

HOUSE BILL NO. 70

INTRODUCED BY R. ERICKSON

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE AMOUNT OF RETIREMENT INCOME THAT MAY BE EXCLUDED WHEN DETERMINING ADJUSTED GROSS INCOME AND THE AMOUNT OF THE INCOME CAP USED FOR REDUCING THE RETIREMENT INCOME EXCLUSION BASED ON THE CHANGE IN THE CONSUMER PRICE INDEX SINCE THE ENACTMENT OF THE EXCLUSION AND INCOME CAP; PROVIDING THAT THE RETIREMENT INCOME EXCLUSION AMOUNT AND INCOME CAP AMOUNT ARE TO BE ADJUSTED ANNUALLY BASED ON CHANGES IN THE CONSUMER PRICE INDEX; AMENDING SECTIONS 15-30-111, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);



1 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that
2 the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

3 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable
4 distribution of the same estate or trust, the difference between the state taxable distribution and the
5 federal taxable distribution of the same estate or trust for the same tax period.

6 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or
7 amended, adjusted gross income does not include the following, which are exempt from taxation under
8 this chapter:

9 (a) (i) all interest income from obligations of the United States government, the state of Montana,
10 a county, municipality, or district, or other political subdivision of the state and any other interest income
11 that is exempt from taxation by Montana under federal law;

12 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
13 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest
14 referred to in subsection (2)(a)(i);

15 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and
16 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

17 (c) (i) except as provided in subsection (2)(c)(ii), the first ~~\$3,600~~ \$4,700 of all pension and
18 annuity income received as defined in 15-30-101;

19 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

20 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
21 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross
22 income in excess of ~~\$30,000~~ \$39,200 as shown on the taxpayer's return;

23 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
24 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
25 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
26 ~~\$30,000~~ \$39,200 as shown on their joint return;

27 (d) all Montana income tax refunds or tax refund credits;

28 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered
30 by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and

1 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
2 licensed to provide food, beverage, or lodging;

3 (g) all benefits received under the workers' compensation laws;

4 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
5 the employee under federal law;

6 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
7 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

8 (j) principal and income in a medical care savings account established in accordance with
9 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
10 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
11 taxpayer;

12 (k) principal and income in a first-time home buyer savings account established in accordance with
13 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
14 purchase of a single-family residence;

15 (l) money, not exceeding \$3,000 for each taxpayer, contributed to a family education savings
16 program account established in accordance with 15-62-201;

17 (m) principal withdrawn from an account for qualified higher education expenses, as defined in
18 15-62-103, for a designated beneficiary of the taxpayer;

19 (n) the recovery during the tax year of any amount deducted in any prior tax year to the extent
20 that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

21 (o) if the federal taxable distribution of an estate or trust is greater than the state taxable
22 distribution of the same estate or trust, the difference between the federal taxable distribution and the
23 state taxable distribution of the same estate or trust for the same tax period; and

24 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income
25 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return
26 if the child and taxpayer meet the filing requirements in 15-30-142.

27 (3) The department, by November 1 of each year, shall multiply the exemption and income
28 amounts set forth in subsection (2)(c) by an inflation factor for that tax year and round the product to the
29 nearest \$10. The resulting exemption and income amounts are effective for that tax year and must be
30 used in calculating the tax imposed in 15-30-103. The inflation factor determination for this subsection

1 must use the June 2002 consumer price index rather than the June 1980 consumer price index as
2 provided in 15-30-101.

3 ~~(3)~~(4) A shareholder of a DISC that is exempt from the corporation license tax under
4 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the
5 DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for
6 all periods for which the DISC election is effective.

7 ~~(4)~~(5) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
8 business deductions by an amount for wages and salaries for which a federal tax credit was elected under
9 sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or
10 amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken.
11 The deduction must be made in the year that the wages and salaries were used to compute the credit. In
12 the case of a partnership or small business corporation, the deduction must be made to determine the
13 amount of income or loss of the partnership or small business corporation.

14 ~~(5)~~(6) Married taxpayers filing a joint federal return who are required to include part of their social
15 security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may
16 split the federal base used in calculation of federal taxable social security benefits or federal taxable tier
17 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must
18 be split equally on the Montana return.

19 ~~(6)~~(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end
20 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross
21 income up to \$100 a week received as wages or payments in lieu of wages for a period during which the
22 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
23 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
24 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
25 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
26 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
27 adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means
28 unable to engage in any substantial gainful activity by reason of any medically determined physical or
29 mental impairment lasting or expected to last at least 12 months.

30 ~~(7)~~(8) Married taxpayers who file a joint federal return and who make an election on the federal

1 return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA
 2 to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may
 3 file separate Montana income tax returns to defer the full taxable conversion amount from Montana
 4 adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer
 5 making the conversion. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L.
 6 1983.)"

7

8 **Section 2.** Section 19-2-1004, MCA, is amended to read:

9 **"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and
 10 19-2-909, the right of a person to any benefit or payment from the retirement systems and the money in
 11 the pension trust funds is not:

12 (1) subject to execution, garnishment, attachment, or any other process;

13 (2) subject to state, county, or municipal taxes except for:

14 (a) a benefit or annuity received in excess of ~~\$3,600 or adjusted by an amount determined that~~
 15 exempted from taxation pursuant to 15-30-111(2)(c)(~~ii~~); or

16 (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985,
 17 as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

18 (3) assignable except as specifically provided in this chapter."

19

20 **Section 3.** Section 19-17-407, MCA, is amended to read:

21 **"19-17-407. Exemption from taxation.** The ~~first \$3,600 or the~~ excluded amount determined
 22 pursuant to 15-30-111(2)(c)(~~ii~~) of benefits received under this part is exempt from state, county, and
 23 municipal taxation."

24

25 **Section 4.** Section 19-18-612, MCA, is amended to read:

26 **"19-18-612. Protection of benefits from legal process and taxation -- nonassignability.** (1) Except
 27 for execution or withholding for the payment of child support or for the payment of spousal support for
 28 a spouse or former spouse who is the custodial parent of the child, payments made or to be made under
 29 this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled
 30 to a pension may not assign the right, and the association and trustees may not recognize any assignment

1 or pay over any sum assigned.

2 (2) The ~~first \$3,600 or the~~ excluded amount determined pursuant to 15-30-111(2)(c)(~~ii~~) of
3 benefits received under this part is exempt from state, county, and municipal taxation."

4

5 **Section 5.** Section 19-19-504, MCA, is amended to read:

6 **"19-19-504. Protection of benefits from legal process and taxation.** (1) Except for execution or
7 withholding for the payment of child support or for the payment of spousal support for a spouse or former
8 spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to
9 execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law
10 and are unassignable except as specifically provided in 19-19-505.

11 (2) The ~~first \$3,600 or the~~ excluded amount determined pursuant to 15-30-111(2)(c)(~~ii~~) of
12 benefits received under this part is exempt from state, county, and municipal taxation."

13

14 **Section 6.** Section 19-20-706, MCA, is amended to read:

15 **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305 and
16 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the
17 provisions of the retirement system and the accumulated contributions and cash and securities in the
18 various funds of the retirement system are:

19 (1) exempted from any state, county, or municipal tax of the state of Montana except for:

20 (a) a retirement allowance received in excess of ~~\$3,600 or adjusted by an~~ the excluded amount
21 determined pursuant to 15-30-111(2)(c)(~~ii~~); or

22 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer
23 after June 30, 1985, as provided in 19-20-602;

24 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
25 equity, or any other process; and

26 (3) unassignable except as specifically provided in this chapter."

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28 **Section 7.** Section 19-21-212, MCA, is amended to read:

29 **"19-21-212. Exemption from taxation, legal process, and assessments.** Except for execution or
30 withholding for the payment of child support or for the payment of spousal support for a spouse or former

1 spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional
2 retirement program and the earnings on the contributions are:

- 3 (1) except for a retirement allowance received in excess of ~~\$3,600 or adjusted by an~~ the excluded
4 amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;
- 5 (2) not subject to execution, garnishment, attachment, or other process;
- 6 (3) not covered or assessable by an insurance guaranty association; and
- 7 (4) unassignable except as specifically provided in the contracts."

8

9 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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11 NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the
12 meaning of 1-2-109, to tax years beginning after December 31, 2000.

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- END -