

SENATE BILL NO. 281

INTRODUCED BY BALLYEAT, HENDRICK, KOOPMAN, HIMMELBERGER, STEINBEISSER, HEINERT,
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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING MARRIED TAXPAYERS WHO FILE SEPARATE
MONTANA INCOME TAX RETURNS TO USE FEDERAL DETERMINATIONS OF ADJUSTED GROSS INCOME
REPORTED ON FEDERAL JOINT RETURNS IN DETERMINING MONTANA ADJUSTED GROSS INCOME
FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 15-30-111, 15-62-207, AND 15-62-208, 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 adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, 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, 26 U.S.C. 852(b)(5), 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 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;

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

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

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that 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, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

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

1 food, beverage, or lodging;

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

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

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

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

10 (k) principal and income in a first-time home buyer savings account established in accordance with
11 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
12 of a single-family residence;

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

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

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

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

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

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

29 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

30 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall

1 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
2 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
3 is effective.

4 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
5 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
6 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
7 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
8 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
9 be made to determine the amount of income or loss of the partnership or small business corporation.

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

15 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
16 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
17 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
18 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
19 must be split equally on each return.

20 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
21 who file separate Montana income tax returns are not required to recompute allowable passive losses according
22 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
23 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
24 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

25 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
26 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
27 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
28 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

29 (9) (A) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
30 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate

1 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
2 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
3 gross income.

4 (B) MARRIED TAXPAYERS FILING A JOINT FEDERAL RETURN WHO ARE ALLOWED A DEDUCTION FOR QUALIFIED
5 TUITION AND RELATED EXPENSES UNDER SECTION 222 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 222, AND WHO FILE
6 SEPARATE MONTANA INCOME TAX RETURNS MAY CLAIM THE SAME AMOUNT OF THE DEDUCTION THAT IS ALLOWED ON THE
7 FEDERAL RETURN. THE DEDUCTION MAY BE SPLIT EQUALLY ON EACH RETURN OR IN PROPORTION TO EACH TAXPAYER'S
8 SHARE OF FEDERAL ADJUSTED GROSS INCOME.

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

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

24 ~~(8)(11)~~ An individual who contributes to one or more accounts established under the Montana family
25 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the
26 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for
27 the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made
28 by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection
29 applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is
30 the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a

Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)(12)~~ (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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

"15-62-207. Deductions for contributions. An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(11), by the total amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

Section 3. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)~~(11).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross

1 income, all withdrawals must be allocated between income and contributions in accordance with the principles
2 applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion
3 of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions,
4 if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions
5 that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must
6 be treated as first derived from contributions that reduced adjusted gross income, to the extent of the
7 contributions, and then to contributions that did not reduce adjusted gross income.

8 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the
9 withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account
10 owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income
11 tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the
12 account owner is not a Montana resident at the time of the withdrawal.

13 (b) The department may require withholding on recapturable withdrawals from an account that was at
14 one time owned by a Montana resident if the account owner is not a Montana resident at the time of the
15 withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time
16 owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

17 (4) For the purposes of this section, all contributions made to accounts by residents of Montana are
18 presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that
19 all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for
20 contributions shall report on their Montana income tax returns the amount of deductible contributions made to
21 accounts for each designated beneficiary and the social security number of each designated beneficiary.

22 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
23 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

24 (a) April 30, 2001; or

25 (b) the date that is 3 years prior to the date of the withdrawal or distribution.

26 (6) The department shall use all means available for the administration and enforcement of income tax
27 laws in the administration and enforcement of this section."

28
29 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
meaning of 1-2-109, to tax years beginning after December 31, 2006.

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