

1 HOUSE BILL NO. 109

2 INTRODUCED BY R. ERICKSON

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING A GRANTOR TRUST AS A DISREGARDED ENTITY;
6 TREATING GRANTOR TRUSTS AS PASS-THROUGH ENTITIES FOR WITHHOLDING AND REPORTING
7 PURPOSES; DEFINING "GRANTOR TRUST"; AMENDING SECTION 15-30-101, MCA; AND PROVIDING AN
8 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 15-30-101, MCA, is amended to read:

13 **"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the
14 following definitions apply:

15 (1) "Base year structure" means the following elements of the income tax structure:

16 (a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of
17 the ~~taxable~~ tax year;

18 (b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the
19 ~~taxable~~ tax year;

20 (c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect
21 on June 30 of the ~~taxable~~ tax year.

22 (2) "Consumer price index" means the consumer price index, United States city average, for all items,
23 for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics
24 of the U.S. department of labor.

25 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

26 (a) that is treated as an association for federal income tax purposes;

27 (b) for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is not
28 in effect; and

29 (c) that is not a disregarded entity.

30 (4) "Department" means the department of revenue.

1 (5) "Disregarded entity" means ~~a business entity~~:

2 (a) a business entity that is disregarded as an entity separate from its owner for federal tax purposes,
3 as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR
4 301.7701-3, or as those regulations may be labeled or amended; ~~or~~

5 (b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided
6 in section 1361(b)(3) of the Internal Revenue Code, ~~{26 U.S.C. 1361(b)(3)}~~; ~~or~~

7 (c) a grantor trust.

8 (6) "Dividend" means:

9 (a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or
10 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

11 (b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

12 (7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,
13 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

14 (8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana,
15 as provided in 15-31-101.

16 (9) "Foreign government" means any jurisdiction other than the one embraced within the United States,
17 its territories, and its possessions.

18 (10) "Grantor trust" means a trust any portion for which the grantor or another person is treated as owner
19 as provided in Chapter 1, Subchapter J, Part I, Subpart E, of the Internal Revenue Code, 26 U.S.C. 671 et seq.

20 ~~(10)~~(11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined
21 in section 61 of the Internal Revenue Code, ~~{26 U.S.C. 61}~~, or as that section may be labeled or amended,
22 excluding unemployment compensation included in federal gross income under the provisions of section 85 of
23 the Internal Revenue Code, ~~{26 U.S.C. 85}~~, as amended.

24 ~~(11)~~(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price
25 index for June of the tax year by the consumer price index for June 2005.

26 ~~(12)~~(13) "Information agents" includes all individuals and entities acting in whatever capacity, including
27 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all
28 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the
29 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,
30 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,

1 and income with respect to which any person or fiduciary is taxable under this chapter.

2 ~~(13)~~(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may
3 be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
4 provisions as they may be otherwise labeled or further amended.

5 ~~(14)~~(15) "Knowingly" is as defined in 45-2-101.

6 ~~(15)~~(16) "Limited liability company" means a limited liability company, a domestic limited liability company,
7 or a foreign limited liability company as defined in 35-8-102.

8 ~~(16)~~(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

9 ~~(17)~~(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

10 (a) a resident taxpayer on a lottery ticket; or

11 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

12 ~~(18)~~(19) (a) "Montana source income" means:

13 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident
14 of the state;

15 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise
16 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation
17 carried on in the state;

18 (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a
19 resident of the state;

20 (iv) interest received or accrued while a resident of the state or from an installment sale of real property
21 or tangible commercial or business personal property located in the state;

22 (v) dividends received or accrued while a resident of the state;

23 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state
24 or while a resident of the state;

25 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the
26 state;

27 (viii) net rents from real property and tangible personal property located in the state or received or
28 accrued while a resident of the state;

29 (ix) net royalties from real property and from tangible real property to the extent the property is used in
30 the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state

1 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical
2 location of the property in the state during the royalty period in the tax year and the denominator of which is the
3 number of days of physical location of the property everywhere during all royalty periods in the tax year. If the
4 physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in
5 which it was located at the time the person paying the royalty obtained possession.

6 (x) patent royalties to the extent the person paying them employs the patent in production, fabrication,
7 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are
8 received or accrued while a resident of the state;

9 (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties
10 are received or accrued while a resident of the state;

11 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

12 (A) derived from a trade, business, occupation, or profession carried on in the state;

13 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
14 property located in the state; or

15 (C) taken into account while a resident of the state;

16 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or
17 item of income, gain, loss, deduction, or credit:

18 (A) derived from a trade, business, occupation, or profession carried on in the state;

19 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
20 property located in the state; or

21 (C) taken into account while a resident of the state;

22 (xiv) social security benefits received or accrued while a resident of the state;

23 (xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits
24 received while a resident of the state; and

25 (xvi) any other income attributable to the state, including but not limited to lottery winnings, state and
26 federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

27 (b) The term does not include:

28 (i) compensation for military service of members of the armed services of the United States who are not
29 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does
30 not include income derived from their personal property located in the state except with respect to personal

1 property used in or arising from a trade or business carried on in Montana; or

2 (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their
3 domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located
4 in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there
5 is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

6 ~~(19)~~(20) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by
7 this chapter.

8 ~~(20)~~(21) "Nonresident" means a natural person who is not a resident.

9 ~~(21)~~(22) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued
10 or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the
11 method of accounting upon the basis of which the taxable income is computed under this chapter.

12 ~~(22)~~(23) "Partner" means a member of a partnership or a manager or member of any other entity, if
13 treated as a partner for federal income tax purposes.

14 ~~(23)~~(24) "Partnership" means a general or limited partnership, limited liability partnership, limited liability
15 company, or other entity, if treated as a partnership for federal income tax purposes.

16 ~~(24)~~(25) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

17 ~~(25)~~(26) "Pension and annuity income" means:

18 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term
19 is used in section 401 of the Internal Revenue Code, ~~(26 U.S.C. 401)~~, or systematic payments received as the
20 result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon
21 the cessation of employment;

22 (b) payments received as the result of past service and cessation of employment in the uniformed
23 services of the United States;

24 (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are
25 included in federal adjusted gross income;

26 (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans
27 recognized under sections 401 through 408 of the Internal Revenue Code, ~~(26 U.S.C. 401 through 408)~~, to the
28 extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

29 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular
30 employment.

1 ~~(26)~~(27) "Purposely" is as defined in 45-2-101.

2 ~~(27)~~(28) "Received", for the purpose of computation of taxable income under this chapter, means
3 received or accrued, and the term "received or accrued" must be construed according to the method of
4 accounting upon the basis of which the taxable income is computed under this chapter.

5 ~~(28)~~(29) "Resident" applies only to natural persons and includes, for the purpose of determining liability
6 to the tax imposed by this chapter with reference to the income of any ~~taxable tax~~ year, any person domiciled in
7 the state of Montana and any other person who maintains a permanent place of abode within the state even
8 though temporarily absent from the state and who has not established a residence elsewhere.

9 ~~(29)~~(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of
10 the Internal Revenue Code, ~~{26 U.S.C. 1362}~~, is in effect.

11 ~~(30)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
12 proportion to their previous holdings.

13 ~~(31)~~(32) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

14 ~~(32)~~(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and
15 exemptions provided for in this chapter.

16 ~~(33)~~(34) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or
17 other obligation imposed by this chapter and unless otherwise specifically provided does not include a C.
18 corporation."

19

20 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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22 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
23 meaning of 1-2-109, to tax years beginning after December 31, 2006.

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