



AN ACT ALLOWING A TAXPAYER TO APPLY FOR RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER THE INDIVIDUAL INCOME TAX; AUTHORIZING THE DEPARTMENT TO ADOPT RULES ON RELIEF FROM JOINT AND SEVERAL LIABILITY; UPDATING CERTAIN PROVISIONS RELATING TO THE INDIVIDUAL INCOME TAX EXEMPTION FOR A QUALIFYING CHILD; REQUIRING CONSISTENCY BETWEEN THE DEDUCTION PERMITTED AN ESTATE OR TRUST FOR TAXES PAID OR ACCRUED DURING A YEAR WITH THE DEDUCTION ALLOWED FOR INDIVIDUAL TAXPAYERS; CLARIFYING THE EXTENSION OF TIME ALLOWED FOR FILING AN INDIVIDUAL INCOME TAX RETURN; MAKING TECHNICAL CORRECTIONS REGARDING THE SUSPENSION OF THE STATUTE OF LIMITATIONS UNDER THE INDIVIDUAL INCOME TAX; CLARIFYING WHEN THE DEPARTMENT MUST PAY INTEREST TO INDIVIDUAL INCOME TAXPAYERS FOR LATE-FILED RETURNS; AMENDING SECTIONS 15-30-112, 15-30-136, 15-30-142, 15-30-144, 15-30-146, AND 15-30-149, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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

Section 1. Relief from joint and several liability on joint return -- limitations -- rules. (1) A taxpayer who has obtained relief from joint and several liability under section 6015 of the Internal Revenue Code, 26 U.S.C. 6015, may apply to the department for relief from joint and several liability of the tax imposed by Title 15, chapter 30. The taxpayer must have filed a Montana joint return for each of the tax years for which relief is sought under this section.

- (2) In applying for relief under this section, the taxpayer shall provide the department with the following:
- (a) the tax years for which relief is sought;
 - (b) complete copies of all correspondence sent to and received from the internal revenue service;
 - (c) any court order stating that the taxpayer's spouse or former spouse is responsible for paying the Montana individual income tax liability; and
 - (d) other information demonstrating that it would be unfair to hold the taxpayer responsible for the tax, penalty, and interest.

(3) If the department determines, after consideration of the facts and circumstances presented by the taxpayer, that it would be unfair to hold the taxpayer responsible for some or all of the tax, penalty, and interest, the department shall grant the taxpayer relief from joint and several liability. The relief from joint and several liability granted by the department:

(a) must be based on the same circumstances for which relief was granted the taxpayer by the internal revenue service; and

(b) may not exceed the relief granted by the internal revenue service.

(4) The department shall adopt rules to implement and administer this section, including but not limited to establishing procedures for applying for relief allowed under this section.

Section 2. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions -- inflation adjustment. (1) ~~Except as provided in Subject to subsection (6), in the case of an individual; is allowed as deductions in computing taxable income~~ the exemptions provided by subsections (2) through (5) ~~must be allowed as deductions in computing taxable income.~~

(2) (a) An exemption of \$1,900 is allowed for all taxpayers.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this

subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of \$1,900 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than ~~\$800~~ or equal to the exemption amount provided in subsection (2)(a); or

(ii) who is a qualifying child of the taxpayer and who:

~~—— (A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the taxpayer begins; or~~

~~—— (B) is as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152, including a student as defined in that section.~~

(b) An exemption is not allowed under this subsection for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

~~(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.~~

~~—— (d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the tax year of the taxpayer begins:~~

~~—— (i) is a full-time student at an educational institution; or~~

~~—— (ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.~~

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this

section by the inflation factor for that tax year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 3. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts -- exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

- (a) dividends;
- (b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:
 - (i) the United States government or the state of Montana;
 - (ii) a school district in the state; or
 - (iii) a county, municipality, district, or other political subdivision of the state;
- (c) income from partnerships and other fiduciaries;
- (d) gross rents and royalties;
- (e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);
- (f) gross profit from trade or business; and
- (g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

- (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;
- (b) taxes paid or accrued within the tax year, including but not limited to federal income ~~tax~~ taxes to the extent allowed a single taxpayer under 15-30-121(1)(b), but excluding Montana income ~~tax~~ taxes;
- (c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;
- (d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of

the Internal Revenue Code, 26 U.S.C. 642(c);

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year ~~currently~~ required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 4. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits -- inflation adjustment. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$3,560, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$7,120, as adjusted under the provisions of subsection (6), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in ~~the preceding sentence~~ this subsection (1) must be increased by \$1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with a husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with the husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and, subject to [section 1], the liability with

respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 5. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing -- extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be ~~annexed~~ attached to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any

taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

~~(2) An automatic 4-month extension of time for filing a return is allowed, provided that:~~

~~— (a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.~~

~~— (b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~

~~— (3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b).~~

(2) (a) Subject to subsections (2)(b) and (2)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(c) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (2)(b) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) The extension of time for filing a return is not an extension of time for the payment of taxes."

Section 6. Section 15-30-146, MCA, is amended to read:

"15-30-146. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-145 ~~shall~~ must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action ~~which~~ that has the effect of suspending the running of the federal statute of limitations and for 1

additional year. If the taxpayer fails to file ~~a record of changes in federal taxable income or an amended Montana~~ return as required by 15-30-304, the statute of limitations ~~shall~~ does not apply until 5 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable ~~therein which~~ as gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations ~~shall~~ does not apply for 2 additional years from the time specified in 15-30-145."

Section 7. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. ~~Interest~~ Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by ~~estimate~~ estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an

overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding ~~taxable~~ tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

~~(a)~~(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

~~(b)~~(ii) the overpayment results from the carryback of a net operating loss; or

~~(c)~~(iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-144, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 3, and the provisions of Title 15, chapter 30, part 3, apply to [section 1].

Section 9. Coordination instruction. If House Bill No. 261 is not passed and approved, then [section 3 of this act], amending 15-30-136, is void.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2009.

(2) [Sections 1, 4, and 11(2) and this section] are effective on passage and approval.

Section 11. Applicability -- retroactive applicability. (1) Except as provided in subsection (2), [this act] applies to tax periods beginning after December 31, 2009.

(2) [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

- END -

I hereby certify that the within bill,
SB 0418, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 418
INTRODUCED BY G. BRANAE
BY REQUEST OF THE SENATE TAXATION STANDING COMMITTEE

AN ACT ALLOWING A TAXPAYER TO APPLY FOR RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER THE INDIVIDUAL INCOME TAX; AUTHORIZING THE DEPARTMENT TO ADOPT RULES ON RELIEF FROM JOINT AND SEVERAL LIABILITY; UPDATING CERTAIN PROVISIONS RELATING TO THE INDIVIDUAL INCOME TAX EXEMPTION FOR A QUALIFYING CHILD; REQUIRING CONSISTENCY BETWEEN THE DEDUCTION PERMITTED AN ESTATE OR TRUST FOR TAXES PAID OR ACCRUED DURING A YEAR WITH THE DEDUCTION ALLOWED FOR INDIVIDUAL TAXPAYERS; CLARIFYING THE EXTENSION OF TIME ALLOWED FOR FILING AN INDIVIDUAL INCOME TAX RETURN; MAKING TECHNICAL CORRECTIONS REGARDING THE SUSPENSION OF THE STATUTE OF LIMITATIONS UNDER THE INDIVIDUAL INCOME TAX; CLARIFYING WHEN THE DEPARTMENT MUST PAY INTEREST TO INDIVIDUAL INCOME TAXPAYERS FOR LATE-FILED RETURNS; AMENDING SECTIONS 15-30-112, 15-30-136, 15-30-142, 15-30-144, 15-30-146, AND 15-30-149, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.