

HOUSE BILL NO. 574

INTRODUCED BY G. HERTZ

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR BUSINESS DEDUCTIONS ON A STATE INCOME TAX RETURN WHERE THE DEDUCTION HAS BEEN REDUCED AS A RESULT OF CALCULATING AND CLAIMING A FEDERAL CREDIT BASED ON THE DEDUCTION; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

"15-30-2110. Adjusted gross income. (1) Subject to subsection (14), 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 as determined under subsection (15);

(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), the amount of any dividend



1 to the extent that the dividend is not included in federal adjusted gross income.

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

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

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

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

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

13 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as
14 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 \$33,910 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 \$33,910
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 or earnings withdrawn from a family education savings account or from a qualified tuition
10 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
11 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
12 a designated beneficiary;
- 13 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
14 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 15 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
16 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
17 of the same estate or trust for the same tax period;
- 18 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
19 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
20 is not provided for federal income tax purposes;
- 21 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
22 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
23 taxpayer meet the filing requirements in 15-30-2602.
- 24 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
25 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 26 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero;
- 27 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
28 15-31-163; and
- 29 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
30 15-30-3104.

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

5 (4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
6 business deductions:

7 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
8 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
9 salaries paid regardless of the credit taken; and

10 (ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the
11 amount of the business expense paid when there is no corresponding state income tax credit or deduction,
12 regardless of the credit taken.

13 (b) ~~The deduction~~ deductions in subsection (4)(a) must be made in the year that the wages, ~~and salaries,~~
14 or business expenses were used to compute the credit. In the case of a partnership or small business
15 corporation, the ~~deduction~~ deductions in subsection (4)(a) must be made to determine the amount of income or
16 loss of the partnership or small business corporation.

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

22 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
23 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
24 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
25 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
26 must be split equally on each return.

27 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
28 who file separate Montana income tax returns are not required to recompute allowable passive losses according
29 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
30 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must

1 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

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

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

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

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

26 (11) (a) An individual who contributes to one or more accounts established under the Montana family
27 education savings program or to a qualified tuition program established and maintained by another state as
28 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
29 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
30 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses

1 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
2 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
3 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
4 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
5 to withdrawals of contributions that reduced adjusted gross income.

6 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
7 15-62-208.

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

18 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
19 53-25-118.

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

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

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

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

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

30 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or

1 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
 2 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
 3 as a licensed health care professional.

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

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

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

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

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

15 (16) 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 the following tax year, rounded to the nearest \$10. The resulting amounts are effective
 18 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
 19 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
 20 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec.
 21 33, Ch. 457, L. 2015.)"

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23 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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25 NEW SECTION. **Section 3. Applicability.** [This act] applies to tax years beginning after December 31,
 26 2016.

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