

HOUSE BILL NO. 714

INTRODUCED BY BALYEAT, BLACK, BOOKOUT-REINICKE, R. BROWN, BRUEGGEMAN, BUTCHER, EVERETT, FISHER, FORRESTER, FUCHS, GEBHARDT, HAINES, JACKSON, KEENAN, LAKE, LAMBERT, LANGE, LEWIS, MAEDJE, MAHLUM, MCGEE, MOOD, O'NEIL, PATTISON, RICE, ROBERTS, SALES, SCHRUMPF, SHOCKLEY, B. THOMAS, F. THOMAS, WAGMAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INDIVIDUAL INCOME TAX TAXPAYERS TO ELECT TO PAY STATE INCOME TAXES BASED UPON THEIR FEDERAL TAXABLE INCOME AS SHOWN ON THEIR FEDERAL INCOME TAX RETURN, ~~LESS WITH~~ ADJUSTMENTS; ESTABLISHING ALTERNATIVE TAX RATES; REDUCING THE ALTERNATIVE TAX RATES, UNDER CERTAIN CONDITIONS, BASED ON THE CHANGES IN TOTAL INDIVIDUAL INCOME TAX LIABILITIES; ALLOWING FILING OF STATE TAXES BY ~~MAILING TRANSMITTING~~ A COPY OF THE TAXPAYER'S FEDERAL INCOME TAX RETURN TO THE DEPARTMENT OF REVENUE; PROVIDING THAT THE TAXPAYER OR THE DEPARTMENT MAY DETERMINE THE AMOUNT OF TAXES; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Election to determine tax liability under alternative method -- effect of election -- rules. (1) On or before the due date, including extensions, of a return for a tax year ending after December 31, 2003, ~~an individual, estate, or trust~~ A MONTANA RESIDENT may, on forms that the department prescribes, file an election to be taxed under the provisions of [sections 1 through 3].

(2) In order to make an election under this section, married taxpayers shall make the election jointly.

(3) ~~(A) An~~ EXCEPT AS PROVIDED IN SUBSECTIONS (3)(B) AND (3)(C), AN election made under this section is an irrevocable election, and the taxpayer is subject to tax under [sections 1 through 3] for the tax year in which the election is made and in subsequent tax years.

(B) SUBSECTION (3)(A) DOES NOT APPLY TO A MONTANA RESIDENT WHO SUBSEQUENTLY BECOMES A PART-YEAR RESIDENT OR NONRESIDENT OF THE STATE UNLESS THE TAXPAYER AGAIN BECOMES A RESIDENT OF THE STATE.

(C) A TAXPAYER WHO ELECTS TO BE TAXED UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 3] WHO MAKES A FEDERAL INCOME TAX RETURN JOINTLY WITH A TAXPAYER WHO WAS NOT REQUIRED TO MAKE THE ELECTION JOINTLY WITH THE TAXPAYER, AS PROVIDED IN SUBSECTION (2), AND WHO HAS NOT ELECTED TO BE TAXED UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 3] SHALL DETERMINE FEDERAL TAXABLE INCOME AND ADJUSTED FEDERAL TAXABLE INCOME

AS IF A MARRIED INDIVIDUAL WHO DOES NOT MAKE A JOINT RETURN.

(4) The department is authorized to adopt rules that it considers necessary to administer the alternative method of taxation provided for in [sections 1 through 3].

NEW SECTION. Section 2. Alternative method for determining tax -- minimum tax. (1) In lieu of the tax imposed under 15-30-103, ~~an individual~~ A MONTANA RESIDENT taxpayer may elect under the provisions of [section 1 through 3] to be taxed based upon the taxpayer's adjusted federal taxable income for the current tax year. The tax determined under this section is based upon the taxpayer's federal taxable income as shown on the taxpayer's federal income tax form as adjusted under ~~subsection~~ SUBSECTIONS (3) THROUGH (5). Adjustments, deductions, exclusions, or credits, EXCEPT FOR THE CREDIT ALLOWED UNDER 15-30-124, that may otherwise be provided in state law are not available to a taxpayer using the tax method provided for in [sections 1 through 3].

(2) For each tax year beginning after December 31, ~~2003~~ 2005, the tax determined under this section, plus the additional tax imposed under subsection ~~(5)~~ (7), is upon the taxpayer's adjusted federal taxable income at the following rates, as adjusted under subsection ~~(4)~~ (6):

(a) for each married individual who makes a joint return and for each surviving spouse:

- (i) on the first ~~\$6,000~~ \$4,000 of adjusted federal taxable income or any part of that income, ~~5.33%~~ 7%;
- (ii) on the next ~~\$35,000~~ \$6,000 of adjusted federal taxable income or any part of that income, ~~6.67%~~ 8%;
- (iii) on the next ~~\$84,000~~ \$10,000 of adjusted federal taxable income or any part of that income, ~~8%~~ 9%;
- (iv) on any adjusted federal taxable income in excess of ~~\$125,000~~ \$20,000 or any part of that income, ~~8.9%~~ 9.6%;

(b) for each head of household:

- (i) on the first ~~\$4,800~~ \$3,200 of adjusted federal taxable income or any part of that income, ~~5.33%~~ 7%;
- (ii) on the next ~~\$28,000~~ \$4,800 of adjusted federal taxable income or any part of that income, ~~6.67%~~ 8%;
- (iii) on the next ~~\$67,200~~ \$8,000 of adjusted federal taxable income or any part of that income, ~~8%~~ 9%;
- (iv) on any adjusted federal taxable income in excess of ~~\$100,000~~ \$16,000 or any part of that income, ~~8.9%~~ 9.6%;

(c) for each individual other than a surviving spouse or head of household who is not a married individual

AND FOR EACH MARRIED INDIVIDUAL WHO DOES NOT MAKE A JOINT RETURN:

- (i) on the first ~~\$3,000~~ \$2,000 of adjusted federal taxable income or any part of that income, ~~5.33%~~ 7%;
- (ii) on the next ~~\$17,500~~ \$3,000 of adjusted federal taxable income or any part of that income, ~~6.67%~~ 8%;

(iii) on the next ~~\$42,000~~ \$5,000 of adjusted federal taxable income or any part of that income, ~~8%~~ 9%;

(iv) on any adjusted federal taxable income in excess of ~~\$62,500~~ \$10,000 or any part of that income, ~~8.9%~~ 9.6%;

~~— (d) for each married individual who does not make a joint return and for each estate or trust not exempt from taxation under the Internal Revenue Code:~~

~~— (i) on the first \$3,000 of adjusted federal taxable income or any part of that income, 5.33%;~~

~~— (ii) on the next \$17,500 of adjusted federal taxable income or any part of that income, 6.67%;~~

~~— (iii) on the next \$42,000 of adjusted federal taxable income or any part of that income, 8%;~~

~~— (iv) on any adjusted federal taxable income in excess of \$62,500 or any part of that income, 8.9%.~~

(3) If exempt from taxation by Montana under federal law, the following items are subtracted from federal taxable income to determine adjusted federal taxable income:

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

(b) railroad retirement benefits; and

(c) tribal-source income. FOR PURPOSES OF THIS SECTION, "TRIBAL-SOURCE INCOME" MEANS INCOME DERIVED:

(I) FROM SOURCES WITHIN THE EXTERIOR BOUNDARIES OF AN INDIAN RESERVATION OR LANDS RESTORED TO TRIBAL OWNERSHIP PURSUANT TO FEDERAL LAW, BY AN ENROLLED TRIBAL MEMBER OF THAT TRIBE WHO RESIDES ON THAT RESERVATION OR RESTORED LANDS; OR

(II) DIRECTLY FROM ALLOTTED OR RESTRICTED LANDS HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF A TRIBE OR THE TRIBAL MEMBER.

(4) 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 ARE ADDED TO FEDERAL TAXABLE INCOME EXCEPT TO THE EXTENT THAT INTEREST DESCRIBED IN THIS SUBSECTION IS ALREADY INCLUDED IN FEDERAL TAXABLE INCOME.

(5) IF A TAXPAYER RECEIVED A REFUND OF FEDERAL INCOME TAX THE DEDUCTION OF WHICH IN THE TAX YEAR IMMEDIATELY PRECEDING THE TAX YEAR IN WHICH THE TAXPAYER MAKES AN ELECTION UNDER [SECTIONS 1 THROUGH 3] RESULTED IN A REDUCTION OF MONTANA INCOME TAX LIABILITY, THE REFUND IS, TO THE EXTENT THAT THE DEDUCTION RESULTED IN A REDUCTION OF MONTANA INCOME TAX LIABILITY, A POSITIVE ADJUSTMENT TO THE TAXPAYER'S FEDERAL TAXABLE INCOME FOR THE TAX YEAR IN WHICH THE ELECTION IS MADE.

~~(4)(6)~~ (a) The department shall adjust the tax rates contained in subsections (2)(a) through (2)(d) as provided in this subsection ~~(4)~~ (6).

(b) Beginning in ~~2006~~ 2007, by January 31 of each year, the department shall divide each income tax rate contained in subsections (2)(a) through (2)(d) by the number determined by using the formula $TPYT/(TPYT04 \times CPI)$, where:

(i) TPYT is total individual income tax liability reported in the previous calendar year for the previous tax year;

(ii) TPYT04 is total individual income tax liability reported in calendar year 2004 for the 2003 tax year; and

(iii) CPI is the consumer price index for June of the previous calendar year divided by the consumer price index for June of 2003.

(c) The resulting adjusted tax rates as determined under subsection ~~(4)(b)~~ (6)(B) must be rounded to the nearest 100th of a percent. Except as provided in subsection ~~(4)(d)~~ (6)(D), the adjusted tax rates are effective for the current tax year and must be used to determine tax liability under this section.

(d) If the number determined under subsection ~~(4)(b)~~ (6)(B) is less than or equal to 1, there is no adjustment in the tax rate for the current tax year.

~~(5)(7)~~ A taxpayer who elects to file an income tax return under [sections 1 through 3] shall pay, in addition to the tax liability determined under subsection (2), a tax of ~~\$50~~ \$90. The ~~\$50~~ \$90 tax must be paid even if there is no tax liability determined under subsection (2). FOR THE PURPOSES OF THIS SUBSECTION, A RETURN FILED USING THE FILING STATUS MARRIED FILING JOINTLY IS CONSIDERED TO HAVE BEEN FILED BY ONE TAXPAYER.

NEW SECTION. Section 3. Return -- payment of alternative tax. (1) A taxpayer paying taxes pursuant to [sections 1 through 3] shall ~~mail~~ TRANSMIT a copy of the taxpayer's federal income tax form RETURN THAT THE TAXPAYER FILED WITH THE INTERNAL REVENUE SERVICE to the department, together with any tax withholding statements. ~~The~~ A taxpayer WHO HAS FILED AN ELECTION WITH THE DEPARTMENT AS PROVIDED IN [SECTION 1] may, using instructions and forms provided by the department, compute the amount of taxes due, or the taxpayer may request that the department compute the amount of taxes due and bill the taxpayer if additional payments are due or pay a refund to the taxpayer if a refund is owed the taxpayer. IF THE TAXPAYER CHOOSES TO HAVE THE DEPARTMENT DETERMINE THE TAX DUE, THE TAXPAYER SHALL REPORT TO THE DEPARTMENT, ON A FORM PROVIDED BY THE DEPARTMENT, ANY ADJUSTMENTS TO INCOME SPECIFIED IN [SECTION 2(3) THROUGH (5)] AND TAXES PAID TO ANOTHER STATE OR COUNTRY THAT MAY BE ALLOWED AS A CREDIT UNDER 15-30-124.

(2) If the taxpayer determines the amount of tax due, the taxpayer shall ~~attach~~ REMIT any payment that may be due ~~to~~ WITH the federal tax form that the taxpayer ~~mails~~ TRANSMITS to the department.

(3) ~~(A) If the A taxpayer WHO chooses to have the department determine the tax due and UNDER THIS CHAPTER MAY PROVIDE A CREDIT CARD AUTHORIZATION TO the department bills the taxpayer, the taxpayer shall pay any billed amount prior to the due date for filing income tax returns under this chapter FOR BILLING THE TAXPAYER FOR THE TAX DUE AS SHOWN BY THE RETURN.~~

(B) EXCEPT AS PROVIDED IN 15-30-145 AND SUBSECTIONS (3)(C) AND (3)(D) OF THIS SECTION, IF THE DEPARTMENT DETERMINES THE AMOUNT OF TAX TO BE BILLED UNDER THIS SUBSECTION (3) AFTER THE DUE DATE OF A FEDERAL RETURN FILED BY THE DUE DATE UNDER THIS CHAPTER, THE TAXPAYER IS SUBJECT TO THE UNIFORM INTEREST ASSESSMENT UNDER 15-1-216(2), BUT NOT TO THE UNIFORM PENALTY ASSESSMENT. HOWEVER, IF THE DEPARTMENT DETERMINES THE AMOUNT OF THE TAX TO BE BILLED MORE THAN 10 WORKING DAYS AFTER THE DUE DATE OF THE RETURN, THE TAXPAYER IS NOT SUBJECT TO THE UNIFORM INTEREST OR PENALTY ASSESSMENT UNDER 15-1-216.

(C) EXCEPT AS PROVIDED IN 15-30-145 AND SUBSECTION (3)(D) OF THIS SECTION, A TAXPAYER WHO CHOOSES TO HAVE THE DEPARTMENT DETERMINE THE TAX DUE AND WHO FILES THE FEDERAL TAX RETURN AT LEAST 10 WORKING DAYS BEFORE THE DUE DATE OF THE RETURN UNDER THIS CHAPTER IS NOT SUBJECT TO THE PROVISIONS OF 15-1-216 OR SUBSECTION (3)(B) OF THIS SECTION.

(D) IF THE TAX DETERMINED BY THE DEPARTMENT UNDER THIS SUBSECTION (3) IS NOT PAID WITHIN 60 DAYS AFTER NOTICE OF THE AMOUNT OF TAX DUE, THEN INTEREST AND PENALTY MUST BE ADDED TO THE AMOUNT DUE AS PROVIDED IN 15-1-216 FROM THE DUE DATE OF THE RETURN.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through 3].

NEW SECTION. Section 5. Effective date. [This act] is effective January 1, ~~2004~~ 2006.

NEW SECTION. Section 6. Applicability. [This act] applies to tax years beginning after December 31, ~~2003~~ 2005.

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