

## HOUSE BILL NO. 270

INTRODUCED BY LANGE, MCGILLVRAY, LAKE, MACLAREN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TAX INCENTIVES FOR INDIVIDUAL MEDICAL CARE; ALLOWING A REFUNDABLE INDIVIDUAL INCOME TAX CREDIT FOR MEDICAL CARE EXPENSES PAID BY THE TAXPAYER; REDUCING THE CREDIT ABOVE CERTAIN GROSS HOUSEHOLD INCOME LEVELS; PROVIDING THAT THE CREDIT MAY NOT BE CLAIMED BY TAXPAYERS WHOSE GROSS HOUSEHOLD INCOME EXCEEDS CERTAIN LEVELS; ALLOWING A REFUNDABLE TAX CREDIT FOR CERTAIN EMPLOYERS THAT PROVIDE HEALTH INSURANCE COVERAGE FOR EMPLOYEES; AMENDING SECTIONS 15-30-111, 15-62-207, AND 15-62-208, 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. Credit for medical care expenses.** (1) Subject to the conditions of this section, there is a tax credit against the taxes otherwise due under this chapter for the expenses paid for medical care, as defined in 26 U.S.C. 213(d), of the taxpayer and the taxpayer's spouse and dependents to the extent that expenses are not covered or reimbursed by other sources, including but not limited to health insurance or a premium assistance payment made under Title 33, chapter 22, part 20.

(2) The amount of the credit is equal to 50% of the expenses paid for medical care in the tax year. Except as provided in subsections (3) through (5), the amount of the credit may not exceed:

- (a) for a taxpayer filing singly, ~~\$400~~ \$200;
- (b) for married taxpayers filing jointly or separately on the same ~~return~~ FORM:
  - (i) with no dependents, ~~\$800~~ \$400;
  - (ii) with one dependent, ~~\$900~~ \$450; or
  - (iii) with two or more dependents, ~~\$1,000~~ \$500;
- (c) for a taxpayer filing as head of household:
  - (i) with one dependent, ~~\$800~~ \$400;
  - (ii) with two dependents, ~~\$900~~ \$450; or
  - (iii) with three or more dependents, ~~\$1,000~~ \$500.

(3) (a) Subject to ~~subsections~~ SUBSECTION (3)(b) and ~~(3)(c)~~, for a taxpayer filing singly, the dollar amount

of the credit allowable under this section is reduced by \$20 for every \$1,000 of gross household income over ~~\$30,000~~ \$25,000.

~~(b) The amount of the credit allowed under this section for a taxpayer filing singly whose gross household income is greater than \$40,000 and less than or equal to \$50,000 may not exceed \$200. The credit is calculated as if the taxpayer's gross household income were equal to \$40,000.~~

~~(e)(B) A taxpayer filing singly whose gross household income exceeds \$50,000~~ IS EQUAL TO OR GREATER THAN \$35,000 may not claim a credit under this section.

(4) (a) Subject to ~~subsections~~ SUBSECTION (4)(b) through ~~(4)(e)~~, for married taxpayers filing jointly or separately on the same return FORM, the dollar amount of the credit is reduced \$20 for every \$1,000 of gross household income over ~~\$40,000~~ \$50,000.

~~(b) The amount of the credit allowed under this section for married taxpayers described in subsection (2)(b)(i) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$400. The credit is calculated as if the taxpayers' gross household income were equal to \$60,000.~~

~~———— (c) The amount of the credit allowed under this section for married taxpayers described in subsection (2)(b)(ii) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$500. The credit is calculated as if the taxpayers' gross household income were equal to \$60,000.~~

~~———— (d) The amount of the credit allowed under this section for married taxpayers described in subsection (2)(b)(iii) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$600. The credit is calculated as if the taxpayers' gross household income were equal to \$60,000.~~

~~(e)(B) Married taxpayers whose gross household income exceeds~~ IS EQUAL TO OR GREATER THAN \$70,000 may not claim a credit under this section.

(5) (a) Subject to ~~subsections~~ SUBSECTION (5)(b) through ~~(5)(e)~~, for a taxpayer filing as head of household, the dollar amount of the credit is reduced \$20 for every \$1,000 of gross household income over ~~\$40,000~~ \$50,000.

~~(b) The amount of the credit allowed under this section for a taxpayer filing as head of household described in subsection (2)(c)(i) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$400. The credit is calculated as if the taxpayer's gross household income were equal to \$60,000.~~

~~———— (c) The amount of the credit allowed under this section for a taxpayer filing as head of household described in subsection (2)(c)(ii) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$500. The credit is calculated as if the taxpayer's gross household income were equal~~

to \$60,000.

~~—— (d) The amount of the credit allowed under this section for a taxpayer filing as head of household described in subsection (2)(c)(iii) with gross household income greater than \$60,000 and less than or equal to \$70,000 may not exceed \$600. The credit is calculated as if the taxpayer's gross household income were equal to \$60,000.~~

~~(e)~~(B) A taxpayer filing as head of household whose gross household income ~~exceeds~~ IS EQUAL TO OR GREATER THAN \$70,000 may not claim a credit under this section.

(6) (a) Except as provided in 15-30-111, a deduction or a credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section.

(b) The credit may not be taken for medical care expenses paid from a medical care savings account provided for in Title 15, chapter 61.

(7) If the amount of the credit exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even though the taxpayer has no income that is taxable under this chapter.

(8) For the purposes of this section:

(a) "gross household income" has the meaning provided in 15-30-171; and

(b) "income" has the meaning provided in 15-30-171.

NEW SECTION. **Section 2. Tax credit for providing health insurance for employees = pass-through entities.** (1) There is a tax credit against the taxes imposed in 15-30-103 in an amount determined under [section 3] for eligible employers who are individuals for qualifying premiums paid by the employer for coverage of eligible employees and eligible employees' spouses and dependents.

~~(2) If the employer is an S corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.~~

NEW SECTION. **Section 3. Tax credit for providing health insurance coverage for employees.** An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of qualifying premiums for health insurance coverage, as defined in 33-22-140, paid by the employer for the employer's employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months and, EXCEPT AS PROVIDED IN SUBSECTION (3), have not paid health insurance premiums for employees during the 2 tax years immediately preceding the tax year for which a claim for the credit is made under this section;

(b) employ 20 or fewer employees working at least 20 hours a week; and

(c) pay at least 50% of each employee's insurance premium.

(2) (A) Subject to the provisions of ~~subsection~~ SUBSECTIONS (4), (5), AND (6), an employer may claim a tax credit in the following amounts:

~~(a)(i)~~ not more than \$100 each ~~month~~ YEAR for each employee and \$100 each ~~month~~ YEAR for each employee's spouse, if the employer covers the employee's spouse; and

~~(b)(ii)~~ not more than \$40 each ~~month~~ YEAR for each dependent, other than the employee's spouse, if the employer is paying for the dependents, not to exceed ~~two~~ FOUR dependents of an employee in addition to the employee's spouse.

(B) THE CREDIT ALLOWED UNDER THIS SUBSECTION (2) MAY NOT BE CLAIMED FOR MORE THAN 2 CONSECUTIVE YEARS.

(3) SUBJECT TO SUBSECTIONS (4), (5), AND (6), AN EMPLOYER WHO HAS PAID HEALTH INSURANCE PREMIUMS FOR EMPLOYEES DURING THE 2 TAX YEARS IMMEDIATELY PRECEDING THE TAX YEAR FOR WHICH A CLAIM FOR THE CREDIT IS MADE UNDER THIS SECTION MAY CLAIM A TAX CREDIT IN THE FOLLOWING AMOUNTS:

(A) NOT MORE THAN \$50 EACH YEAR FOR EACH EMPLOYEE AND \$50 EACH YEAR FOR EACH EMPLOYEE'S SPOUSE, IF THE EMPLOYER COVERS THE EMPLOYEE'S SPOUSE; AND

(B) NOT MORE THAN \$20 EACH YEAR FOR EACH DEPENDENT, OTHER THAN THE EMPLOYEE'S SPOUSE, IF THE EMPLOYER IS PAYING FOR THE DEPENDENTS, NOT TO EXCEED FOUR DEPENDENTS OF AN EMPLOYEE IN ADDITION TO THE EMPLOYEE'S SPOUSE.

~~(3)(4)~~ An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer;

(b) for premiums paid for which a deduction is claimed under 15-30-121 or 15-31-114.

~~(4)(5)~~ A tax credit is not allowed under this section with respect to any amount for which a tax credit is allowed under 15-30-129, 15-30-185, 15-31-130, 15-31-132, or any other provision of Title 15, chapter 30 or 31.

~~(5)(6)~~ A tax credit is not allowed under this section if the employer receives premium assistance payments under Title 33, chapter 22, part 20.

~~(6)(7)~~ If the tax credit allowed under this section exceeds the employer's tax liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the employer. The tax credit may be claimed even

if the employer has no tax liability under 15-30-103 or 15-31-121.

~~(7)~~(8) (a) If an employer that would be eligible for a tax credit under this section ceases doing business before filing a claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this section merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the tax credit in the future, the surviving or acquired corporation may file for the tax credit for the tax period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the tax credit for any tax period during which the employer was eligible.

(9) IF THE CREDIT ALLOWED UNDER THIS SECTION IS CLAIMED BY A SMALL BUSINESS CORPORATION, AS DEFINED IN 15-30-1101, A PASS-THROUGH ENTITY, OR A PARTNERSHIP, THE CREDIT MUST BE ATTRIBUTED TO SHAREHOLDERS, OWNERS, OR PARTNERS USING THE SAME PROPORTION AS USED TO REPORT THE ENTITY'S INCOME OR LOSS.

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

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

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

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

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

(c) 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;

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

(e) 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;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of

the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) 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, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) 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;

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

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in [section 1], [section 2], or 33-22-2006 that reduces Montana tax below zero.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election

is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions 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. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

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

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

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

~~(8)~~(7) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross 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 adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, 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 (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)(8)~~ (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

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

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

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

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

**Section 5.** Section 15-62-207, MCA, is amended to read:

**"15-62-207. Deductions for contributions.** An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~, by the total amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

**Section 6.** Section 15-62-208, MCA, is amended to read:

**"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that

reduced adjusted gross income under 15-30-111~~(8)~~.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

**NEW SECTION. Section 7. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified

as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 3].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

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