

SENATE BILL NO. 396

INTRODUCED BY K. GILLAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING REPORTING REQUIREMENTS FOR MONTANA  
5 SOURCE INCOME BY NONRESIDENTS WHO SELL AN INTEREST IN A PASS-THROUGH ENTITY THAT HAS  
6 MONTANA PROPERTY OR BUSINESS ACTIVITY; LIMITING THE AMOUNT OF GAIN SOURCED TO  
7 MONTANA TO THE FRACTION OF A PASS-THROUGH ENTITY'S TANGIBLE PROPERTY LOCATED IN  
8 MONTANA; PROVIDING A SPECIAL RULE WHEN MOST OF THE PROPERTY OF A PASS-THROUGH  
9 ENTITY IS INTANGIBLE PROPERTY; RETAINING THE CURRENT SOURCING RULE FOR TRANSFERS OF  
10 INTERESTS IN PUBLICLY TRADED PARTNERSHIPS; AMENDING SECTION 15-30-2101, MCA; AND  
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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15 **Section 1.** Section 15-30-2101, MCA, is amended to read:

16 **"15-30-2101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the  
17 following definitions apply:

- 18 (1) "Base year structure" means the following elements of the income tax structure:  
19 (a) the tax brackets established in 15-30-2103, but unadjusted by 15-30-2103(2), in effect on June 30  
20 of the taxable year;  
21 (b) the exemptions contained in 15-30-2114, but unadjusted by 15-30-2114(6), in effect on June 30 of  
22 the taxable year;  
23 (c) the maximum standard deduction provided in 15-30-2132, but unadjusted by 15-30-2132(2), in effect  
24 on June 30 of the taxable year.  
25 (2) "Consumer price index" means the consumer price index, United States city average, for all items,  
26 for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics  
27 of the U.S. department of labor.  
28 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:  
29 (a) that is treated as an association for federal income tax purposes;  
30 (b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not



1 in effect; and

2 (c) that is not a disregarded entity.

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

4 (5) "Disregarded entity" means a business entity:

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

8 (b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided  
9 in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

10 (6) "Dividend" means:

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

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

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

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

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

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

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

26 (12) "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) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be  
3 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) "Knowingly" is as defined in 45-2-101.

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

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

9 (17) "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) (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 as provided in subsection (18)(b);

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;

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; and

27 (xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership  
28 doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751,  
29 multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment  
30 factor as provided in this subsection (18)(a)(xvii) does not fairly and equitably represent the nonresident

1 taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may  
2 require with respect to any and all of the partnership interest, the employment of another method to effectuate  
3 an equitable allocation or apportionment of the nonresident's income. This subsection (18)(a)(xvii) is intended  
4 to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are  
5 afforded the same rights under 15-1-601 and 15-31-312.

6 (b) (i) Subject to subsections (18)(a)(xvii), (18)(b)(ii), (18)(b)(iii), and (18)(b)(iv), Montana source income  
7 includes gain that is attributable to the sale or other transfer of an interest in a pass-through entity equal to the  
8 gain recognized for federal income tax purposes multiplied by a fraction, the numerator of which is the original  
9 cost of the tangible property of the pass-through entity located in Montana and the denominator of which is the  
10 original cost of the tangible property of the pass-through entity located everywhere, determined at the time of the  
11 sale or other transfer.

12 (ii) If more than 50% of the value of the assets of the pass-through entity consists of intangible property,  
13 the gain is multiplied by the Montana sales factor of the pass-through entity for its first full tax period immediately  
14 preceding the tax period during which the pass-through entity's interest was transferred or sold.

15 (iii) Gain or loss on the sale of an interest in a single-member limited liability company that is a  
16 disregarded entity is allocable to this state as if the single-member limited liability company did not exist and the  
17 assets of the limited liability company were directly owned and sold by the sole member.

18 (iv) If the apportionment provisions of subsection (18)(b)(i) do not fairly represent the extent of the  
19 pass-through entity's business activity in the state, the taxpayer may petition for, or the department may require,  
20 in respect to all or any part of the entity's business activity, the employment of any other method to effectuate an  
21 equitable apportionment to this state of the taxpayer's income from the sale of the interest in the entity.

22 ~~(b)~~(c) The term does not include:

23 (i) compensation for military service of members of the armed services of the United States who are not  
24 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does  
25 not include income derived from their personal property located in the state except with respect to personal  
26 property used in or arising from a trade or business carried on in Montana; or

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

1 (19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this  
2 chapter.

3 (20) "Nonresident" means a natural person who is not a resident.

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

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

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

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

12 (25) "Pension and annuity income" means:

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

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

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

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

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

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

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

30 (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to

1 the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the  
2 state of Montana and any other person who maintains a permanent place of abode within the state even though  
3 temporarily absent from the state and who has not established a residence elsewhere.

4 (29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the  
5 Internal Revenue Code (26 U.S.C. 1362) is in effect.

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

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

9 (32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and  
10 exemptions provided for in this chapter.

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

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

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16 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the  
17 meaning of 1-2-109, to tax years beginning after December 31, 2010.

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