

HOUSE BILL NO. 799

INTRODUCED BY B. WISEMAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CURRENT TAXATION OR A LIEN TO SECURE
5 DEFERRED PAYMENT OF TAXES WHEN MONTANA REAL ESTATE IS EXCHANGED FOR FOREIGN
6 PROPERTY; AMENDING SECTIONS 15-30-111 AND 15-31-113, MCA; AND PROVIDING AN EFFECTIVE
7 DATE AND AN APPLICABILITY DATE."

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

10
11 NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 3], the following
12 definitions apply:

13 (1) "Certified calculated gain" means the gain that the transferor will realize on an exchange of Montana
14 real estate for foreign property and that is certified in writing by the transferor.

15 (2) "Foreign property" means property that is not Montana real estate.

16 (3) "Improvements" has the meaning provided in 15-1-101.

17 (4) "Montana real estate" means real estate or improvements located in Montana.

18 (5) "Montana source gain" means gain realized but not recognized for federal income tax purposes
19 when Montana real estate is relinquished in an exchange in which gain and loss is not recognized pursuant to
20 section 1031 of the Internal Revenue Code, 26 U.S.C. 1031.

21 (6) "Real estate" has the meaning provided in 15-1-101.

22
23 NEW SECTION. **Section 2. Gain on exchange of Montana real estate for foreign property --**
24 **security for payment of taxes.** (1) Except as provided in subsection (2), Montana source gain is recognized
25 for Montana tax purposes in the tax year in which the gain is realized.

26 (2) A taxpayer may elect to defer recognition of Montana source gain by providing the department a first
27 priority security interest in the foreign property received in the exchange to secure the taxpayer's payment of
28 Montana taxes when the Montana source gain is recognized.

29 (3) A taxpayer electing to defer recognition of gain as provided in subsection (2) shall:

30 (a) calculate and certify in writing, under the penalty of false swearing provided in 45-7-202, the certified

1 calculated gain the taxpayer will realize on the exchange of the Montana real estate for foreign property;

2 (b) record or cause the recording of a security agreement, as described in subsection (4), at the same

3 time the taxpayer records the instrument conveying title to the foreign property to the taxpayer, which must occur

4 within 185 days of the date the Montana property is relinquished in the exchange; and

5 (c) report the certified calculated gain and provide a copy of the recorded security agreement described

6 in subsection (4) to the department within 30 days after the date the security agreement is recorded.

7 (4) The security agreement required under subsection (3) must:

8 (a) be in writing;

9 (b) be executed by the taxpayer and each holder of an interest in the foreign property received in the

10 exchange and acknowledged by the taxpayer and each interest holder in the same manner as the instrument

11 conveying title to the foreign property to the taxpayer is acknowledged;

12 (c) identify the foreign property received in the exchange in the same manner as the instrument

13 conveying title to the foreign property to the taxpayer identifies the foreign property;

14 (d) specify the amount of the certified calculated gain;

15 (e) grant the department a first priority security interest in the foreign property to secure the payment

16 of Montana taxes attributable to the certified calculated gain. The amount of taxes is determined by multiplying

17 the certified calculated gain by:

18 (i) the tax rate provided in 15-31-121(1), if the taxpayer is a corporation; or

19 (ii) the highest rate provided in 15-30-103 in any other case.

20 (f) include the taxpayer's:

21 (i) consent to be subject to the personal jurisdiction of the state for the collection of Montana taxes and

22 related interest, penalties, and fees imposed with respect to the Montana source gain;

23 (ii) promise to notify the department in writing of any sale or transfer of the foreign property within 30

24 days after the date of transfer;

25 (iii) promise to provide a substitute security interest in accordance with this section if the foreign property

26 is sold or transferred in a transaction in which a gain or loss is not recognized for federal income tax purposes;

27 and

28 (iv) agreement that if the taxpayer breaches a promise described in this subsection (4)(f), the department

29 may, by written notice mailed to the taxpayer's last-known address, declare the Montana source gain to be

30 immediately recognized.

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2 **NEW SECTION. Section 3. Recognition of gain -- department acknowledgment of satisfaction**
3 **-- limitation on assessment.** (1) At the taxpayer's written request and upon payment of the Montana taxes
4 attributable to the Montana source gain, the department shall provide to the taxpayer an acknowledgment of
5 satisfaction of the obligations secured by the security agreement described in [section 2].

6 (2) The time for assessing any tax, penalty, and interest imposed by Title 15, chapter 30 or 31, that is
7 attributable to Montana source gain expires 5 years after the date on which the taxpayer notifies the department
8 of the sale or transfer of the foreign property, as required in [section 2(4)(f)(ii)].

9
10 **Section 4.** Section 15-30-111, MCA, is amended to read:

11 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted
12 gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the
13 following:

14 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
15 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
16 under federal law;

17 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
18 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

19 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
20 reduction of Montana income tax liability;

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

23 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

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

26 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
27 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
28 of the same estate or trust for the same tax period; ~~and~~

29 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing
30 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal

1 adjusted gross income; and

2 (h) Montana source gain realized but not deferred, as provided for in [section 2].

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

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

8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
9 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

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

12 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
13 received as defined in 15-30-101;

14 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

15 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
16 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
17 excess of \$30,000 as shown on the taxpayer's return;

18 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
19 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
20 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
21 as shown on their joint return;

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

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

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

28 (g) all benefits received under the workers' compensation laws;

29 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
30 employee under federal law;

- 1 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
2 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 3 (j) principal and income in a medical care savings account established in accordance with 15-61-201
4 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
5 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 6 (k) principal and income in a first-time home buyer savings account established in accordance with
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
8 purchase of a single-family residence;
- 9 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family
10 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
11 beneficiary;
- 12 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
13 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 14 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
15 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
16 of the same estate or trust for the same tax period;
- 17 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
18 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
19 is not provided for federal income tax purposes;
- 20 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income
21 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the
22 child and taxpayer meet the filing requirements in 15-30-142.
- 23 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
24 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.
- 25 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
26 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
27 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
28 is effective.
- 29 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
30 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38

1 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
2 and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and
3 salaries were used to compute the credit. In the case of a partnership or small business corporation, the
4 deduction must be made to determine the amount of income or loss of the partnership or small business
5 corporation.

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

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

21 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to
22 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,
23 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana
24 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the
25 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

26 (8) An individual who contributes to one or more accounts established under the Montana family
27 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the
28 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,
29 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions
30 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this

1 subsection applies only with respect to contributions to an account of which the account owner, as defined in
 2 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or
 3 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of
 4 contributions that reduced adjusted gross income.

5 (9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

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

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

11 (iii) has had a student loan incurred as a result of health-related education; and

12 (iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described
 13 in subsection (9)(b) as an incentive to practice in Montana.

14 (b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or
 15 qualified private program. A qualified private loan repayment program includes a licensed health care facility,
 16 as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the
 17 facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec.
 18 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

19

20 **Section 5.** Section 15-31-113, MCA, is amended to read:

21 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized
 22 in determining the corporation's gross income for federal income tax purposes and:

23 (a) including:

24 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section
 25 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

26 (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate
 27 income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may
 28 be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana
 29 income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to
 30 the stockholders pursuant to federal law; and

1 (iii) Montana source gain realized but not deferred, as provided for in [section 2]; and
2 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation
3 pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or
4 renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection
5 (1)(a)(ii) of this section.

6 (2) The term "net income" means the gross income of the corporation less the deductions set forth in
7 15-31-114.

8 (3) A corporation is not exempt from the corporation license tax unless specifically provided for under
9 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from
10 the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license
11 tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according
12 to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable
13 year."
14

15 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 3] are intended to be
16 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 3].
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18 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2005.
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20 NEW SECTION. Section 8. Applicability. [This act] applies to transfers of Montana real estate that
21 occur after June 30, 2005.
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