

1 HOUSE BILL NO. 709

2 INTRODUCED BY J. HAMILTON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TERMS FOR FIRST-TIME HOME BUYER SAVINGS
5 ACCOUNTS; REVISING THE DEFINITION OF "ELIGIBLE COSTS"; ALLOWING INDIVIDUALS CONTRIBUTING
6 TO THEIR OWN ACCOUNT OR INDIVIDUALS CONTRIBUTING ON BEHALF OF FIRST-TIME HOME BUYERS
7 A REDUCTION IN INCOME TAXES UNDER CERTAIN CONDITIONS; CONFINING THE EXCLUSION TO THE
8 CURRENT TAX YEAR; PROVIDING A PENALTY FOR CLAIMING AN INCOME REDUCTION GREATER THAN
9 ALLOWABLE LIMITS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110,
10 15-63-102, AND 15-63-202, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 15-30-2110, MCA, is amended to read:
15 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection ~~(14)~~ (15), adjusted gross income is
16 the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C.
17 62, and in addition includes the following:
18 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
19 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
20 under federal law;
21 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
22 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);
23 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
24 reduction of Montana income tax liability as determined under subsection ~~(15)~~ (16);
25 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
26 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;
27 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;
28 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
29 amount recovered reduced the taxpayer's Montana income tax in the year deducted;
30 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of

1 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
2 of the same estate or trust for the same tax period; and

3 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend
4 to the extent that the dividend is not included in federal adjusted gross income.

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

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

10 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
11 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

12 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
13 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

14 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection ~~(16)~~ (17), the first \$4,070 of
15 all pension and annuity income received as defined in 15-30-2101;

16 (ii) subject to subsection ~~(16)~~ (17), for pension and annuity income described under subsection (2)(c)(i),
17 as follows:

18 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
19 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
20 excess of \$33,910 as shown on the taxpayer's return;

21 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
22 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
23 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
24 as shown on their joint return;

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

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

27 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
28 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
29 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
30 or lodging;

- 1 (g) all benefits received under the workers' compensation laws;
- 2 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
3 employee under federal law;
- 4 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
5 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 6 (j) principal and income in a medical care savings account established in accordance with 15-61-201
7 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care
8 savings account inherited by an immediate family member as provided in 15-61-202(6);
- 9 (k) principal and income in a first-time home buyer savings account established in accordance with
10 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
11 of a single-family residence;
- 12 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
13 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
14 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
15 a designated beneficiary;
- 16 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
17 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 18 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
19 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
20 of the same estate or trust for the same tax period;
- 21 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
22 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
23 is not provided for federal income tax purposes;
- 24 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
25 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
26 taxpayer meet the filing requirements in 15-30-2602.
- 27 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
28 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 29 (r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
30 15-31-163;

1 (s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
2 15-30-3104; and

3 (t) a payment received by a private landowner for providing public access to public land pursuant to Title
4 76, chapter 17, part 1.

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

9 (4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
10 business deductions:

11 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
12 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
13 salaries paid regardless of the credit taken; or

14 (ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the
15 amount of the business expense paid when there is no corresponding state income tax credit or deduction,
16 regardless of the credit taken.

17 (b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business
18 expenses were used to compute the credit. In the case of a partnership or small business corporation, the
19 deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or
20 small business corporation.

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

26 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
27 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
28 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
29 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
30 must be split equally on each return.

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

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

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

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

20 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
21 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
22 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
23 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
24 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
25 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
26 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
27 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
28 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
29 or expected to last at least 12 months.

30 (11) (a) An individual who contributes to one or more accounts established under the Montana family

1 education savings program or to a qualified tuition program established and maintained by another state as
2 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
3 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
4 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
5 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
6 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
7 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
8 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
9 to withdrawals of contributions that reduced adjusted gross income.

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

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

22 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
23 53-25-118.

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

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

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

1 (iii) has had a student loan incurred as a result of health-related education; and
 2 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
 3 program described in subsection (13)(b) as an incentive to practice in Montana.

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

8 (14) (a) Subject to subsection (14)(c), an individual who contributes to a first-time home buyer savings
 9 account under Title 15, chapter 63, may reduce adjusted gross income by the amount listed in 15-63-202(2)(a)
 10 or (2)(b), as applicable, or by the amount of the contribution if less than the amount in the inflation-adjusted
 11 amount in 15-63-202(2)(a)(i) or (2)(a)(ii).

12 (b) In the case of married taxpayers, each spouse is entitled to a reduction, subject to subsection (14)(c),
 13 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions
 14 made by the spouses as being made by each spouse.

15 (c) The reduction in adjusted gross income under this subsection (14) is subject to the limits provided
 16 in 15-63-202(2) whether claimed in whole or in part by the account owner individually or jointly or by a contributor
 17 to the account if the contributor is a Montana taxpayer. The overall reduction allowed for each account may not
 18 be greater than the applicable limit in 15-63-202(2).

19 ~~(14)(15)~~ Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40%
 20 of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
 21 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

22 ~~(15)(16)~~ A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
 23 following order as applicable:

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

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

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

30 ~~(16)(17)~~ By November 1 of each year, the department shall multiply the amount of pension and annuity

1 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
2 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
3 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
4 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
5 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(s) terminates December 31, 2023--sec.
6 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

7

8 **Section 2.** Section 15-63-102, MCA, is amended to read:

9 **"15-63-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
10 definitions apply:

11 (1) "Account administrator" means:

12 (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

13 (b) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

14 (c) the account holder.

15 (2) "Account holder" means an individual who is a resident of this state and who establishes, individually
16 or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A
17 married taxpayer filing separately may be an account holder if the account is established separately from the
18 taxpayer's spouse. Married taxpayers filing jointly are considered as the account holder.

19 (3) "Eligible costs" means the downpayment and allowable closing costs, which may include initial
20 mortgage insurance or escrow, for the purchase of a single-family residence in Montana by a first-time home
21 buyer. Eligible costs also include the cost of bringing a single-family residence being purchased by the first-time
22 home buyer up to basic occupancy standards, including the cost of appliances.

23 (4) "First-time home buyer" means an individual who has never owned or purchased under contract for
24 deed, either individually or jointly, a single-family residence in Montana or out-of-state.

25 (5) "First-time home buyer savings account" or "account" means an account established with an account
26 administrator in this state pursuant to 15-63-201.

27 (6) "Single-family residence" means an owner-occupied residence in Montana, including a manufactured
28 home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by
29 or that has been purchased under contract for deed by a person, individually or jointly."

30

1 **Section 3.** Section 15-63-202, MCA, is amended to read:

2 "**15-63-202. Tax exemption -- conditions -- penalty -- rulemaking.** (1) (a) Except as provided in this
3 section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an
4 account or on behalf of the account holder by another individual subject to individual income tax in this state ~~and~~
5 ~~all interest or other income on the principal~~ may be excluded from the adjusted gross income of the account
6 holder or the individual contributing on behalf of the account holder as provided in 15-30-2110.

7 (b) The principal and all interest or other income on the principal ~~and~~ is exempt from taxation, in
8 accordance with 15-30-2110(2)(k), as long as the principal and interest or other income is contained within the
9 account or withdrawn by the account holder only for eligible costs for the purchase of a single-family residence
10 by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be
11 excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a
12 purpose other than for eligible costs for the purchase of a single-family residence.

13 (2) (a) ~~An~~ Subject to application of an inflation factor in subsection (2)(b), for any one account an account
14 holder or contributor to the account:

15 (i) who files singly, head of household, or married filing separately may exclude from adjusted gross
16 income as an annual contribution in 1 year up to ~~\$3,000;~~

17 (A) \$3,500 in tax year 2019; and

18 (B) \$4,000 in tax year 2020.

19 ~~(b)(ii) An account holder~~ who files jointly may exclude as annual contribution in 1 year up to ~~\$6,000;~~

20 (A) \$7,000 in tax year 2019; and

21 (B) \$8,000 in tax year 2020.

22 (b) The annual excludable contribution is to be increased annually after tax year 2020 by multiplying the
23 amount in subsection (2)(a)(i)(B) or (2)(a)(ii)(B) by an inflation factor determined by dividing the consumer price
24 index for June of the previous tax year by the consumer price index for June 2020 and rounding the resulting
25 figure to the nearest \$500 increment.

26 (c) There is no limitation on the amount of principal and interest or other income on the principal that may
27 be retained tax-free within an account.

28 (d) An account holder or an individual on behalf of an account holder may ~~not~~ contribute to the first-time
29 home buyer savings account for a consecutive period not exceeding 10 years or until the purchase of the first
30 home, whichever comes first.

1 (3) An account holder may not deduct pursuant to 15-30-2131 or exclude pursuant to 15-30-2110 an
2 amount representing a loss in the value of an investment contained in an account.

3 (4) Each year, an account holder may deposit into an account more than the amount excluded pursuant
4 to subsection (2), if the exemption but the reduction in income under 15-30-2110 claimed by the account holder
5 and a contributor, if any, in the year does may not exceed the amount specified in subsection (2)(a) or (2)(b)
6 (2)(a)(i) or (2)(a)(ii), as adjusted.

7 (5) The amount of the contribution that may be used to reduce the contributor's adjusted gross income
8 is that amount up to the limit in subsection (2) that is not claimed by the account holder. An account holder who
9 deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from
10 the account holder's adjusted gross income, in accordance with 15-30-2110(2)(k), in a subsequent year any part
11 of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

12 (6) An attempt to claim more than the annual excludable contribution is subject to penalty, as determined
13 by the department by rule.

14 (5)(7) The transfer of money by a person other than the account holder to the account of an account
15 holder does not subject the account holder to tax liability under this section. Amounts contained within the account
16 of the receiving account holder are subject to the requirements and limitations provided in this section. ~~The~~
17 ~~person other than the account holder who transfers money to the account is not entitled to the tax exemption~~
18 ~~under this section.~~

19 (6)(8) The account holder who establishes the account, individually or jointly, is the owner of the account.
20 An account holder may withdraw money in an account and deposit the money in another account with a different
21 account administrator or with the same account administrator without incurring tax liability.

22 (7)(9) The account holder shall use the money in the account for the eligible costs related to the
23 purchase of a single-family residence within 10 years following the year in which the account was established.
24 Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family
25 residence or any principal or income remaining in the account on December 31 of the last year of the 10-year
26 period must be taxed as ordinary income.

27 (8)(10) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant
28 to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account
29 holder does not subject the account holder to tax liability.

30 (9)(11) Within 30 days of being furnished proof of the death of the account holder, the account

1 administrator shall distribute the principal and accumulated interest or other income in the account to the estate
2 of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223. If the pay-on-death
3 beneficiary deposits the distribution provided under this subsection into an existing first-time home buyer savings
4 account or into a first-time home buyer savings account established within 60 days of receiving the distribution,
5 the distribution is not taxable."

6
7 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
9 remains in effect in all valid applications that are severable from the invalid applications.

10

11 **NEW SECTION. Section 5. Effective date.** [This act] is effective July 1, 2019.

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