

1 HOUSE BILL NO. 175

2 INTRODUCED BY J. HAMILTON, E. MCCLAFFERTY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MEDICAL CARE SAVINGS ACCOUNT LAWS; REVISING
5 THE CONTRIBUTION LIMITS FOR MEDICAL CARE SAVINGS ACCOUNTS; ALLOWING THE USE OF
6 MEDICAL CARE SAVINGS ACCOUNT FUNDS FOR REIMBURSEMENT OF TIME USED FOR FAMILY LEAVE;
7 ALLOWING A PARENT OR CHILD TO INHERIT A MEDICAL CARE SAVINGS ACCOUNT TAX-FREE;
8 ALLOWING MEDICAL CARE SAVINGS ACCOUNT FUNDS TO BE USED FOR ELIGIBLE MEDICAL
9 EXPENSES OF ANYONE; ALLOWING MEDICAL CARE SAVINGS ACCOUNT FUNDS TO BE USED FOR
10 ELIGIBLE MEDICAL EXPENSES OF A DECEASED ACCOUNT HOLDER WITHIN 1 YEAR OF DEATH;
11 REQUIRING ANNUAL REPORTING OF THE STARTING BALANCE AND ENDING BALANCE OF THE
12 ACCOUNT; AMENDING SECTIONS 15-30-2110, 15-61-102, 15-61-202, 15-61-203, AND 15-61-204, MCA; AND
13 PROVIDING AN APPLICABILITY DATE."
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

17 **Section 1.** Section 15-30-2110, MCA, is amended to read:

18 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (14), adjusted gross income is the
19 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
20 and in addition includes the following:

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

24 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
25 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

26 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
27 reduction of Montana income tax liability as determined under subsection (15);

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

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

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

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

6 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend
7 to the extent that the dividend is not included in federal adjusted gross income.

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

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

13 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
14 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

15 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
16 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

17 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all
18 pension and annuity income received as defined in 15-30-2101;

19 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as
20 follows:

21 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
22 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
23 excess of \$33,910 as shown on the taxpayer's return;

24 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
25 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
26 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
27 as shown on their joint return;

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

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

30 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section

1 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
2 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
3 or lodging;

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

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

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

9 (j) principal and income in a medical care savings account established in accordance with 15-61-201
10 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, ~~of the taxpayer or a~~
11 ~~dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer~~ including a
12 medical care savings account inherited by a spouse, parent, or child AN IMMEDIATE FAMILY MEMBER as provided
13 in 15-61-202(7);

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

17 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
18 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
19 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
20 a designated beneficiary;

21 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
22 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

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

26 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
27 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
28 is not provided for federal income tax purposes;

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

1 taxpayer meet the filing requirements in 15-30-2602.

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

4 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero;

5 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
6 15-31-163; and

7 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
8 15-30-3104.

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

13 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
14 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
15 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
16 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
17 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
18 be made to determine the amount of income or loss of the partnership or small business corporation.

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

24 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
25 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
26 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
27 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
28 must be split equally on each return.

29 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
30 who file separate Montana income tax returns are not required to recompute allowable passive losses according

1 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
2 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
3 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

4 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
5 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
6 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
7 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

8 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
9 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
10 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
11 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
12 gross income.

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

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

28 (11) (a) An individual who contributes to one or more accounts established under the Montana family
29 education savings program or to a qualified tuition program established and maintained by another state as
30 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted

1 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
2 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
3 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
4 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
5 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
6 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
7 to withdrawals of contributions that reduced adjusted gross income.

8 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
9 15-62-208.

10 (12) (a) An individual who contributes to one or more accounts established under the Montana achieving
11 a better life experience program or to a qualified program established and maintained by another state as
12 provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross
13 income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse
14 is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may
15 jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The
16 reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an
17 account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild
18 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with
19 respect to withdrawals of contributions that reduced adjusted gross income.

20 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
21 53-25-118.

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

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

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

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

30 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment

1 program described in subsection (13)(b) as an incentive to practice in Montana.

2 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or
3 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
4 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
5 as a licensed health care professional.

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

9 (15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
10 following order as applicable:

11 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax
12 year;

13 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
14 but did not result in a reduction in state income tax liability in that prior tax year; and

15 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
16 and that reduced the taxpayer's state income tax liability in that prior tax year.

17 (16) By November 1 of each year, the department shall multiply the amount of pension and annuity
18 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
19 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
20 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
21 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
22 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec.
23 33, Ch. 457, L. 2015.)"

24

25 **Section 2.** Section 15-61-102, MCA, is amended to read:

26 **"15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following
27 definitions apply:

28 (1) "Account administrator" means:

29 (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

30 (b) a health care insurer as defined in 33-22-125;

- 1 (c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;
 2 (d) an employer if the employer has a self-insured health plan under ERISA;
 3 (e) the account holder or an employee for whose benefit the account in question is established;
 4 (f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;
 5 (g) an attorney licensed to practice law in this state;
 6 (h) a person who is an enrolled agent allowed to practice before the United States internal revenue
 7 service.

8 (2) "Account holder" means an individual who is a resident of this state and who establishes a medical
 9 care savings account or for whose benefit the account is established.

10 (3) "Consumer price index" means the consumer price index, United States city average, for all items,
 11 for all urban consumers, as published by the bureau of labor statistics of the United States department of labor.

12 ~~(3)~~(4) "Dependent" means the spouse of the employee or account holder or a child of the employee or
 13 account holder if the child is:

14 (a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is
 15 under 19 years of age;

16 (b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other
 17 care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated,
 18 self-supporting, married, or a member of the armed forces of the United States; or

19 (c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

20 ~~(4)~~(5) "Eligible medical expense" means:

21 (a) an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d)
 22 for the employee or account holder or a dependent of the employee or account holder;

23 (b) an expense for long-term care, including long-term care insurance or a long-term care annuity; and

24 (c) a family leave expense.

25 ~~(5)~~(6) "Employee" means an employed individual for whose benefit or for the benefit of whose
 26 dependents a medical care savings account is established. The term includes a self-employed individual.

27 ~~(6)~~(7) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

28 (8) "Family leave expense" means:

29 (a) an expense, calculated monthly, approximating wages lost while caring for an immediate family
 30 member FOR THE PURPOSES ALLOWED UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993, 29 U.S.C. 2601, ET SEQ.,

1 AND 29 CFR, PART 825. A family leave expense is calculated by multiplying the hourly wage that the caregiver
 2 would have been paid by the number of hours that would typically be spent working but were instead spent caring
 3 for an immediate family member. The hourly wage for a person paid a salary is the gross annual wage divided
 4 by 2,087.

5 (b) a premium paid for family leave insurance.

6 (9) "IMMEDIATE FAMILY MEMBER" MEANS A PARENT, SPOUSE, OR CHILD.

7 (7)(9)(10) "Medical care savings account" or "account" means an account established with an account
 8 administrator in this state pursuant to 15-61-201."

9

10 **Section 3.** Section 15-61-202, MCA, is amended to read:

11 **"15-61-202. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal
 12 provided for in subsection (2) contributed annually by an employee or account holder to an account and all
 13 interest or other income on that principal may be excluded from the adjusted gross income of the employee or
 14 account holder and are exempt from taxation, in accordance with 15-30-2110(2)(j), as long as the principal and
 15 interest or other income is contained within the account, distributed to a spouse, parent, or child AN IMMEDIATE
 16 FAMILY MEMBER as provided in subsection (7), or withdrawn only for payment of eligible medical expenses ~~or for~~
 17 ~~the long-term care of the employee or account holder or a dependent of the employee or account holder~~ or for
 18 paying the expenses of administering the account. Any part of the principal or income, or both, withdrawn from
 19 an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the
 20 account and used for a purpose other than an eligible medical expense ~~or the long-term care of the employee~~
 21 ~~or account holder or a dependent of the employee or account holder~~ or for paying the expenses of administering
 22 the account.

23 (2) (a) An employee or account holder may ~~exclude as an annual contribution in 1 year~~ annually
 24 contribute not more than ~~\$3,000;~~

25 (i) \$3,500 in tax year 2018;

26 (ii) \$4,000 in tax year 2019;

27 (iii) an amount determined for each subsequent tax year by multiplying the amount in subsection (2)(c)(ii)
 28 (2)(A)(ii) by an inflation factor determined by dividing the consumer price index for June of the previous tax year
 29 by the consumer price index for June 2018 and rounding the resulting figure to the nearest \$500 increment.

30 (b) There is no limitation on the amount of funds and interest or other income on those funds that may

1 be retained tax-free within an account.

2 (3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount
3 contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude
4 pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account.

5 ~~(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded
6 pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not
7 exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may
8 exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-2110(2)(j) in
9 a subsequent year any part of \$3,000 per year not previously excluded.~~

10 ~~(5)~~(4) The transfer of money in an account owned by one employee or account holder to the account
11 of another employee or account holder ~~within the~~ WHO IS AN immediate family MEMBER of the first employee or
12 account holder does not subject either employee or account holder to tax liability under this section. Amounts
13 contained within the account of the receiving employee or account holder are subject to the requirements and
14 limitations provided in this section.

15 ~~(6)~~(5) The employee or account holder who establishes the account is the owner of the account. An
16 employee or account holder may withdraw money in an account and deposit the money in another account with
17 a different or with the same account administrator without incurring tax liability.

18 ~~(7)~~(6) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing
19 for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account
20 holder does not subject the employee or account holder to tax liability.

21 ~~(8)~~(7) Within 30 days of being furnished proof of the death of the employee or account holder, the
22 account administrator shall distribute the principal and accumulated interest or other income in the account to the
23 estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223.
24 ~~A spouse, child, or parent~~ AN IMMEDIATE FAMILY MEMBER who receives the distribution provided for in this
25 subsection becomes the account holder and may:

26 (a) within 1 year of the death of the employee or account holder from which the account was inherited,
27 withdraw funds for eligible medical expenses incurred by the deceased; and

28 (b) contribute to the account, retain money in the account tax-free, and withdraw funds from the account
29 as provided in this chapter."

30

1 **Section 4.** Section 15-61-203, MCA, is amended to read:

2 **"15-61-203. Withdrawal of funds from account for purposes other than eligible medical expenses**
 3 **~~and long-term care.~~** (1) An employee or account holder may withdraw money from the individual's medical care
 4 savings account for any purpose other than an eligible medical expense ~~or the long-term care of the employee~~
 5 ~~or account holder or a dependent of the employee or account holder~~ or for paying the expenses of administering
 6 the account only on the last business day of the account administrator's business year. Money withdrawn from
 7 an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

8 (2) ~~If the employee or account holder withdraws money from the account~~ There is a penalty equal to 10%
 9 of the amount of a withdrawal for a withdrawal other than for eligible medical expenses or ~~long-term care for~~
 10 expenses of administering the account or other than on the last business day of the account administrator's
 11 business year, ~~the~~ The administrator ~~shall~~ may withhold the penalty from the amount of the withdrawal and, on
 12 behalf of the employee or account holder, pay ~~as a~~ the penalty to the department of revenue ~~an amount equal~~
 13 ~~to 10% of the amount of the withdrawal.~~ Payments made to the department pursuant to this section must be
 14 deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as
 15 ordinary income of the employee or account holder.

16 (3) For the purposes of this section, "last business day of the account administrator's business year",
 17 as applied to an account administrator who is also the account holder or an employee, means the last weekday
 18 in December."
 19

20 **Section 5.** Section 15-61-204, MCA, is amended to read:

21 **"15-61-204. Administration of account.** (1) (a) An account administrator shall administer the medical
 22 care savings account from which the payment of claims is made and, except as provided in subsection (1)(b),
 23 has a fiduciary duty to the person for whose benefit the account is administered.

24 (b) Except for reporting and remitting of penalties to the department of revenue, a financial institution
 25 shall administer a medical care savings account as a regular deposit or share account and has the same rights
 26 and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other
 27 provision of this chapter, a financial institution is not responsible for determining whether a medical expense is
 28 eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are
 29 for eligible and nonreimbursable medical expenses.

30 (2) Not more than 30 days after an account administrator begins to administer an account, the account

1 administrator shall notify in writing each employee and account holder on whose behalf the account administrator
2 administers an account of the date of the last business day of the account administrator's business year.

3 (3) An account administrator may use funds held in a medical care savings account only for the purpose
4 of paying ~~the eligible medical expenses of the employee or account holder or the employee's or account holder's~~
5 ~~dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the~~
6 ~~employee or account holder or a dependent of the employee or account holder, or for~~ paying the expenses of
7 administering the account. Funds held in a medical care savings account may not be used to pay medical
8 expenses or for a long-term care insurance policy or annuity ~~of the employee or account holder or a dependent~~
9 ~~of the employee or account holder~~ that is otherwise reimbursable, including medical expenses payable pursuant
10 to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health
11 coverage policy, certificate, or contract.

12 (4) The employee or account holder may submit documentation of eligible medical expenses paid by the
13 employee or account holder ~~or a dependent of the employee or account holder~~ in the tax year to the account
14 administrator, and the account administrator shall reimburse the employee or account holder from the employee's
15 or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical
16 care savings account was made for an eligible medical expense is upon the account holder and not upon the
17 account administrator or the employer of the account holder.

18 (5) The employee or account holder may submit documentation of the purchase of long-term care
19 insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or
20 account holder to the account administrator, and the account administrator shall reimburse the employee or
21 account holder from the employee's or account holder's account for payments made for the purchase of the
22 insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the
23 account for the payment of long-term care insurance premiums or an annuity.

24 (6) The employee or account holder must annually report to the department the starting balance and
25 ending balance of a medical care savings account.

26 ~~(6)~~(7) If an employer makes contributions to a medical care savings account on a periodic installment
27 basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses
28 incurred that exceeds the amount in the employee's medical care savings account at the time that the expense
29 is incurred if the employee agrees to repay the advance from future installments or when the employee ceases
30 employment with the employer.

