





## SENATE STANDING COMMITTEE REPORT

March 23, 2005

Page 1 of 5

Mr. President:

We, your committee on Taxation recommend that **Senate Bill 511** (first reading copy -- white) do pass as amended.

Signed:

A handwritten signature in black ink, appearing to read "Jim Elliott", written over a horizontal line.

*Senator Jim Elliott, Chair*

And, that such amendments read:

1. Title, lines 4 and 5.

**Strike:** "EXCLUDING FROM" on line 4

**Insert:** "ALLOWING A DEDUCTION FOR"

**Strike:** "ADJUSTED" on line 4 through "INCOME" on line 5

**Insert:** "PURPOSES ON"

2. Title, line 7 through line 8.

**Strike:** "15-30-110" on line 7 through "15-30-111," on line 8

**Insert:** "15-30-121"

3. Page 1, line 12 through page 6, line 26.

**Strike:** section 1 through section 2 in their entirety

**Insert:** "Section 21. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1)

In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift

**Committee Vote:**

Yes 8, No 3.

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annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are

incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in

61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201; and

(j) capital gains on common or preferred stock that was purchased in a qualified corporation, as provided in subsection (3), after December 31, 2004, and that was held for at least 3 years.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2).

(3) For the purposes of subsection (1)(j), "qualified corporation" means a corporation that:

(a) is a C. corporation and has been reported as a C. corporation for federal tax purposes for the 2 years immediately preceding the year in which the exemption is claimed;

(b) was not publicly traded on a stock exchange or listed for over-the-counter trading or was not affiliated, as defined in 13 CFR 121.103, with a publicly traded company at the time the stock was purchased;

(c) is headquartered within the state and has its principal business operations located within the state;

(d) has at least 35% of its directors and officers and 60% of its employees residing in the state in the year in which the exemption is claimed and for at least the 2 years immediately preceding the year in which the exemption is claimed;

(e) employed fewer than 100 full-time equivalent employees at the time the stock was purchased and has fewer than 500 full-time equivalent employees when the exemption is claimed;

(f) is an active operating entity that produces goods or services. An active operating entity under this subsection (3)(f) does not include a passive investment entity that primarily engages in buying, holding, and trading assets for speculation on price changes such as:

(i) real estate holding companies, real estate investment trusts, and companies whose assets predominantly consist of real property or whose income is predominantly derived from the sale, rental, or management of real property or interests in real

property such as leaseholds or mineral rights;

(ii) companies whose assets predominantly consist of or whose income predominantly arises from financial instruments such as futures contracts, insurance contracts, mortgages, or debt obligations;

(iii) shell business entities, as defined in 33-12-102, whose assets predominantly consist of share and equity interests in other companies."

**Renumber:** subsequent section

4. Page 8, line 18.

**Strike:** "15-30-110(2)(b)"

**Insert:** "15-1-121(3), that was purchased after December 31, 2004, and that was held for at least 3 years"

- END -

MONTANA STATE SENATE  
2005 LEGISLATURE

ROLL CALL VOTE

TAXATION

DATE 3-23-05 BILL NO. SB 511 NUMBER J

MOTION GEBHARDT: Do Pass As Amended

NAME	AYE	NO
SEN. JIM ELLIOT, CHAIRMAN		✓
SEN. JERRY BLACK		
SEN. JON ELLINGSON	[ ✓ ]	
SEN. JEFF ESSMANN	✓	
SEN. KELLY GEBHARDT	✓	
SEN. KIM GILLAN	✓	
SEN. DAN HARRINGTON		✓
SEN. SAM KITZENBERG		
SEN. TRUDI SCHMIDT	[ ✓ ]	
SEN. ROBERT STORY	✓	
SEN. KEN TOOLE, VICE CHAIRMAN	[ ]	(✓)
TOTAL	8	3

PROXY VOTE

I, the undersigned, hereby authorize Senator Gillan to

vote my proxy on any issue before the Senate Taxation

Committee held on March 23, 2005.

SB 511 YES on S.B. 511

Jim Ellinger  
SENATOR  
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Elliott to

vote my proxy on any issue before the Senate Taxation

Committee held on March 23, 2005.

SB 511

*Schmidt*

\_\_\_\_\_  
SENATOR  
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator *Don Harty* to

vote my proxy on any issue before the Senate *(all)*

Committee held on *March 23*, 2005.

*K. Carly*

SENATOR  
STATE OF MONTANA

**MONTANA STATE SENATE  
2005 LEGISLATURE**

**VISITOR REGISTER**

**TAXATION**

**DATE** 3-23-05 **BILLS BEING HEARD TODAY** \_\_\_\_\_

SB 511

**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Manville [unclear]		MT Tax [unclear]	SB 517	X	
Charles Brown	649-7320	Billing [unclear]	SB 517	X	
WESS BROWN	442-2455	MT CHAMBER	SB 517	X	
Riley Johnson	443-3197	WFIB	SB 517	X	
BRENDA GILMER	444-3339	DOR - MT	SB 513		
Stuart Duggell	439-5490	MT [unclear]	SB 517	X	
Don Judge	459-1708	Teamsters local 190	SB 517		X
Bob Helmer	251-5861	Rocky Mtn Capital	SB 511	X	
John [unclear]		MT [unclear]	SB 517	X	

**PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY**