

## 1 SENATE BILL NO. 76

2 INTRODUCED BY D. BROWN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SOCIAL SECURITY BENEFITS FROM THE  
5 INDIVIDUAL INCOME TAX; AMENDING SECTIONS 15-30-2101 AND 15-30-2110, MCA; AND PROVIDING AN  
6 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

7

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

9

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

11 **"15-30-2101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the  
12 following definitions apply:

13 (1) "Base year structure" means the following elements of the income tax structure:

14 (a) the tax brackets established in 15-30-2103, but unadjusted by 15-30-2103(2), in effect on June 30  
15 of the taxable year;

16 (b) the exemptions contained in 15-30-2114, but unadjusted by 15-30-2114(6), in effect on June 30 of  
17 the taxable year;

18 (c) the maximum standard deduction provided in 15-30-2132, but unadjusted by 15-30-2132(2), in effect  
19 on June 30 of the taxable year.

20 (2) "Consumer price index" means the consumer price index, United States city average, for all items,  
21 for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics  
22 of the U.S. department of labor.

23 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

24 (a) that is treated as an association for federal income tax purposes;

25 (b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not  
26 in effect; and

27 (c) that is not a disregarded entity.

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

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

30 (a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in

1 United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as  
2 those regulations may be labeled or amended; or

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

5 (6) "Dividend" means:

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

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

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

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

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

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

19 (11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index  
20 for June of the previous tax year by the consumer price index for June 2015.

21 (12) "Information agents" includes all individuals and entities acting in whatever capacity, including  
22 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all  
23 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the  
24 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,  
25 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,  
26 and income with respect to which any person or fiduciary is taxable under this chapter.

27 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be  
28 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those  
29 provisions as they may be otherwise labeled or further amended.

30 (14) "Knowingly" is as defined in 45-2-101.

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

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

4 (17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

5 (a) a resident taxpayer on a lottery ticket; or

6 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

7 (18) (a) "Montana source income" means:

8 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident  
9 of the state;

10 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise  
11 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation  
12 carried on in the state;

13 (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a  
14 resident of the state;

15 (iv) interest received or accrued while a resident of the state or from an installment sale of real property  
16 or tangible commercial or business personal property located in the state;

17 (v) dividends received or accrued while a resident of the state;

18 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state  
19 or while a resident of the state;

20 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the  
21 state;

22 (viii) net rents from real property and tangible personal property located in the state or received or  
23 accrued while a resident of the state;

24 (ix) net royalties from real property and from tangible real property to the extent the property is used in  
25 the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state  
26 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical  
27 location of the property in the state during the royalty period in the tax year and the denominator of which is the  
28 number of days of physical location of the property everywhere during all royalty periods in the tax year. If the  
29 physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in  
30 which it was located at the time the person paying the royalty obtained possession.

1 (x) patent royalties to the extent the person paying them employs the patent in production, fabrication,  
 2 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are  
 3 received or accrued while a resident of the state;

4 (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties  
 5 are received or accrued while a resident of the state;

6 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:  
 7 (A) derived from a trade, business, occupation, or profession carried on in the state;  
 8 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
 9 property located in the state; or  
 10 (C) taken into account while a resident of the state;

11 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or  
 12 item of income, gain, loss, deduction, or credit:  
 13 (A) derived from a trade, business, occupation, or profession carried on in the state;  
 14 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
 15 property located in the state; or  
 16 (C) taken into account while a resident of the state;

17 ~~(xiv) social security benefits received or accrued while a resident of the state;~~  
 18 ~~(xv)~~(xiv) taxable individual retirement account distributions, annuities, pensions, and other retirement  
 19 benefits received while a resident of the state;

20 ~~(xvi)~~(xv) any other income attributable to the state, including but not limited to lottery winnings, state and  
 21 federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks; and  
 22 ~~(xviii)~~(xvi) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership  
 23 doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751,  
 24 multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment  
 25 factor as provided in this subsection ~~(18)(a)(xvii)~~ (18)(a)(xvi) does not fairly and equitably represent the  
 26 nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the  
 27 department may require with respect to any and all of the partnership interest, the employment of another method  
 28 to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection ~~(18)(a)(xvii)~~  
 29 (18)(a)(xvi) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with  
 30 taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

1 (b) The term does not include:

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

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

10 (iii) social security benefits received or accrued while a resident of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to  
11 the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the  
12 state of Montana and any other person who maintains a permanent place of abode within the state even though  
13 temporarily absent from the state and who has not established a residence elsewhere.

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

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

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

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

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

23

24 **Section 2.** Section 15-30-2110, MCA, is amended to read:

25 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (14), adjusted gross income is the  
26 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,  
27 and in addition includes the following:

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

- 1 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
2 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);
- 3 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
4 reduction of Montana income tax liability as determined under subsection (15);
- 5 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
6 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;
- 7 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;
- 8 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
9 amount recovered reduced the taxpayer's Montana income tax in the year deducted;
- 10 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
11 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
12 of the same estate or trust for the same tax period; and
- 13 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend  
14 to the extent that the dividend is not included in federal adjusted gross income.
- 15 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
16 include the following, which are exempt from taxation under this chapter:
- 17 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a  
18 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt  
19 from taxation by Montana under federal law;
- 20 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
21 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);
- 22 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including  
23 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- 24 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all  
25 pension and annuity income received as defined in 15-30-2101;
- 26 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as  
27 follows:
- 28 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
29 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
30 excess of \$33,910 as shown on the taxpayer's return;

- 1 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
2 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
3 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910  
4 as shown on their joint return;
- 5 (d) all Montana income tax refunds or tax refund credits;
- 6 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 7 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section  
8 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January  
9 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,  
10 or lodging;
- 11 (g) all benefits received under the workers' compensation laws;
- 12 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
13 employee under federal law;
- 14 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
15 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 16 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
17 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
18 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 19 (k) principal and income in a first-time home buyer savings account established in accordance with  
20 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
21 of a single-family residence;
- 22 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition  
23 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal  
24 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of  
25 a designated beneficiary;
- 26 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
27 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 28 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
29 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
30 of the same estate or trust for the same tax period;

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

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

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

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

10 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in  
11 15-31-163; ~~and~~

12 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to  
13 15-30-3104; and

14 (u) social security benefits.

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

19 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
20 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
21 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  
22 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
23 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must  
24 be made to determine the amount of income or loss of the partnership or small business corporation.

25 (5) Married taxpayers filing a joint federal return who are required to include ~~part of their social security~~  
26 ~~benefits or~~ part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
27 base used in calculation of ~~federal taxable social security benefits or~~ federal taxable tier 1 railroad retirement  
28 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
29 Montana return.

30 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section

1 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may  
2 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital  
3 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss  
4 must be split equally on each return.

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

10 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a  
11 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.  
12 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is  
13 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

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

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

24 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
25 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
26 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
27 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
28 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
29 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
30 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted

1 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
2 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
3 or expected to last at least 12 months.

4 (11) (a) An individual who contributes to one or more accounts established under the Montana family  
5 education savings program or to a qualified tuition program established and maintained by another state as  
6 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted  
7 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each  
8 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses  
9 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The  
10 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account  
11 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the  
12 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect  
13 to withdrawals of contributions that reduced adjusted gross income.

14 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in  
15 15-62-208.

16 (12) (a) An individual who contributes to one or more accounts established under the Montana achieving  
17 a better life experience program or to a qualified program established and maintained by another state as  
18 provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross  
19 income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse  
20 is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may  
21 jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The  
22 reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an  
23 account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild  
24 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with  
25 respect to withdrawals of contributions that reduced adjusted gross income.

26 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in  
27 53-25-118.

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

30 (i) is a health care professional licensed in Montana as provided in Title 37;

1 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
2 population in a federally designated health professional shortage area, a medically underserved area or  
3 population, or a federal nursing shortage county as determined by the secretary of health and human services  
4 or by the governor;

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

6 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
7 program described in subsection (13)(b) as an incentive to practice in Montana.

8 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or  
9 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
10 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
11 as a licensed health care professional.

12 (14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of  
13 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are  
14 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

15 (15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the  
16 following order as applicable:

17 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax  
18 year;

19 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year  
20 but did not result in a reduction in state income tax liability in that prior tax year; and

21 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year  
22 and that reduced the taxpayer's state income tax liability in that prior tax year.

23 (16) By November 1 of each year, the department shall multiply the amount of pension and annuity  
24 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)  
25 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective  
26 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).  
27 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates  
28 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec.  
29 33, Ch. 457, L. 2015.)"

30

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

2

3            NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the  
4 meaning of 1-2-109, to tax years beginning after December 31, 2016.

5

- END -