

HOUSE BILL NO. 545

INTRODUCED BY S. REICHNER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING EMPLOYERS TO PAY THE TOTAL COST OF THEIR
5 QUALIFYING EMPLOYEES' INDIVIDUAL DISABILITY COVERAGE IN CERTAIN INSTANCES; DEFINING
6 "QUALIFYING EMPLOYEE"; CLARIFYING THAT AN EMPLOYER'S PAYMENT OF THE COST OF INDIVIDUAL
7 DISABILITY COVERAGE FOR ITS QUALIFYING EMPLOYEES IS EXCLUDED FROM THE DEFINITION OF
8 "ADJUSTED GROSS INCOME" FOR INDIVIDUAL INCOME TAX PURPOSES; PROVIDING THAT THE SMALL
9 EMPLOYER HEALTH INSURANCE AVAILABILITY ACT DOES NOT APPLY TO DISABILITY COVERAGE
10 PROVIDED BY SMALL EMPLOYERS FOR QUALIFYING EMPLOYEES; AMENDING SECTIONS 15-30-2110
11 AND 33-22-1804, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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15 NEW SECTION. Section 1. Employer payment of employee individual disability coverage. (1) The
16 provisions of Title 33 may not be construed as prohibiting an employer from paying a portion of or the entire cost
17 of individual disability coverage for or on behalf of each of the employer's qualifying employees in any case in
18 which A QUALIFYING EMPLOYEE ELECTS INDIVIDUAL DISABILITY COVERAGE BECAUSE:

19 (a) the employer does not otherwise offer or provide its qualifying employees with group health plan
20 coverage; or

21 (b) the employer offers or provides its qualifying employees with group health plan coverage but the cost
22 TO THE QUALIFYING EMPLOYEE of the coverage exceeds 9.5% of the qualifying employee's household income.

23 (2) AN EMPLOYER'S CONTRIBUTION TO COVERAGE FOR ITS QUALIFYING EMPLOYEES WHO ELECT DISABILITY
24 COVERAGE PURSUANT TO SUBSECTION (1) MUST BE MADE:

25 (A) AT A UNIFORM PERCENTAGE OF THE COST OF THE HEALTH PLAN OFFERED BY THE EMPLOYER; OR

26 (B) AT A UNIFORM SET DOLLAR AMOUNT REGARDLESS OF WHETHER AN EMPLOYER OFFERS NO HEALTH PLAN OR
27 A HEALTH PLAN WITH ONE OR MORE BENEFIT OPTIONS.

28 ~~(2)~~(3) For purposes of this section, "qualifying employee" means an employee who is employed by the
29 employer for at least 30 hours per week.
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1 **Section 2.** Section 15-30-2110, MCA, is amended to read:

2 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
3 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
4 and in addition includes the following:

5 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
6 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
7 under federal law;

8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
9 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

10 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
11 reduction of Montana income tax liability;

12 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
13 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

14 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

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

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

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

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

25 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
26 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
27 from taxation by Montana under federal law;

28 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
29 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

30 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including

1 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

2 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
3 received as defined in 15-30-2101;

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

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

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

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

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

14 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
15 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
16 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
17 or lodging;

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

19 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
20 employee under federal law, including premiums paid by the employer for an employee pursuant to [section 1];

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

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

26 (k) principal and income in a first-time home buyer savings account established in accordance with
27 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
28 of a single-family residence;

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

1 beneficiary;

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

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

7 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
8 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
9 is not provided for federal income tax purposes;

10 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
11 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
12 taxpayer meet the filing requirements in 15-30-2602.

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

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

16 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
17 15-31-163.

18 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
19 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
20 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
21 is effective.

22 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
23 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
24 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
25 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
26 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
27 be made to determine the amount of income or loss of the partnership or small business corporation.

28 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
29 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
30 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement

1 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
2 Montana return.

3 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
4 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
5 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
6 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
7 must be split equally on each return.

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

13 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
14 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
15 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
16 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

17 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
18 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
19 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
20 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
21 gross income.

22 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
23 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
24 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
25 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
26 income.

27 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
28 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
29 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
30 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the

1 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
2 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
3 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
4 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
5 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
6 or expected to last at least 12 months.

7 (11) An individual who contributes to one or more accounts established under the Montana family
8 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the
9 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for
10 the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made
11 by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection
12 applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is
13 the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a
14 Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions
15 that reduced adjusted gross income.

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

18 (i) is a health care professional licensed in Montana as provided in Title 37;
19 (ii) is serving a significant portion of a designated geographic area, special population, or facility
20 population in a federally designated health professional shortage area, a medically underserved area or
21 population, or a federal nursing shortage county as determined by the secretary of health and human services
22 or by the governor;

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

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

26 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or
27 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
28 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
29 as a licensed health care professional.

30 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of

1 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
2 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

3 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
4 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
5 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
6 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
7 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
8 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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10 **Section 3.** Section 33-22-1804, MCA, is amended to read:

11 **"33-22-1804. Applicability and scope.** (1) This part applies to a health benefit plan marketed through
12 a small employer that provides coverage to the employees of a small employer in this state if any of the following
13 conditions are met:

14 (a) a portion of the premium or benefits is paid by or on behalf of the small employer;

15 (b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise,
16 by or on behalf of the small employer for any portion of the premium;

17 (c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as
18 part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a
19 plan or program that is funded entirely by contributions from the employees; or

20 (d) all of the premium is paid by the employee who obtains coverage through the employer's group health
21 benefit plan.

22 (2) This part does not apply to an individual health benefit plan for which the entire premium is paid by
23 an employee through payroll deduction or other means.

24 (3) Unless prohibited by a written opinion from a federal agency, by final regulations implementing Public
25 Law 104-191, or by a ruling by a court of competent jurisdiction, this part does not apply to an individual health
26 benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage
27 adjustments or otherwise, by or on behalf of the small employer for any portion of the premium. However, this
28 part does apply to an individual health benefit plan if the employer making the direct or indirect reimbursement
29 for any portion of the premium has had in place an employer-sponsored group health benefit plan in the 12
30 months preceding the reimbursement.

