

HOUSE BILL NO. 834
INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING MONTANA INDIVIDUAL INCOME TAX DEDUCTIONS AND CORPORATION LICENSE AND INCOME TAX DEDUCTIONS WITH THE INTERNAL REVENUE CODE IN EFFECT IN 2006; REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO REVIEW AND MAKE RECOMMENDATIONS REGARDING FEDERAL INCOME TAX DEDUCTIONS; PROVIDING AN APPROPRIATION FOR THE REVIEW; AMENDING SECTIONS 15-30-101, 15-30-111, 15-30-117, 15-30-121, 15-30-123, 15-30-154, 15-30-1102, 15-31-102, 15-31-113, 15-31-114, 15-62-207, AND 15-62-208, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable tax~~ year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable tax~~ year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable tax~~ year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity that is:

(a) ~~that is~~ disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, ~~or as those regulations may be labeled or amended~~; or

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~{26 U.S.C. 1361(b)(3)}~~.

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~{26 U.S.C. 61}~~, ~~or as that section may be labeled or amended~~, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, ~~{26 U.S.C. 85}~~ ~~as amended~~.

(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, ~~as amended, or as it may be labeled or further amended~~ as it read on December 31, 2006. References to specific provisions of the Internal

Revenue Code mean those provisions as they ~~may be otherwise labeled or further amended~~ read on December 31, 2006.

(14) "Knowingly" ~~is as defined~~ has the meaning provided in 45-2-101.

(15) "Limited liability company" means a limited liability company, a domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" ~~means a limited liability partnership as defined~~ has the meaning provided in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the

number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located

in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, {26 U.S.C. 401}, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, {26 U.S.C. 401 through 408}, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" ~~is as defined~~ has the meaning provided in 45-2-101.

(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(28) "Resident" ~~applies only to~~ means a natural persons person and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any ~~taxable tax~~ year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~{26 U.S.C. 1362}~~, is in effect.

(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(31) "Tax year" means the taxpayer's ~~taxable tax~~ year for federal income tax purposes.

(32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(33) (a) "Taxpayer" ~~includes~~ means any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter.

(b) ~~and unless otherwise specifically provided~~ The term does not include a C. corporation unless specifically provided by this chapter."

Section 2. 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)(B)~~;

(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~~ a person for rendering 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 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.~~

~~(7)~~ (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 3. Section 15-30-117, MCA, is amended to read:

"15-30-117. Net operating loss -- computation. A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code, ~~of 1986 (26 U.S.C. 172), or as that section may be labeled or amended~~ except that the net operating loss determined under section 172(c) of the Internal Revenue Code, ~~(26 U.S.C. 172(c))~~, means taxable income, as defined in 15-30-101, computed with the modifications specified in section 172(d) of the Internal Revenue Code, ~~(26 U.S.C. 172(d))~~, as they relate to items provided for in this chapter."

Section 4. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as itemized deductions:

(a) except as provided in subsection (2), the items referred to in sections section 161, including the contributions referred to in 33-15-201(5)(b), and 244 of the Internal Revenue Code, 26 U.S.C. 161, and 244, subject to the following exceptions, which are not deductible:

- ~~(i) items provided for in 15-30-123;~~
- ~~(ii) state income tax paid;~~
- ~~(iii) premium payments for medical care as provided in subsection (1)(g)(i);~~
- ~~(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and~~
- ~~(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-704; including the following:~~

- (i) trade or business expenses as provided in 26 U.S.C. 162;
- (ii) interest as provided in 26 U.S.C. 163;
- (iii) taxes as provided in 26 U.S.C. 164;
- (iv) losses as provided in 26 U.S.C. 165;
- (v) bad debts as provided in 26 U.S.C. 166;
- (vi) depreciation as provided in 26 U.S.C. 167 and 168;
- (vii) amortization of pollution control facilities as provided in 26 U.S.C. 169;
- (viii) subject to subsection (2)(c), charitable contributions and gifts as provided in 26 U.S.C. 170;
- (ix) amortizable bond premiums as provided in 26 U.S.C. 171;
- (x) subject to 15-30-117, a net operating loss deduction as provided in 26 U.S.C. 172;
- (xi) circulation expenditures as provided in 26 U.S.C. 173;
- (xii) research and experimental expenditures as provided in 26 U.S.C. 174;
- (xiii) soil and water conservation expenditures as provided in 26 U.S.C. 175;
- (xiv) payments with respect to employees of certain foreign corporations as provided in 26 U.S.C. 176;
- (xv) amortization of the cost of acquiring a lease as provided in 26 U.S.C. 178;
- (xvi) expensing of certain depreciable business assets as provided in 26 U.S.C. 179;
- (xvii) costs for clean-fuel vehicles and certain refueling property as provided in 26 U.S.C. 179A;
- (xviii) capital costs incurred in complying with environmental protection agency sulfur regulations as provided in 26 U.S.C. 179B;
- (xix) expensing of certain refineries as provided in 26 U.S.C. 179C;

- (xx) costs of energy-efficient commercial buildings as provided in 26 U.S.C. 179D;
- (xxi) except for the deduction taken under subsection (1)(g), expenditures by farmers for fertilizers and other expenses as provided in 26 U.S.C. 180;
- (xxii) the amounts allowed under the treatment of certain qualified film and television productions as provided in 26 U.S.C. 181;
- (xxiii) costs of activities not engaged in for profit as provided in 26 U.S.C. 183;
- (xxiv) recovery of damages for antitrust violations and other violations as provided in 26 U.S.C. 186;
- (xxv) expenditures to remove architectural and transportation barriers to the handicapped and elderly as provided in 26 U.S.C. 190;
- (xxvi) contributions to a black lung benefit trust as provided in 26 U.S.C. 192;
- (xxvii) expenses for tertiary injectants as provided in 26 U.S.C. 193;
- (xxviii) amortization of reforestation expenditures as provided in 26 U.S.C. 194;
- (xxix) contributions to employer liability trusts as provided in 26 U.S.C. 194A;
- (xxx) startup expenditures as provided in 26 U.S.C. 195;
- (xxxi) certain unused business credits as provided in 26 U.S.C. 196;
- (xxxii) amortization of goodwill and certain other intangibles as provided in 26 U.S.C. 197;
- (xxxiii) expensing of environmental remediation costs as provided in 26 U.S.C. 198; and
- (xxxiv) income attributable to domestic production activities as provided in 26 U.S.C. 199;
- (b) the items referred to in section 211 of the Internal Revenue Code, 26 U.S.C. 211, including the following:
 - (i) expenses for the production of income as provided in 26 U.S.C. 212;
 - (ii) except for premium payments deducted under subsections (1)(i)(i) and (1)(i)(ii), medical care expenses as provided in 26 U.S.C. 213;
 - (iii) alimony and separate maintenance payments as provided in 26 U.S.C. 215;
 - (iv) taxes, interest, and business depreciation paid by a cooperative housing corporation tenant-stockholder as provided in 26 U.S.C. 216;
 - (v) moving expenses as provided in 26 U.S.C. 217;
 - (vi) contributions to retirement savings accounts as provided in 26 U.S.C. 219;
 - (vii) contributions to Archer medical savings accounts as provided in 26 U.S.C. 220;
 - (viii) interest paid on education loans as provided in 26 U.S.C. 221;
 - (ix) qualified tuition and related expenses as provided in 26 U.S.C. 222; and

(x) contributions to health care savings accounts as provided in 26 U.S.C. 223;

(c) contributions referred to in 33-15-201(5)(b);

~~(b)(d)~~ federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

~~(e)(e)~~ expenses of household and dependent care services as outlined in subsections ~~(1)(e)(i)~~ (1)(e)(i) through ~~(1)(e)(iii)~~ (1)(e)(iii) and ~~(2) (3)~~ and subject to the limitations and rules as set out in subsections ~~(1)(e)(iv)~~ (1)(e)(iv) through ~~(1)(e)(vi)~~ (1)(e)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections ~~(1)(e)(i)~~ (1)(e)(i) through ~~(1)(e)(iii)~~ (1)(e)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection ~~(1)(e)(i)~~ (1)(e)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection ~~(1)(e)(i)~~ (1)(e)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection ~~(1)(e)(i)(A)~~ (1)(e)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection ~~(1)(e)~~ (1)(e):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection ~~(1)(e)(i)(C)~~ (1)(e)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

~~(d)(f)~~ in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

~~(e)(g)~~ that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

~~(f)(h)~~ contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

~~(g)(i)~~ the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

~~———(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or~~

~~(B)~~ the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

~~(h)(j)~~ light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax year; and

~~(i)(k)~~ per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In computing net income, the following items are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid; and

(c) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

~~(2)(3)~~ (a) Subject to the conditions of subsection ~~(1)(e)~~ (1)(e), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection ~~(1)(e)(iv)(B)~~ (1)(e)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(2) (3)~~ (3)."

Section 5. Section 15-30-123, MCA, is amended to read:

"15-30-123. Nondeductible items in computing net income. In computing net income, deductions of items specified under 26 U.S.C. 261 are not allowed, ~~for including:~~

(1) personal, living, or family expenses as provided in 26 U.S.C. 262;

(2) ~~any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate~~ capital expenditures as provided in 26 U.S.C. 263;

(3) ~~any amount expended in restoring property or in making good the exhaustion of the property for which an allowance is or has been made~~ capitalization and inclusion in inventory costs of certain expenses as provided in 26 U.S.C. 263A;

(4) ~~premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under the policy~~ certain amounts paid in connection with insurance contracts as provided in 26 U.S.C. 264; or

(5) ~~expenses and interest that are associated with the production of exempt or excludable~~ relating to tax-exempt income as provided in 26 U.S.C. 265. This subsection (5) does not apply to the deductibility of federal income taxes paid on income that is excludable or exempt for Montana income tax purposes.

(6) carrying charges as provided in 26 U.S.C. 266;

(7) losses, expenses, and interest with respect to transactions between related taxpayers as provided in 26 U.S.C. 267;

(8) sale of land with unharvested crops as provided in 26 U.S.C. 268;

(9) costs of acquisitions made to evade or avoid income tax as provided in 26 U.S.C. 269;

(10) costs or expenses related to personal service corporations formed or availed of to avoid or evade income tax as provided in 26 U.S.C. 269A;

(11) stapled entities as provided in 26 U.S.C. 269B;

(12) debts owed by political parties as provided in 26 U.S.C. 271;

(13) expenditures for the disposal of coal or domestic iron ore as provided in 26 U.S.C. 272;

(14) amounts paid to holders of a life or terminable interest as provided in 26 U.S.C. 273;

(15) certain entertainment expenses and other expenses as provided in 26 U.S.C. 274;

(16) certain taxes as provided in 26 U.S.C. 275;

(17) certain indirect contributions to political parties as provided in 26 U.S.C. 276;

(18) costs incurred by certain membership organizations in transactions with members as provided in 26 U.S.C. 277;

(19) interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation as provided in 26 U.S.C. 277;

(20) certain expenses in connection with business use of a home, rental of a vacation home, or other expenses as provided in 26 U.S.C. 280A;

(21) expenses for the demolition of structures as provided in 26 U.S.C. 280B;

(22) expenditures made in connection with the sale of illegal drugs as provided in 26 U.S.C. 280E;

(23) certain depreciation for luxury automobiles and other property used for personal purposes as provided in 26 U.S.C. 280F;

(24) golden parachute payments as provided in 26 U.S.C. 280G; or
(25) certain amounts paid to employee-owners by a personal service corporation electing alternative tax years as provided in 26 U.S.C. 280H."

Section 6. Section 15-30-154, MCA, is amended to read:

"15-30-154. Income tax deduction for contribution to veterans' programs. (1) A taxpayer who itemizes deductions in filing an individual or a joint income tax return may, in computing net income, claim a deduction for donations to the veterans' services account established in 10-2-112(1), the state veterans' cemetery program pursuant to 10-2-603, or any surcharge paid pursuant to 10-2-114 unless the amount is included as a charitable deduction under 15-30-121~~(1)~~~~(a)~~.

(2) A taxpayer may enclose a separate check or other payment to contribute to the veterans' special revenue accounts, established in 10-2-112(1) and 10-2-603 and count that deduction from taxes for the year in which the donation was made.

(3) The department shall provide a form to identify the deduction, and the contribution must be attached to the form.

(4) All money received pursuant to subsection (1) must be forwarded upon receipt by the department to the state treasurer for deposit in the veterans' services account established in 10-2-112(1) or to the special revenue account established in 10-2-603. If the taxpayer does not specify to which fund the contribution is intended to go, the department shall deposit the money in the veterans' services account established in 10-2-112(1). The department may not make deductions for administrative expenses in handling these donations."

Section 7. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities -- information returns required.

(1) Except as otherwise provided:

- (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;
- (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and
- (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C.

corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i)(1)(d).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

- (i) the name, address, and social security or federal identification number of each partner;
- (ii) the partnership's Montana source income;
- (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
- (v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

- (i) the name, address, and social security or federal identification number of each shareholder;
- (ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 8. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or

individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire ~~taxable~~ tax year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

(2) In determining the license fee to be paid under this part, there may not be included any earnings

derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, ~~as amended~~, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 9. Section 15-31-113, MCA, is amended to read:

"15-31-113. ~~Gross income and net income~~ Definitions -- computation of gross income of corporations not exempt from taxation. (1) For the purposes of this chapter, the following definitions apply:

(a)(i) ~~The term "gross income"~~ "Gross income" means ~~all the taxpayer's gross income, recognized in determining the corporation's gross income for federal income tax purposes and: as defined in section 61 of the Internal Revenue Code, 26 U.S.C. 61, increased as provided in subsection (1)(a)(ii) and decreased as provided in subsection (1)(a)(iii).~~

(a)(ii) ~~including~~ The following items are included in determining gross income:

(i)(A) interest exempt from federal income tax and exempt-interest dividends as defined in ~~section 26 U.S.C. 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered; and~~

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

(b)(iii) ~~excluding~~ A corporation's gross income does not include the gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to ~~sections 26 U.S.C. 331 through 337, of the Internal Revenue Code, as those sections may be amended or renumbered~~, when the gain is required to be recognized by the liquidating corporation pursuant to subsection ~~(1)(a)(ii)~~ (1)(a)(ii)(B) of this section.

(b) "Internal Revenue Code" has the meaning provided in 15-30-101.

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

~~(3)~~(2) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 10. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing taxable income -- deductions not allowed. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

~~(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.~~

~~———— (b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).~~

~~———— (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.~~

~~———— (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal~~

Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes:

~~—— (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.~~

(a) trade or business expenses as provided in 26 U.S.C. 162, except that a deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) interest as provided in 26 U.S.C. 163;

~~(e)(c)~~ (f) taxes paid within the year as provided in 26 U.S.C. 164, except the following:

~~(A)(i)~~ taxes imposed by this part;

~~(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;~~

~~(C)(ii)~~ taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

~~(D)(iii)~~ taxes imposed by any other state or country upon or measured by net income or profits;

~~(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.~~

(d) losses as provided in 26 U.S.C. 165;

(e) bad debts as provided in 26 U.S.C. 166;

(f) depreciation as provided in 26 U.S.C. 167 and 168, except that a deduction is not allowed for depreciation or amortization on a title plant as defined in 33-25-105;

(g) amortization of pollution control facilities as provided in 26 U.S.C. 169;

(h)(i) except as provided in subsection (1)(h)(ii) or (1)(h)(iii), charitable contributions and gifts as provided in 26 U.S.C. 170.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection (1)(h).

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the

annuity is a qualified charitable gift annuity as defined in 33-20-701.

- (i) amortizable bond premiums as provided in 26 U.S.C. 171;
- (j) net operating loss deductions as provided in 26 U.S.C. 172 and determined under the provisions of 15-31-119;
- (k) circulation expenditures as provided in 26 U.S.C. 173;
- (l) research and experimental expenditures as provided in 26 U.S.C. 174;
- (m) soil and water conservation expenditures as provided in 26 U.S.C. 175;
- (n) payments with respect to employees of certain foreign corporations as provided in 26 U.S.C. 176;
- (o) amortization of the cost of acquiring a lease as provided in 26 U.S.C. 178;
- (p) expensing of certain depreciable business assets as provided in 26 U.S.C. 179;
- (q) costs of clean-fuel vehicles and certain refueling property as provided in 26 U.S.C. 179A;
- (r) capital costs incurred in complying with environmental protection agency sulfur regulations as provided in 26 U.S.C. 179B;
- (s) expensing of certain refineries as provided in 26 U.S.C. 179C;
- (t) costs of energy-efficient commercial buildings as provided in 26 U.S.C. 179D;
- (u) except for the deduction taken under 15-32-303, expenditures by farmers for fertilizers and other expenses as provided in 26 U.S.C. 180;
- (v) the amounts allowed under the treatment of certain qualified film and television productions as provided in 26 U.S.C. 181;
- (w) costs of activities not engaged in for profit as provided in 26 U.S.C. 183;
- (x) recovery of damages for antitrust violations and other violations as provided in 26 U.S.C. 186;
- (y) expenditures to remove architectural and transportation barriers to the handicapped and elderly as provided in 26 U.S.C. 190;
- (z) contributions to a black lung benefit trust as provided in 26 U.S.C. 192;
- (aa) expenses for tertiary injectants as provided in 26 U.S.C. 193;
- (bb) amortization of reforestation expenditures as provided in 26 U.S.C. 194;
- (cc) contributions to employer liability trusts as provided in 26 U.S.C. 194A;
- (dd) startup expenditures as provided in 26 U.S.C. 195;
- (ee) certain unused business credits as provided in 26 U.S.C. 196;
- (ff) amortization of goodwill and certain other intangibles as provided in 26 U.S.C. 197;
- (gg) expensing of environmental remediation costs as provided in 26 U.S.C. 198;

(hh) income attributable to domestic production activities as provided in 26 U.S.C. 199;

~~(f)(ii)~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

~~(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.~~

~~———— (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.~~

~~———— (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.~~

~~(h)(ii)~~ per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In addition to the deductions allowed under subsection (1), the following deductions, in accordance with 26 U.S.C. 241 and subject to 26 U.S.C. 249, are allowed in computing net income:

(a) subject to 26 U.S.C. 246 and 246A, dividends received by corporations as provided in 26 U.S.C. 243;

(b) subject to 26 U.S.C. 246 and 246A, dividends received on certain preferred stock as provided in 26 U.S.C. 244;

(c) subject to 26 U.S.C. 246 and 246A, dividends received from certain foreign corporations as provided in 26 U.S.C. 245;

(d) dividends paid on certain preferred stock of public utilities as provided in 26 U.S.C. 247;

(e) organizational expenditures as provided in 26 U.S.C. 248;

~~(2)(3)~~ In lieu of the deduction allowed under subsection ~~(1)(g)~~ (1)(h), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection ~~(2)(b)~~ (3)(b).

~~(3)(4)~~ (3)(4) In the case of a A regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 851(a) or 851(g), ~~as that~~

~~section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered.~~

(5) Items specified under 15-30-123 are not allowed as deductions under this section."

Section 11. 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)(7)~~, 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 12. 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)(7)~~.

(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 13. Revenue and transportation interim committee to examine income items. (1) The revenue and transportation interim committee, provided for in 5-5-227, shall review the itemized deductions for individuals, including the additional itemized deductions for individuals referenced in 26 U.S.C. 211 through 223, contained in 15-30-121, as amended by [section 4], and the itemized deductions for corporations, including the special deductions for corporations referenced in 26 U.S.C. 241 through 249, contained in 15-31-114, as amended by [section 10]. The purpose of the review is to determine which deductions, if any, should be aligned directly with current federal law, aligned indirectly with federal tax law, or eliminated as a deduction item.

(2) Based on the review conducted in subsection (1), the revenue and transportation committee shall, by September 15, 2008, report its finding and recommendations to the 61st legislature.

(3) In the conduct of the review required by subsection (1), the committee may request the assistance

of:

- (a) certified public accountants;
 - (b) tax attorneys;
 - (c) taxpayer groups;
 - (d) representatives of pass-through entities;
 - (e) representatives of C. corporations;
 - (f) the department of revenue; and
 - (g) other persons knowledgeable of state and federal income tax law.
- (4) The committee may appoint subcommittees as provided in 5-5-211.

NEW SECTION. Section 14. Appropriation. There is appropriated \$25,000 from the general fund to the legislative services division for the biennium beginning July 1, 2007, for the operating expenses and personnel expenses related to the review required by [section 13].

NEW SECTION. Section 15. Transition -- rules. (1) If 15-30-121, as amended by [section 4], or 15-31-114, as amended by [section 10], requires a taxpayer to change the taxpayer's method of accounting in order to determine taxable income, the taxpayer shall make the adjustments required by changes to the method of accounting as provided in 26 U.S.C. 481.

- (2) The department of revenue may adopt rules to implement this section.

NEW SECTION. Section 16. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this section].

NEW SECTION. Section 17. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2009.

- (2) [Sections 13, 14, and 18 and this section] are effective July 1, 2007.

NEW SECTION. Section 18. Applicability. [Sections 1 through 12 and 15] apply to tax periods beginning after December 31, 2008.

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