SENATE BILL NO. 273

INTRODUCED BY T. MCGILLVRAY, J. GILLETTE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING MEDICAL SAVINGS ACCOUNT LAWS; EXTENDING THE MEDICAL SAVINGS ACCOUNT TAX DEDUCTION; MAKING DIRECT PRIMARY CARE FEES AN ELIGIBLE MEDICAL EXPENSE FOR MEDICAL SAVINGS ACCOUNTS; AMENDING SECTIONS 15-30-2120, 15-61-102, 15-61-202, AND 50-4-107, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.”

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

Section 1. Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

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

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

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

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through (3)(m);

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

~~(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;~~

(d) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

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

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; and

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

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

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

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

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

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state

as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

Section 2. Section 15-61-102, MCA, is amended to read:

"**15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

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

(b) a health care insurer as defined in 33-22-125;

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

(d) an employer if the employer has a self-insured health plan under ERISA;

(e) the account holder or an employee for whose benefit the account in question is established;

(f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

(g) an attorney licensed to practice law in this state;

(h) a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers, as published by the bureau of labor statistics of the United States department of labor.

(4) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(5) "Eligible medical expense" means:

(a) an expense paid by the employee or account holder for medical care defined by 26 U.S.C.

213(d);

(b) an expense for long-term care, including long-term care insurance or a long-term care annuity; ~~and~~

(c) a family leave expense; and

(d) any direct fee, as defined in 50-4-106, associated with a direct patient care agreement.

(6) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(7) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(8) "Family leave expense" means:

(a) an expense, calculated monthly, approximating wages lost while caring for an immediate family member for the purposes allowed under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq., and 29 CFR, part 825. A family leave expense is calculated by multiplying the hourly wage that the caregiver would have been paid by the number of hours that would typically be spent working but were instead spent caring for an immediate family member. The hourly wage for a person paid a salary is the gross annual wage divided by 2,087.

(b) a premium paid for family leave insurance.

(9) "Immediate family member" means a parent, spouse, or child.

(10) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201."

Section 3. Section 15-61-202, MCA, is amended to read:

"**15-61-202. (Temporary) Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-2110(2)(j), as long as the principal and interest or other income is contained within the account, distributed to an immediate family member as provided in subsection (6), or withdrawn only for payment of eligible medical expenses or for paying the expenses of administering the account. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or for paying the expenses of administering the account.

(2) (a) An employee or account holder may annually contribute not more than:

(i) $3,500 in tax year 2018;

(ii) $4,000 in tax year 2019;

(iii) an amount determined for each subsequent tax year by multiplying the amount in subsection (2)(a)(ii) by an inflation factor determined by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2018 and rounding the resulting figure to the nearest $500 increment.

(b) There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account.

(4) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder who is an immediate family member of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(5) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(6) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223. An immediate family member who receives the distribution provided for in this subsection becomes the

account holder and may:

(a) within 1 year of the death of the employee or account holder from which the account was inherited, withdraw funds for eligible medical expenses incurred by the deceased; and

(b) contribute to the account, retain money in the account tax-free, and withdraw funds from the account as provided in this chapter.

15-61-202. (Effective January 1, 2024) Tax exemption -- conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on the principal ~~that was contributed to a medical care savings account prior to January 1, 2024,~~ may be excluded from the Montana taxable income of the employee or account holder and is exempt from taxation, in accordance with 15-30-2120, as long as the principal and interest or other income is contained within the account, distributed to an immediate family member as provided in subsection ~~(6)~~ (5), or withdrawn only for payment of eligible medical expenses or for paying the expenses of administering the account. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or for paying the expenses of administering the account.

~~(2) For contributions that were made prior to January 1, 2024, there is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.~~

(2) (a) An employee or account holder may annually contribute not more than:

(i) $4,500 in tax year 2024; and

(ii) an amount determined for each subsequent tax year by multiplying the amount in subsection (2)(a)(i) by an inflation factor determined by dividing the consumer price index fund for June of the previous tax year by the consumer price index for June 2023 and rounding the resulting figure to the nearest $500 increment.

(b) There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder who is an immediate family member of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained

within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(4) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(5) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223. An immediate family member who receives the distribution provided for in this subsection becomes the account holder and may:

(a) within 1 year of the death of the employee or account holder from which the account was inherited, withdraw funds for eligible medical expenses incurred by the deceased; and

(b) retain money in the account tax-free and withdraw funds from the account as provided in this chapter."

Section 4. Section 50-4-107, MCA, is amended to read:

"**50-4-107. Direct patient care agreements -- requirements -- prohibition.** (1) A patient or the patient's legal representative may enter into a direct patient care agreement with a health care provider to arrange for health care services for the patient.

(2) A direct patient care agreement must be in writing, and the patient or the patient's legal representative must be given a copy of the written agreement at the time the agreement is signed.

(3) The agreement must:

(a) describe the health care services to be provided in exchange for payment of a direct fee;

(b) specify the direct fee required and any additional fees to be paid by a third party;

(c) specify the patient's payment obligation;

(d) prohibit the provider from charging or receiving additional compensation for health care services included in the direct fee;

(e) prohibit the provider from submitting to a health insurance issuer or a contractor or subcontractor of a health insurance issuer a claim for payment for health care services provided to a patient under a direct patient care agreement;

(f) meet the disclosure requirements of 50-4-108; and

(g) unequivocally provide that the charges for medical services not included in the agreement are the sole responsibility of the patient.

(4) A direct patient care agreement may allow for the direct fee and any additional fees to be paid by a third party.

(5) (a) Either party to a direct patient care agreement may terminate the agreement in writing without penalty or payment of a termination fee:

(i) at any time; or

(ii) after notice as specified in the agreement. The notice requirement may not exceed 60 days.

(b) The agreement must specify the terms of cancellation, including terms that cover relocation or military duty by the patient.

(6) The direct fees paid pursuant to this section are an eligible medical expense for the purposes of 15-61-202."

NEW SECTION. **Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1 and 3] are effective January 1, 2024.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022.

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