

1 SENATE BILL NO. 127

2 INTRODUCED BY J. BOHLINGER

3 BY REQUEST OF THE BOARD OF REGENTS OF HIGHER EDUCATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM ANNUAL DEDUCTION FOR
6 CONTRIBUTIONS TO A FAMILY EDUCATION SAVINGS ACCOUNT; REDUCING ADJUSTED GROSS
7 INCOME TO REFLECT THE INCREASE IN THE DEDUCTION; AMENDING SECTIONS 15-30-111 AND
8 15-62-207, MCA; AND PROVIDING AN APPLICABILITY DATE."

9

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

11

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

13 **"15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal
14 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62,
15 as that section may be labeled or amended, and in addition includes the following:

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

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

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

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

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

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

29 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
30 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution

1 of the same estate or trust for the same tax period.

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

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

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

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

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

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

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

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

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

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

25 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
26 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on
27 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide
28 food, beverage, or lodging;

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

30 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the

1 employee under federal law;

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

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

7 (k) principal and income in a first-time home buyer savings account established in accordance with
8 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
9 purchase of a single-family residence;

10 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family
11 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
12 beneficiary;

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

15 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
16 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
17 of the same estate or trust for the same tax period;

18 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
19 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
20 is not provided for federal income tax purposes; and

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

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

28 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
29 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38
30 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to

1 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made
2 in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small
3 business corporation, the deduction must be made to determine the amount of income or loss of the partnership
4 or small business corporation.

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

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

20 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to
21 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,
22 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana
23 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the
24 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

25 (8) ~~An~~ As provided in 15-62-207, an individual who contributes to one or more accounts established
26 under the Montana family education savings program may reduce adjusted gross income by the lesser of ~~\$3,000~~
27 \$5,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction,
28 not in excess of ~~\$3,000~~ \$5,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat
29 half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted
30 gross income under this subsection applies only with respect to contributions to an account of which the account

1 owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
2 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
3 to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence
4 of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.
5 262, L. 2001.)

6 **15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross
7 income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal
8 Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the
9 following:

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

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

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

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

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

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

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

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

29 (a) (i) all interest income from obligations of the United States government, the state of Montana, a
30 county, municipality, or district, or other political subdivision of the state and any other interest income that is

- 1 exempt from taxation by Montana under federal law;
- 2 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26
3 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred
4 to in subsection (2)(a)(i);
- 5 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and
6 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- 7 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
8 received as defined in 15-30-101;
- 9 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:
- 10 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
11 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
12 excess of \$30,000 as shown on the taxpayer's return;
- 13 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
14 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
15 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
16 as shown on their joint return;
- 17 (d) all Montana income tax refunds or tax refund credits;
- 18 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 19 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
20 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on
21 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide
22 food, beverage, or lodging;
- 23 (g) all benefits received under the workers' compensation laws;
- 24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
25 employee under federal law;
- 26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
27 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 28 (j) principal and income in a medical care savings account established in accordance with 15-61-201
29 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
30 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

1 (k) principal and income in a first-time home buyer savings account established in accordance with
2 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
3 purchase of a single-family residence;

4 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family
5 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
6 beneficiary;

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

9 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
10 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
11 of the same estate or trust for the same tax period;

12 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
13 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
14 is not provided for federal income tax purposes;

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

18 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
19 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

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

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25 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38
26 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to
27 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made
28 in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small
29 business corporation, the deduction must be made to determine the amount of income or loss of the partnership
30 or small business corporation.

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

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

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 17 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,
 18 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana
 19 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the
 20 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

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 22 under the Montana family education savings program may reduce adjusted gross income by the lesser of ~~\$3,000~~
 23 \$5,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction,
 24 not in excess of ~~\$3,000~~ \$5,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat
 25 half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted
 26 gross income under this subsection applies only with respect to contributions to an account of which the account
 27 owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
 28 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
 29 to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence
 30 of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.

1 262, L. 2001.)"

2

3 **Section 2.** Section 15-62-207, MCA, is amended to read:

4 **"15-62-207. Deductions for contributions.** An individual who contributes to an account in a tax year
5 is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(8), by the amount of
6 the contribution, but not more than ~~\$3,000~~ \$5,000. The contribution must be made to an account owned by the
7 contributor, the contributor's spouse, the contributor's child, or the contributor's stepchild if the stepchild is a
8 Montana resident."

9

10 NEW SECTION. **Section 3. Applicability.** [This act] applies to tax years beginning after December
11 31, 2003.

12

- END -