

SENATE BILL NO. 463

INTRODUCED BY BLACK, DEPRATU, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAXPAYER TO ELECT TO HAVE CERTAIN NET LONG-TERM CAPITAL GAINS THAT ARE ATTRIBUTABLE TO THE SALE OR EXCHANGE OF CAPITAL STOCK OF A CORPORATION ACQUIRED ON ACCOUNT OF EMPLOYMENT BY THE CORPORATION OR WHILE EMPLOYED BY THE CORPORATION TO BE TAXED AT A SINGLE TAX RATE; AMENDING SECTION 15-30-137, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) (a) "Capital stock" means voting or nonvoting common or preferred stock ~~that is publicly traded by~~ OF a corporation.

(b) The term does not include stock rights, stock warrants, stock options, or debt securities.

(2) (a) "Corporation" means a corporation, as defined in 15-30-101, including a unitary business, as described in 15-31-312, that has, at the time of the first sale or exchange of capital stock for which an election has been made under [section 2], been engaged in business in the state for at least 3 years. The corporation must:

(i) be headquartered in Montana; FOR THE PURPOSES OF THIS SUBSECTION (2)(A)(I), A CORPORATION IS CONSIDERED TO BE HEADQUARTERED IN MONTANA IF MORE THAN 50% OF ITS CORPORATE OFFICERS RESIDE IN THE STATE.

(ii) have at least ~~50%~~ 35% of its employees located within the state; ~~and~~

(iii) at the time of the first sale or exchange of capital stock for which an election has been made under [section 2], have at least ~~five~~ 25 shareholders, with at least ~~two~~ 3 shareholders or group of shareholders who are not related to each other and each of whom owns at least 10% of the capital stock of the corporation. For the purposes of this subsection (2)(a)(iii), ~~two~~ 3 persons are related if:

(A) one person owns capital stock, either directly or indirectly, in the corporation that if directly owned would be attributed to ~~the other~~ ANOTHER person under section 318 of the Internal Revenue Code of 1986, 26

U.S.C. 318; or

(B) one person is the brother, sister, aunt, uncle, cousin, niece, or nephew of ~~the other~~ ANOTHER person who owns capital stock, either directly or indirectly, in the corporation; AND

(IV) HAVE HAD AT LEAST 25 FULL-TIME EMPLOYEES RESIDING WITHIN THE STATE AT ALL TIMES DURING THE PREVIOUS 3 YEARS.

(b) The term includes a predecessor or successor corporation.

(3) "Net long-term capital gain" has the meaning provided in section 1222 of the Internal Revenue Code of 1986, 26 U.S.C. 1222.

(4) "Predecessor or successor corporation" means a corporation that was party to a reorganization that was entirely or substantially tax free and that occurred during or after the employment of the individual making an election under [section 2].

NEW SECTION. Section 2. Election for taxation of qualifying net capital gains -- rules. (1) An individual, or a trust qualifying under subsection (2)(b), may elect to have the net long-term capital gain from the sale or exchange of capital stock of a corporation acquired by the individual on account of employment by the corporation or while employed by the corporation taxed as provided in [section 3].

(2) (a) The election referred to in subsection (1) applies to a sale or exchange of capital stock in any tax year if the sale or exchange of capital stock is in the same corporation for which the election was made.

(b) An election made under subsection (1) applies to the sale or exchange of capital stock of the corporation that is transferred by inter vivos gift from the individual to the individual's spouse or children or to a trust for the benefit of the individual's spouse or children if the capital stock was acquired as provided in subsection (1). This subsection (2)(b) applies, in the case of a spouse, only if the spouse was married to the individual on the date of sale or exchange of capital stock or on the date of death of the individual.

(c) If the individual dies without making an election, the surviving spouse or, if there is no surviving spouse, the oldest surviving child may make the election for capital stock that would have qualified under subsection (2)(b).

(3) An election must be made by including a statement with the taxpayer's tax return or an amended return for the tax year in which the election is made. The statement must identify the corporation that issued the stock.

(4) The department shall adopt rules to implement and administer [sections 1 through 3].

NEW SECTION. Section 3. Tax on qualifying net capital gains. (1) Subject to the conditions of [section 2], a separate tax is imposed on the net long-term capital gain that is attributable to the sale or exchange of capital stock of a corporation.

(2) The tax is 2% of the net long-term capital gain.

Section 4. Section 15-30-137, MCA, is amended to read:

"15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103 or, if applicable, the rate contained in [section 3]. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts, when applicable."

NEW SECTION. Section 5. 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 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

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