



AN ACT PROVIDING FOR MONTANA ECONOMIC STIMULUS; PROVIDING A 5 PERCENT CAPITAL GAINS CREDIT FOR THE SALE OF A MONTANA BUSINESS THAT WAS ESTABLISHED DURING A CERTAIN TIME PERIOD AND THAT HAS BEEN IN OPERATION FOR OR HAS EMPLOYED A CERTAIN PERCENTAGE OF MONTANA EMPLOYEES FOR AT LEAST 10 YEARS; PROVIDING THAT 50 PERCENT OF ANY BONUS DEPRECIATION RECAPTURED UNDER FEDERAL TAX LAW ORIGINALLY TAKEN FOR ECONOMIC RECOVERY IS DEDUCTIBLE FOR INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX PURPOSES; PROVIDING THAT TO QUALIFY THE SUBJECT PROPERTY OF THE RECAPTURE MUST HAVE BEEN FABRICATED OR ASSEMBLED IN MONTANA AND SOLD DURING SPECIFIED TIMES; PROVIDING FOR A CAPITAL GAINS TAX FOR SALE OF CERTAIN TANGIBLE AND INTANGIBLE MONTANA BUSINESS PROPERTY OR QUALIFYING STOCK OF A MONTANA BUSINESS; PROVIDING THAT THE PROPERTY MUST HAVE BEEN HELD FOR AT LEAST 5 YEARS; PROVIDING THAT THE RATE FOR DETERMINING THE CREDIT INCREASES FROM 2 PERCENT TO 5 PERCENT OVER A 20-YEAR PERIOD; AMENDING SECTIONS 15-30-121, 15-30-183, AND 15-31-114, 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. Short title. [Sections 1 through 7] may be cited as the "Montana Economic Stimulus Act".

Section 2. Policy. (1) It is the policy of the state of Montana to provide a stimulus for the creation of new jobs in Montana through creating a tax incentive for new business startups and existing business relocation to the state in reaction to an economic downturn that started in 2008.

(2) It is the policy of the state of Montana to stimulate the production and manufacture of capital goods in Montana by providing for a deduction from taxation of the recapture of bonus depreciation allowed under the American Recovery and Reinvestment Act of 2009.

Section 3. Capital gains credit -- Montana-held businesses. (1) There is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to 5% of the taxpayer's net capital gain on the sale of a qualifying business or a portion of a qualifying business as provided in this section.

(2) To qualify for the tax credit allowed by this section, the business must have been started or its principal business location must have been established in Montana during the period between January 1, 2009, and January 1, 2012, and the principal business location must have remained in Montana until a qualifying sale has occurred under subsection (3).

(3) The tax credit allowed by this section may be for:

- (a) the sale of the assets of a qualified business that are held for a minimum of 10 years; or
- (b) the sale of an ownership interest by a partner, shareholder, manager, member, or other owner of a qualified business if 60% of the qualifying business employees are located in Montana for a minimum of 10 years prior to the date of the sale.

(4) If the seller is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

(5) A credit may not be refunded if there is no tax liability, but a tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding 5 tax years.

(6) The department shall adopt rules to prevent the fraudulent formation or transfer of a business or the transfer of assets or employees by a taxpayer for purposes of claiming a credit under this section for tax avoidance purposes.

Section 4. Recapture of bonus depreciation -- certain Montana property. (1) There is a deduction from taxes due under this chapter for 50% of the amount of the total depreciation recapture on qualified property that was subject to bonus depreciation under section 168(k) of the Internal Revenue Code, 26 U.S.C. 168(k), as amended by section 1201, of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) Property qualifies for the deduction under this section if, under rules of the department:

- (a) the taxpayer notifies the department of the subject property at the time of purchase, fabrication, or construction of the property;

(b) the taxpayer certifies that at least 50% of the property was fabricated or assembled in Montana during the period from January 1, 2009, through December 31, 2011; and

(c) the property is sold after December 31, 2014.

Section 5. 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 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 61-3-321(2) and 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) 50% of the amount of depreciation recapture of property subject to bonus depreciation as provided in [section 4].

(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)."

Section 6. Section 15-30-183, MCA, is amended to read:

"15-30-183. Capital gains credit -- increasing credit for Montana property held long term. (1) An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to 1% of the taxpayer's net capital gains for tax years 2005 and 2006 and 2% of the taxpayer's net capital gains for tax years beginning after 2006, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-142.

(2) (a) An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 that is a percentage of the taxpayer's net capital gain on the sale of qualified property, as determined under subsection (2)(c), based upon the length of time the qualified property was held by the taxpayer.

(b) The percentage used to compute the allowable credit under subsection (2)(a) is 2% for property held for 5 years, increasing 0.2% for each additional year the property is held up to a maximum of 5%. The credit is not allowed for property held for less than 5 years.

(c) Property qualifies for the purposes of allowing a credit under this section if:

(i) the property was held for at least 5 years; and

(ii) (A) the property was an asset held for investment or the production of income by a Montana farm, ranch, or business, whether organized as a C. corporation, S. corporation, partnership, limited liability company, other pass-through entity, trust, or sole proprietorship, including but not limited to land, an improvement to land, or equipment, including assets eligible for receiving capital gains treatment under section 197 of the Internal Revenue Code, 26 U.S.C. 197; or

(B) it was the stock of a Montana corporation that has at least 60% of the corporation's employees located in Montana during the holding period.

(3) The credit sum of the credits allowed under this section may not exceed the taxpayer's income tax liability."

Section 7. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the

business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) 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

(i) 50% of the amount of depreciation recapture of property subject to bonus depreciation as provided in [section 4].

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered."

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

(2) [Section 4] is intended to be codified as an integral part of:

- (a) Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 4]; and
- (b) Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 4].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Retroactive applicability. [Section 6] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

- END -

I hereby certify that the within bill,
SB 0503, 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. 503

INTRODUCED BY ESSMANN, ZINKE, J. PETERSON, BLACK, HINKLE, MCGEE, JACKSON, BALES, ,
GEBHARDT, DE. BARRETT, CURTISS, TUTVEDT, PERRY, RIPLEY, STEINBEISSER, BRENDEN,
T. BROWN, BRUEGGEMAN, R. BROWN, BARKUS

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