DER-1?" to determine when the Form DER-1 is required to be filed. These particular entity types are not required to file the form unless certain events occur in order to "trigger" a filing requirement.

If you marked the box indicating that you are an IRC § 761 partnership or an IRC § 1361(b)(3) qualified subchapter S subsidiary, enter the date of your federal election.

Line 7 – Total Income Tax Withholding. Enter the total from Schedule I, column E or F. This is the total amount withheld on behalf of the nonresident owner, foreign C corporations, and second-tier pass-through entity owners.

Line 8a – Total Montana Mineral Royalty Tax Withheld. Enter the total amount of mineral royalty tax the disregarded entity paid and/or the total amount of Montana mineral royalty tax withheld on behalf of the disregarded entity by a lower-tier pass-through entity. These amounts will be reported on federal Forms 1099 and Montana Schedule K-1.

Royalty payments made to owners of Montana mineral rights are subject to withholding if certain thresholds are met. This withholding is different than the amounts deducted from the disregarded entity's royalty payments for production taxes.

Line 8b – Mineral Royalty Tax Withheld Distributed to Owner. Enter the amount of mineral royalty tax withheld reported on line 8a that is distributed to the owner.

Line 8c – Montana Mineral Royalty Tax Withheld Attributable to Disregarded Entity. Subtract line 8b from line 8a. This is the amount of Montana mineral royalty tax withheld that is attributable to the disregarded entity.

Line 9a – Total Montana Pass-Through Withholding. If the disregarded entity has an ownership interest in a pass-through entity that had Montana source income and the pass-through entity paid Montana income tax on behalf of the disregarded entity, enter the amount here. This amount is reported to the disregarded entity on a Montana Schedule K-1.

Line 9b – Montana Pass-Through Withholding Distributed to Royalty Owner. Enter the amount of Montana pass-through withholding reported on line 9a that is distributed to the owner.

Line 9c – Montana Pass-Through Withholding Attributable to Disregarded Entity. Subtract line 9b from line 9a. This is the amount of Montana pass-through withholding that is attributable to the disregarded entity.

Line 10 – Total Withholding Payments Attributable to Disregarded Entity. Add lines 8c and 9c.

Line 11 – Subtract line 10 from line 7.

Line 12 – Late Filing Penalty. A late filing penalty is charged if Form DER-1 is filed after the due date, including the automatic extension. The penalty is $10 multiplied by the number of months or fractions of a month that the entity does not file the disregarded entity information return. This penalty is calculated for up to five months. For example, if a disregarded entity files the Form DER-1 six months after its due date, the late file penalty would be $50 ($10 x 5 months).

Please Note: A late filing penalty is not imposed on an entity that has ten or fewer owners, each of whom is an individual, an estate of a deceased individual or a C corporation, and if the owners have filed the required tax returns or other required reports timely and have paid all taxes when due.

Line 13 – Late Payment Penalty. If the entity hasn't paid the tax liability (line 7) by the due date of the return, it will have to pay a late payment penalty. This penalty is 1.2% per month or fraction of a month on the tax liability that was not paid by the original due date. This penalty cannot exceed 12% of the tax liability on line 7.

Line 14 – Interest. Compute interest on any tax liability (line 7) that has not been paid by the due date of the tax return and enter the total on this line.

If 100% of the tax liability is not paid by the original due date, interest is due at a rate of 8% per year, computed daily on the unpaid balance.

To calculate the interest, multiply line 7 by 0.02192% (0.0002192) times the number of days after the unextended due date.

Line 15 – Total, Penalties and Interest. Add lines 7 through 10; enter the result on this line.

Line 16. Add lines 11 and 15.

Line 17 - Amount You Owe. If the amount on line 16 is greater than zero, enter it on this line. This is the amount due with the disregarded entity's return. The disregarded entity can pay the amount it owes by:

- money order, personal check or cashier's check payable to the MONTANA DEPARTMENT OF REVENUE. Remember to use a voucher, sign the check and write the disregarded entity's taxpayer identification number (either a SSN or FEIN) and "Tax Year 2015" on the memo line. A payment voucher is available online at revenue.mt.gov under Forms.

Please check our website for potential electronic payment options.

Line 18 - Refund. If the amount on line 16 is less than zero, enter it on this line as a positive number. This is the amount the disregarded entity overpaid.

If you would like to use direct deposit, enter the financial institution's routing number (RTN#) and the account number (ACCT#) in the space provided. The routing number will be nine digits and the account number can be up to 17 characters, including numbers and letters. Mark whether the account is a checking or savings account and if the refund will go to a bank outside of the United States and its territories (Midway Islands, Puerto Rico, American Samoa, U.S. Virgin Islands, Federated States of Micronesia, and Guam). If the financial institution does not accept the direct deposit, we will mail you a refund check.

Schedule I Instructions

Include all owners on this form. Except for an IRC § 761 partnership, or when spouses are considered a single taxpayer, the disregarded entity should have only one owner who owns 100% of the entity.

Column A – Name and Address of Owner. Enter the name and complete mailing address of each owner.

Column B – Identification Number. If the owner is an individual or an individual filing federal Schedule C, enter the individual's social security number (SSN).

If the owner is any other entity type listed on page 1, line 6A, enter the federal employer identification number (FEIN).

Column C – Percentage of Ownership. Enter each owner's percentage of ownership in the disregarded entity that is used to calculate the owner's share of income (loss). Generally, this is 100% unless the disregarded entity is an IRC § 761 partnership.

Column D – Montana Source Income. Enter each owner's share of the disregarded entity's Montana source income (loss).

Column E and Column F. Enter the amount remitted on behalf of each owner. For a foreign C corporation, the amount remitted is 6.75% of the Montana source income. For a nonresident individual, estate, trust or a second-tier pass-through entity, the amount remitted is 6.9% of the Montana source income. Transfer the amount of these columns to page 2, line 7, of the Form DER-1.

Column G – PT-AGR or PT-STM. There are two types of documents that are reported here, depending on the type of owner.

If the owner is a nonresident individual, nonresident estate, nonresident trust, or foreign C corporation, the owner must provide a Form PT-AGR to the disregarded entity if the disregarded entity does not pay tax on behalf of the owner for the owner's share of Montana source income. If the disregarded entity is filing the agreement to the department this year, enter "2015."

If the owner is a pass-through entity, the owner must provide a Form PT-STM to the disregarded entity if the disregarded entity does not pay tax on behalf of the owner for the owner's share of Montana source income. If the disregarded entity is providing the statement to the department this year, enter "2015."