

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT DISALLOWING A DEDUCTION FROM INDIVIDUAL INCOME TAX
5 OR CORPORATE INCOME TAX FOR CERTAIN ADVERTISING EXPENSES; AMENDING SECTIONS 15-30-
6 2131 AND 15-31-114, MCA; AND PROVIDING AN APPLICABILITY DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 15-30-2131, MCA, is amended to read:

11 **"15-30-2131. Deductions allowed in computing net income.** (1) In computing net income, there are
12 allowed as deductions:

13 (a) except as provided in subsection (3), the items referred to in sections 161, including the
14 contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211,
15 subject to the following exceptions, which are not deductible:

- 16 (i) items provided for in 15-30-2133;
- 17 (ii) state income tax paid;
- 18 (iii) premium payments for medical care as provided in subsection (1)(g)(i);
- 19 (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and
- 20 (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable
21 gift annuity as defined in 33-20-701;

22 (b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly,
23 head of household, or married filing separately or \$10,000 if married and filing jointly;

24 (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through
25 (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as
26 follows:

- 27 (i) expenses for household and dependent care services necessary for gainful employment incurred
28 for:

- 1 (A) a dependent under 15 years of age for whom an exemption can be claimed;
- 2 (B) a dependent as allowable under 15-30-2114(5), except that the limitations for age and gross
3 income do not apply, who is unable to provide self-care because of physical or mental illness; and
- 4 (C) a spouse who is unable to provide self-care because of physical or mental illness;
- 5 (ii) employment-related expenses incurred for the following services, but only if the expenses are
6 incurred to enable the taxpayer to be gainfully employed:
 - 7 (A) household services that are attributable to the care of the qualifying individual; and
 - 8 (B) care of an individual who qualifies under subsection (1)(c)(i);
 - 9 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household
10 is furnished by an individual or, if the individual is married during the applicable period, is furnished by the
11 individual and the individual's spouse;
 - 12 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following
13 limitations:
 - 14 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during
15 the year only to the extent that the expenses do not exceed \$4,800;
 - 16 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-
17 related expenses only if they are incurred for services in the taxpayer's household, except that employment-
18 related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for
19 the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses
20 incurred during the year do not exceed:
 - 21 (I) \$2,400 in the case of one qualifying individual;
 - 22 (II) \$3,600 in the case of two qualifying individuals; and
 - 23 (III) \$4,800 in the case of three or more qualifying individuals;
 - 24 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during
25 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by
26 one-half of the excess of the combined adjusted gross income over \$18,000;
 - 27 (vi) for purposes of this subsection (1)(c):
 - 28 (A) married couples shall file a joint return or file separately on the same form;

1 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred
2 are deductible only if:

3 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent
4 that they are a direct result of the employment; or

5 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

6 (C) an individual legally separated from the individual's spouse under a decree of divorce or of
7 separate maintenance may not be considered as married;

8 (D) the deduction for employment-related expenses must be divided equally between the spouses
9 when filing separately on the same form;

10 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year
11 and payments made to an individual with respect to whom a deduction is allowable under 15-30-2114(5) are
12 not deductible as employment-related expenses;

13 (d) in the case of an individual, political contributions determined in accordance with the provisions of
14 section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year
15 that ended December 31, 1978;

16 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct
17 allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

18 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject
19 to the conditions set forth in 15-30-2143;

20 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
21 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-2366, for:

22 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the
23 taxpayer's dependents, and the parents and grandparents of the taxpayer; and

24 (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified
25 long-term care services, as defined in 26 U.S.C. 7702B(c), for:

26 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

27 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the
28 taxpayer for tax years beginning after December 31, 1996;

1 (h) light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax
2 year; and

3 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-
4 209, 81-7-118, or 81-7-201.

5 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care
6 home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own
7 child and at least one unrelated child in the ordinary course of business may deduct employment-related
8 expenses considered to have been paid for the care of the child.

9 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is
10 equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of
11 hours of care. The employment-related expenses apply regardless of whether any expenses actually have
12 been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

13 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
14 deduction under this subsection (2).

15 (3) The deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or
16 business provided for in 26 U.S.C. 162 may not be claimed for expenses for advertising of professional
17 products by an insurance company, a medical or drug company, or an attorney."

18

19 **Section 2.** Section 15-31-114, MCA, is amended to read:

20 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
21 following deductions are allowed from the gross income received by the corporation within the year from all
22 sources:

23 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the
24 maintenance and operation of its business and properties, including reasonable allowance for salaries for
25 personal services actually rendered, subject to the limitation contained in this section, and rentals or other
26 payments required to be made as a condition to the continued use or possession of property to which the
27 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries
28 paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations

1 are taxed on income derived from outside the state, salaries of officers paid in connection with securing the
 2 income are deductible. A deduction is not allowed for expenses for advertising of professional products by an
 3 insurance company, a medical or drug company, or an attorney.

4 (b) (i) all losses actually sustained and charged off within the year and not compensated by
 5 insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property
 6 used in the trade or business. The allowance is determined according to the provisions of section 167 of the
 7 Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the
 8 same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid
 9 out for any buildings, permanent improvements, or betterments made to increase the value of any property or
 10 estate, and a deduction may not be made for any amount of expense of restoring property or making good the
 11 exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is
 12 not allowed on a title plant as defined in 33-25-105(15).

13 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined
 14 according to the provisions of 15-31-119.

15 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance
 16 for depletion and for depreciation of improvements. The reasonable allowance must be determined according to
 17 the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal
 18 Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible
 19 drilling expenses for corporate income tax purposes must be the same as the elections made for federal
 20 income tax purposes.

21 (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the
 22 business from which its income is derived. Interest may not be allowed as a deduction if paid on an
 23 indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business
 24 unless the income from the property or business would be taxable under this part.

25 (e) (i) taxes paid within the year, except the following:

26 (A) taxes imposed by this part;

27 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
 28 assessed;

1 (C) taxes on or according to or measured by net income or profits imposed by authority of the
2 government of the United States;

3 (D) taxes imposed by any other state or country upon or measured by net income or profits.

4 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school
5 district, or municipality of this state.

6 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

7 (g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that
8 qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

9 (ii) The public service commission may not allow in the rate base of a regulated corporation the
10 inclusion of contributions made under this subsection.

11 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the
12 annuity is a qualified charitable gift annuity as defined in 33-20-701.

13 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-
14 209, 81-7-118, or 81-7-201.

15 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market
16 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological
17 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited
18 postsecondary school located in Montana if:

19 (a) the contribution is made no later than 5 years after the manufacture of the donated property is
20 substantially completed;

21 (b) the property is not transferred by the donee in exchange for money, other property, or services;
22 and

23 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the
24 property and representing that the use and disposition of the property will be in accordance with the provisions
25 of subsection (2)(b).

26 (3) In the case of a regulated investment company or a fund of a regulated investment company, as
27 defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that
28 section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section

1 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered,
2 except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is
3 not subject to tax under this chapter when earned by the regulated investment company. For the purposes of
4 computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal
5 Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered,
6 apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections
7 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be
8 amended or renumbered."

9
10 NEW SECTION. **Section 3. Applicability.** [This act] applies to tax years beginning after December
11 31, 2021.

12 - END -