

## 1 SENATE BILL NO. 81

2 INTRODUCED BY D. LEWIS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TAX CREDITS FOR CONTRIBUTIONS TO  
5 EDUCATIONAL IMPROVEMENT ORGANIZATIONS AND STUDENT SCHOLARSHIP ORGANIZATIONS BY  
6 INDIVIDUAL AND CORPORATE TAXPAYERS; CREATING PUBLIC SCHOOL AND STUDENT FUNDING  
7 THROUGH TAX REPLACEMENT PROGRAMS; ESTABLISHING REQUIREMENTS FOR ORGANIZATIONS  
8 THAT AWARD GRANTS AND SCHOLARSHIPS; ESTABLISHING REQUIREMENTS FOR AWARDED PUBLIC  
9 SCHOOL GRANTS AND DETERMINING ELIGIBLE PUBLIC SCHOOLS; ESTABLISHING REQUIREMENTS  
10 FOR GRANTING STUDENT SCHOLARSHIPS AND DETERMINING EDUCATION PROVIDERS THAT ARE  
11 ELIGIBLE TO EDUCATE STUDENTS RECEIVING SCHOLARSHIPS; PROVIDING THAT THE AMOUNT OF  
12 A SCHOLARSHIP IS NOT TAXABLE INCOME; ESTABLISHING THE MAXIMUM AMOUNTS THAT MAY BE  
13 CLAIMED AS CREDITS; LIMITING THE TOTAL AMOUNT OF CREDITS THROUGH AN APPLICATION  
14 PROCESS TO THE DEPARTMENT OF REVENUE; REQUIRING REPORTS TO THE REVENUE AND  
15 TRANSPORTATION INTERIM COMMITTEE; ESTABLISHING ORGANIZATION REVIEW AND TERMINATION  
16 PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, MCA; AND  
17 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 NEW SECTION. **Section 1. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of  
22 educational improvement organizations and student scholarship organizations is to enhance the curriculum of  
23 public schools and provide parental and student choice in education by replacing the use of state general fund  
24 money with private contributions through tax replacement programs.

25  
26 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13], the following definitions  
27 apply:

28 (1) "Educational improvement organization" means a charitable organization in this state that:  
29 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26  
30 U.S.C. 501(c)(3);

1 (b) contributes at least 90% of its annual contributions as grants to eligible public schools for innovative  
2 educational programs;

3 (c) makes grants for innovative educational programs for more than one eligible public school and more  
4 than one public school district.

5 (2) "Eligible public school" means a:

6 (a) Montana public school; or

7 (b) school offering vocational-technical education to vocational-technical students that is conducted by  
8 a unit of the Montana university system, a community college, or a tribally controlled community college, as  
9 designated by the board of regents.

10 (3) "Eligible student" means a student who is a Montana resident who is 5 years of age or older on or  
11 before September 10 of the year of attendance and has not yet reached 19 years of age.

12 (4) "Innovative educational program" means an advanced academic program that is not part of the  
13 regular academic program of an eligible public school but enhances the curriculum or academic program of an  
14 eligible public school. The instruction, program, or other activities offered through an innovative educational  
15 program must include at least one of the following characteristics:

16 (a) provides different focus, methodology, skill training, or delivery, including internet-based and distance  
17 learning technologies, than is provided in a typical academic program of a public school;

18 (b) offers before or after public school hours, on weekends, as a year-round program, as an extension  
19 of the public school year, or a combination of these characteristics;

20 (c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

21 (d) uses internships and other work-based learning opportunities for a student that supplements the  
22 curriculum or academic program of a student and provides a student with the opportunity to apply the knowledge  
23 and skills learned in the academic program; or

24 (e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year  
25 or 4-year college or university.

26 (5) "Qualified education provider" means an education provider that:

27 (a) is not a public school;

28 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or  
29 national accreditation organization; or

30 (ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing

- 1 at the time of enrollment that the provider is not accredited and is not seeking accreditation;
- 2 (c) is not a home school as referred to in 20-5-109;
- 3 (d) administers a nationally recognized normative assessment test or criterion reference test and makes
- 4 the results available to the child's parents or legal guardian;
- 5 (e) satisfies the health and safety requirements prescribed by law for private schools in this state; and
- 6 (f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.
- 7 (6) "Student scholarship organization" means a charitable organization in this state that:
- 8 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
- 9 U.S.C. 501(c)(3);
- 10 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any
- 11 qualified education provider; and
- 12 (c) provides educational scholarships to eligible students without limiting student access to only one
- 13 education provider.

14

15 **NEW SECTION. Section 3. Requirements for educational improvement organization.** (1) An

16 educational improvement organization:

- 17 (a) shall obligate at least 90% of its annual revenue for grants to eligible public schools. For the purpose
- 18 of this calculation:
- 19 (i) the cost of the annual fiscal review provided for in [section 4(1)(b)] may be paid out of the total
- 20 contributions before calculation of the 90% minimum obligation amount; and
- 21 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year
- 22 must be paid out in grants within the 3 calendar years following the contribution.
- 23 (b) may not restrict or reserve grants for use at a particular eligible public school or any particular public
- 24 school district;
- 25 (c) shall provide grants only to eligible public schools;
- 26 (d) may not provide a grant to an eligible public school that exceeds 25% of annual contributions to the
- 27 organization;
- 28 (e) shall maintain separate accounts for grant funds and operating funds;
- 29 (f) may transfer funds to another educational improvement organization;
- 30 (g) shall maintain an application process under which grant applications are accepted, reviewed,

1 approved, and denied; and

2 (h) shall comply with reporting requirements in accordance with [section 4].

3 (2) An organization that fails to satisfy the conditions of this section is subject to termination as provided  
4 in [section 12].

5

6 **NEW SECTION. Section 4. Reporting requirements for educational improvement organizations.**

7 (1) Each educational improvement organization shall:

8 (a) submit a notice to the department of intent to operate as an educational improvement organization  
9 prior to accepting donations;

10 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within  
11 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar  
12 years:

13 (i) the total number and dollar value of individual and corporate contributions;

14 (ii) the total number and dollar value of grants obligated to eligible public schools and a description of  
15 each school's program;

16 (iii) the total number and dollar value of grants awarded to eligible public schools and a description of the  
17 programs funded; and

18 (iv) the cost of the annual fiscal review;

19 (c) submit the annual fiscal review report provided for in this section to the department within 150 days  
20 of the close of the calendar year.

21 (2) The department shall provide written notice to an educational improvement organization that fails to  
22 submit the annual fiscal review report required by this section, and the organization has 30 days from receipt of  
23 the notice to submit the report.

24 (3) An educational improvement organization that fails to satisfy the conditions of this section is subject  
25 to termination as provided in [section 12].

26

27 **NEW SECTION. Section 5. Requirements for student scholarship organizations.** (1) A student  
28 scholarship organization:

29 (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:

30 (i) the cost of the annual fiscal review provided for in [section 7(1)(b)] may be paid out of the total

1 contributions before calculation of the 90% minimum obligation amount; and

2 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year  
3 must be paid out in scholarships within the 3 calendar years following the contribution.

4 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular  
5 type of education provider and shall allow an eligible student to enroll with any qualified education provider of the  
6 parents' or legal guardian's choice;

7 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education  
8 provider;

9 (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the  
10 per-pupil average of total public school expenditures calculated in [section 18];

11 (e) shall ensure that the organization's average scholarship for an academic year does not exceed 30%  
12 of the per-pupil average of total public school expenditures calculated in [section 18];

13 (f) shall maintain separate accounts for scholarship funds and operating funds;

14 (g) may transfer funds to another student scholarship organization;

15 (h) shall maintain an application process under which scholarship applications are accepted, reviewed,  
16 approved, and denied; and

17 (i) shall comply with payment and reporting requirements in accordance with [sections 6 and 7].

18 (2) An organization that fails to satisfy the conditions of this section is subject to termination as provided  
19 in [section 12].

20

21 **NEW SECTION. Section 6. Tuition payment limitation.** (1) A student scholarship organization shall  
22 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian  
23 of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the  
24 parents or legal guardian that the payment was received.

25 (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from  
26 a student scholarship organization if the total amount of the awards exceeds 50% of the per-pupil average of total  
27 public school expenditures calculated in [section 18].

28

29 **NEW SECTION. Section 7. Reporting requirements for student scholarship organizations.** (1) Each  
30 student scholarship organization shall:

1 (a) submit a notice to the department of intent to operate as a student scholarship organization prior to  
2 accepting donations;

3 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within  
4 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar  
5 years:

6 (i) the total number and dollar value of individual and corporate contributions;

7 (ii) the total number and dollar value of scholarships obligated to eligible students;

8 (iii) the total number and dollar value of scholarships awarded to eligible students; and

9 (iv) the cost of the annual fiscal review;

10 (c) submit the annual fiscal review report provided for in this section to the department within 150 days  
11 of the close of the calendar year.

12 (2) The department shall provide written notice to a student scholarship organization that fails to submit  
13 the annual fiscal review report required by this section, and the organization has 30 days from receipt of the  
14 notice to submit the report.

15 (3) An organization that fails to satisfy the conditions of this section is subject to termination as provided  
16 in [section 12].

17  
18 **NEW SECTION. Section 8. Website.** (1) The department shall maintain on its website a link to a current  
19 list of all educational improvement organizations and student scholarship organizations that have provided notice  
20 pursuant to [sections 4(1)(a) and 7(1)(a)].

21 (2) The list must include:

22 (a) a statistical compilation of the information received from the educational improvement organizations  
23 and student scholarship organizations; and

24 (b) information regarding a description of the eligible public school programs that utilize grants as  
25 provided in [section 4(1)(b)(ii) and (1)(b)(iii)].

26  
27 **NEW SECTION. Section 9. Qualified education tax credit for contributions to educational**  
28 **improvement organization.** (1) A taxpayer is allowed a credit against the tax imposed by chapter 30 or 31 for  
29 donations made to an educational improvement organization in a preapproved amount as provided in this section.  
30 The donor may not direct or designate contributions to an eligible public school.

1 (2) If the credit allowed under this section is claimed by a small business corporation, as defined in  
2 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners using the same proportion  
3 used to report the corporation's or partnership's income or loss for Montana income tax purposes.

4 (3) The total amount of the tax credit under this section for a tax year may not exceed 75% of the  
5 taxpayer's income tax liability.

6 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must  
7 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

8 (5) (a) (i) The aggregate initial amount of tax credits allowed under this section is \$5 million beginning  
9 in tax year 2013.

10 (ii) Beginning in 2014, by August 1 of each year, the department shall determine the percentage that the  
11 total amount of tax credits granted for the prior tax year is of the total amount of grants awarded for that tax year.  
12 The determination must be based on the annual fiscal reviews that the educational improvement organizations  
13 have provided to the department in accordance with [section 4(1)(b)]. If the amount of tax credits exceeds 80%  
14 of the amount that was awarded in grants, the aggregate amount of tax credits allowed in this subsection (5)(a)  
15 must be increased by 30% over the amount allowed in the prior tax year. If the percentage of the amount granted  
16 for grants is less than 80% of the credits allowed, then the allowed tax credit amount remains unchanged for the  
17 next tax year.

18 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served  
19 basis.

20 (c) Before making a contribution to an educational improvement organization, a potential donor shall by  
21 October 1 of the year in which the credit is sought notify the department of the total amount of contributions that  
22 the potential donor intends to make to the educational improvement organization. The donor shall use a form that  
23 is approved by the department for the notification, and the department shall preapprove or deny the requested  
24 amount within 30 days after receiving the request from the potential donor. If within 30 days the department fails  
25 to preapprove or deny the request, the request is considered approved. To receive a tax credit under this section,  
26 a donor shall make the contribution to the educational improvement organization within 30 days after receiving  
27 notice from the department that the requested amount was preapproved or within 30 days of the date the amount  
28 was considered approved. If the potential donor does not make the contribution within the required time, the  
29 department may not include the preapproved contribution amount when calculating the limit prescribed in  
30 subsection (5)(a) and the donor may not receive the credit.

1 (d) Preapproval of contributions by the department must be based solely on the availability of tax credits  
2 subject to the aggregate total limit established in subsection (5)(a).

3 (e) To claim the tax credit under this section, a taxpayer shall attach a form that is approved by the  
4 department to the taxpayer's tax return confirming that a donation was made. The form must be signed by the  
5 educational improvement organization and include the taxpayer's name, address, tax identification number, the  
6 amount of the contribution, the date of the contribution, and the amount of the credit.

7 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for  
8 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of  
9 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

10 (a) claiming a credit under this section instead of a deduction; or

11 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for  
12 which the credit is allowed under this section.

13

14 **NEW SECTION. Section 10. Qualified education tax credit for contributions to student scholarship**  
15 **organizations.** (1) A taxpayer is allowed a credit against the tax imposed by chapter 30 or 31 for donations made  
16 to a student scholarship organization in a preapproved amount as provided in this section. The donor may not  
17 direct or designate contributions to a parent, legal guardian, or specific qualified education provider.

18 (2) If the credit allowed under this section is claimed by a small business corporation, as defined in  
19 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners using the same proportion  
20 used to report the corporation's or partnership's income or loss for Montana income tax purposes.

21 (3) The total amount of the tax credit under this section for a tax year may not exceed 75% of the  
22 taxpayer's income tax liability.

23 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must  
24 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

25 (5) (a) (i) The aggregate initial amount of tax credits allowed under this section is \$5 million beginning  
26 in tax year 2013.

27 (ii) Beginning in 2014, by August 1 of each year, the department shall determine the percentage that the  
28 total amount of tax credits granted for the prior tax year is of the total amount of scholarships awarded for that  
29 tax year. The determination must be based on the annual fiscal reviews that student scholarship organizations  
30 have provided to the department in accordance with [section 7(1)(b)]. If the amount of tax credits exceeds 80%



1 of the amount that was awarded in scholarships, the aggregate amount of tax credits allowed in this subsection  
2 (5)(a) must be increased by 30% over the amount allowed in the prior tax year. If the percentage of the amount  
3 granted for scholarships is less than 80% of the credits allowed, then the allowed tax credit amount remains  
4 unchanged for the next tax year.

5 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served  
6 basis.

7 (c) Before making a contribution to a student scholarship organization, a potential donor shall by October  
8 1 of the year in which the credit is sought notify the department of the total amount of contributions that the  
9 potential donor intends to make to the student scholarship organization. The donor shall use a form that is  
10 approved by the department for the notification, and the department shall preapprove or deny the requested  
11 amount within 30 days after receiving the request from the potential donor. If within 30 days the department fails  
12 to preapprove or deny the request, the request is considered approved. To receive a tax credit under this section,  
13 a donor shall make the contribution to the student scholarship organization within 30 days after receiving notice  
14 from the department that the requested amount was preapproved or within 30 days of the date the amount was  
15 considered approved. If the potential donor does not make the contribution within the required time, the  
16 department may not include the preapproved contribution amount when calculating the limit prescribed in  
17 subsection (5)(a) and the donor may not receive the credit.

18 (d) Preapproval of contributions by the department must be based solely on the availability of tax credits  
19 subject to the aggregate total limit established in subsection (5)(a).

20 (e) To claim the tax credit under this section, a taxpayer shall attach a form that is approved by the  
21 department to the taxpayer's tax return confirming that a donation was made. The form must be signed by the  
22 student scholarship organization and include the taxpayer's name, address, tax identification number, the amount  
23 of the contribution, the date of the contribution, and the amount of the credit.

24 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for  
25 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of  
26 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

27 (a) claiming a credit under this section instead of a deduction; or

28 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for  
29 which the credit is allowed under this section.

30

1           NEW SECTION.   **Section 11. Report to revenue and transportation interim committee --**  
2   **educational improvement organizations and student scholarship organizations.** Each biennium, the  
3   department shall provide a list to the revenue and transportation interim committee of educational improvement  
4   organizations and student scholarship organizations receiving contributions from businesses and individuals that  
5   are granted tax credits under [sections 9 and 10]. The listing must detail the tax credits utilized by corporations,  
6   individuals, small business corporations, partnerships, limited liability partnerships, and limited liability companies.

7  
8  
9           NEW SECTION.   **Section 12. Review determination -- termination -- confidentiality.** (1) Subject to  
10   subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to  
11   determining whether:

12           (a) an educational improvement organization is in compliance with [sections 3, 4, and 9]; and

13           (b) a student scholarship organization is in compliance with [sections 5 through 7 and 10].

14           (2) If an educational improvement organization or student scholarship organization is not in compliance,  
15   the department shall provide written notice of the specific failures to the organization, and the organization has  
16   30 days from the date of the notice to correct deficiencies. If the organization fails to correct all deficiencies, the  
17   department shall provide a final written notice of the failure to the organization. The organization may appeal the  
18   department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211  
19   within 30 days of the date of the notice.

20           (3) (a) If an educational improvement organization or student scholarship organization does not seek  
21   review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

22           (b) The final department decision for an educational improvement organization must provide that the  
23   educational improvement organization:

24           (i) will be removed from the list of eligible educational improvement organizations provided in [section  
25   8] and notified of the removal;

26           (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

27           (A) cease all operations as an educational improvement organization and transfer all grant account funds  
28   to a properly operating educational improvement organization; and

29           (B) provide written notice to all applicants that have been preapproved for a tax credit that the  
30   organization is not allowed to operate as an educational improvement organization and that the applicant has 45

1 days from the date the organization was removed from the eligible list to transfer preapproval status to another  
2 educational improvement organization.

3 (c) The final department decision for a student scholarship organization must provide that the student  
4 scholarship organization:

5 (i) will be removed from the list of eligible student scholarship organizations provided in [section 8] and  
6 notified of the removal;

7 (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

8 (A) cease all operations as a student scholarship organization and transfer all scholarship account funds  
9 to a properly operating student scholarship organization; and

10 (B) provide written notice to all applicants that have been preapproved for a tax credit that the  
11 organization is not allowed to operate as a student scholarship organization and that the applicant has 45 days  
12 from the date the organization was removed from the eligible list to transfer preapproval status to another student  
13 scholarship organization.

14 (4) An educational improvement organization or student scholarship organization that receives a final  
15 department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

16 (5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial  
17 review pursuant to 15-2-303.

18 (6) If an educational improvement organization or student scholarship organization files an appeal  
19 pursuant to this section, the organization may continue to operate until the decision of the court is final.

20 (7) The identity of donors who make contributions to an educational improvement organization or student  
21 scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618.

22

23 **NEW SECTION. Section 13. Rulemaking.** The department may adopt rules, prepare forms, and  
24 maintain records that are necessary to implement and administer [sections 1 through 13].

25

26 **NEW SECTION. Section 14. Qualified education individual income tax credit for contributions to**  
27 **educational improvement organization.** There is a credit against tax liability under this chapter for charitable  
28 donations made to an educational improvement organization as provided in [section 9].

29

30 **NEW SECTION. Section 15. Qualified education individual income tax credit for contributions to**

1 **student scholarship organization.** There is a credit against tax liability under this chapter for charitable  
2 donations made to a student scholarship organization as provided in [section 10].

3  
4 NEW SECTION. **Section 16. Qualified education corporate tax credit for contributions to**  
5 **educational improvement organization.** There is a credit against tax liability under this chapter for charitable  
6 donations made to an educational improvement organization as provided in [section 9].

7  
8 NEW SECTION. **Section 17. Qualified education corporate tax credit for contributions to student**  
9 **scholarship organization.** There is a credit against tax liability under this chapter for charitable donations made  
10 to a student scholarship organization as provided in [section 10].

11  
12 NEW SECTION. **Section 18. Statewide average per-pupil spending.** (1) The superintendent of public  
13 instruction shall calculate the per-pupil average of total public school expenditures in Montana for the prior school  
14 fiscal year by August 1 of the ensuing school fiscal year and make the calculation available to the public. The  
15 calculation is made by dividing total expenditures calculated in subsection (2) by total pupils calculated in  
16 subsection (3).

17 (2) Funds to be included in total school expenditures include but are not limited to:

- 18 (a) district general fund expenditures;  
19 (b) transportation;  
20 (c) bus depreciation;  
21 (d) food services;  
22 (e) tuition;  
23 (f) retirement;  
24 (g) miscellaneous programs;  
25 (h) traffic education;  
26 (i) nonoperating;  
27 (j) lease-rental agreement;  
28 (k) compensated absence fund;  
29 (l) metal mines tax reserve;  
30 (m) state mining impact;

- 1 (n) impact aid;
- 2 (o) litigation reserve;
- 3 (p) technology acquisition;
- 4 (q) flexibility fund;
- 5 (r) debt service;
- 6 (s) building reserve; and
- 7 (t) interlocal agreement.

8 (3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB  
9 average provided in 20-9-311, for Montana school districts for the previous school year.

10

11 **Section 19.** Section 15-30-2110, MCA, is amended to read:

12 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the  
13 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,  
14 and in addition includes the following:

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

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
19 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

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

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

30 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after

1 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted  
2 gross income.

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

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

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

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

12 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
13 received as defined in 15-30-2101;

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

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

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

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

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

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

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

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

- 1 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 3 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
4 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
5 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 6 (k) principal and income in a first-time home buyer savings account established in accordance with  
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
8 of a single-family residence;
- 9 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
10 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
11 beneficiary;
- 12 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
13 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 14 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
15 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
16 of the same estate or trust for the same tax period;
- 17 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch  
18 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction  
19 is not provided for federal income tax purposes;
- 20 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
21 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
22 taxpayer meet the filing requirements in 15-30-2602.
- 23 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
24 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 25 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~
- 26 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in  
27 15-31-163; and
- 28 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to  
29 [section 6].
- 30 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall

1 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
2 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
3 is effective.

4 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
5 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
6 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  
7 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
8 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must  
9 be made to determine the amount of income or loss of the partnership or small business corporation.

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

15 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section  
16 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may  
17 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital  
18 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss  
19 must be split equally on each return.

20 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and  
21 who file separate Montana income tax returns are not required to recompute allowable passive losses according  
22 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal  
23 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must  
24 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

25 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a  
26 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.  
27 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is  
28 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

29 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a  
30 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate



1 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.  
2 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted  
3 gross income.

4 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and  
5 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana  
6 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The  
7 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross  
8 income.

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

19 (11) An individual who contributes to one or more accounts established under the Montana family  
20 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
21 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for  
22 the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made  
23 by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection  
24 applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is  
25 the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a  
26 Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions  
27 that reduced adjusted gross income.

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

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

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

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

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

8 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or  
 9 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
 10 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
 11 as a licensed health care professional.

12 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of  
 13 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are  
 14 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

15 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity  
 16 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)  
 17 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results  
 18 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the  
 19 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.  
 20 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

21  
 22 **NEW SECTION. Section 20. Codification instruction.** (1) [Sections 1 through 13] are intended to be  
 23 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

24 (2) [Sections 14 and 15] are intended to be codified as an integral part of Title 15, chapter 30, part 23,  
 25 and the provisions of Title 15, chapter 30, part 23, apply to [sections 14 and 15].

26 (3) [Sections 16 and 17] are intended to be codified as an integral part of Title 15, chapter 31, and the  
 27 provisions of Title 15, chapter 31, apply to [sections 16 and 17].

28 (4) [Section 18] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions  
 29 of Title 20, chapter 9, apply to [section 18].

30

1            NEW SECTION. **Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are  
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
3 the part remains in effect in all valid applications that are severable from the invalid applications.

4

5            NEW SECTION. **Section 22. Effective date.** [This act] is effective on passage and approval.

6

7            NEW SECTION. **Section 23. Retroactive applicability.** [This act] applies retroactively, within the  
8 meaning of 1-2-109, to tax years beginning after December 31, 2012.

9

- END -