

1 SENATE BILL NO. 190

2 INTRODUCED BY J. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF THE INDIVIDUAL INCOME
5 TAX LAW; LIMITING THE AMOUNT OF FEDERAL INCOME TAX PAID OR ACCRUED THAT MAY BE
6 CLAIMED AS A DEDUCTION BY ESTATES AND TRUSTS IN COMPUTING NET INCOME; PROVIDING FOR
7 A CAPITAL GAINS TAX CREDIT FOR SALE OF CERTAIN TANGIBLE AND INTANGIBLE MONTANA
8 BUSINESS PROPERTY OR QUALIFYING STOCK OF A MONTANA BUSINESS; PROVIDING THAT THE
9 PROPERTY MUST HAVE BEEN HELD FOR AT LEAST 10 YEARS; PROVIDING THAT THE RATE FOR
10 DETERMINING THE CREDIT INCREASES FROM 2% TO 5% OVER A 25-YEAR PERIOD; AMENDING
11 SECTIONS 15-30-2152 AND 15-30-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
12 RETROACTIVE APPLICABILITY DATE."

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

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16 **Section 1.** Section 15-30-2152, MCA, is amended to read:

17 **"15-30-2152. Computation of income of estates or trusts -- exemption.** (1) Except as otherwise
18 provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in
19 the tax year, including but not limited to the following items:

20 (a) dividends;

21 (b) interest received or accrued, including interest received on obligations of another state or territory
22 or a county, municipality, district, or other political subdivision of the state, but excluding interest income from
23 obligations of:

24 (i) the United States government or the state of Montana;

25 (ii) a school district; or

26 (iii) a county, municipality, district, or other political subdivision of the state;

27 (c) income from partnerships and other fiduciaries;

28 (d) gross rents and royalties;

29 (e) gain from sale or exchange of property, including those gains that are excluded from gross income
30 for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);

- 1 (f) gross profit from trade or business; and
- 2 (g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a
3 reduction of Montana income tax liability.
- 4 (2) In computing net income, there are allowed as deductions:
- 5 (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal
6 Revenue Code, 26 U.S.C. 163;
- 7 (b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding
8 Montana income tax; however, the deduction for federal income taxes paid or accrued may not exceed the
9 amount allowed for a single taxpayer under 15-30-2131(1)(b);
- 10 (c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes
11 according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;
- 12 (d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of
13 the Internal Revenue Code, 26 U.S.C. 642(c);
- 14 (e) administrative expenses claimed for federal income tax purposes, according to sections 212 and
15 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);
- 16 (f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for
17 by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal
18 Revenue Code, 26 U.S.C. 165;
- 19 (g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal
20 Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final
21 return;
- 22 (h) Montana income tax refunds or tax refund credits.
- 23 (3) The following additional deductions are allowed in deriving taxable income of estates and trusts:
- 24 (a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;
- 25 (b) any other amounts properly paid or credited or required to be distributed for the tax year.
- 26 (4) The exemption allowed for estates and trusts is that exemption provided in 15-30-2114(2)(a) and (6)."
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28 **Section 2.** Section 15-30-2301, MCA, is amended to read:

29 **"15-30-2301. Capital gains credit -- increasing credit for Montana property held long-term. (1)** An

30 individual taxpayer is allowed a credit against the taxes imposed by 15-30-2103 in an amount equal to 1% of the

1 taxpayer's net capital gains for tax years 2005 and 2006 and 2% of the taxpayer's net capital gains for tax years
2 beginning after 2006, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-2602.

3 (2) (a) An individual taxpayer is allowed a credit against the taxes imposed by 15-30-2103 that is a
4 percentage of the taxpayer's net capital gain on the sale of qualified property, as determined under subsection
5 (2)(c), based upon the length of time the qualified property was held by the taxpayer.

6 (b) The percentage used to compute the allowable credit under subsection (2)(a) is 2% for property held
7 for 10 years or less, increasing 0.2% for each additional year the property is held over 10 years, up to a maximum
8 of 5%.

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

10 (i) the property was held for at least 10 years; and

11 (ii) (A) the property was an asset of a Montana business, such as land, an improvement to land, or
12 equipment, including assets eligible for receiving capital gains treatment under section 197 of the Internal
13 Revenue Code, 26 U.S.C. 197; or

14 (B) the property was the stock of a Montana corporation with at least 60% of the corporation's employees
15 located in Montana during the holding period.

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

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19 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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21 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
22 meaning of 1-2-109, to tax years beginning after December 31, 2010.

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