

HOUSE BILL NO. 616

INTRODUCED BY A. HERTZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA ENTREPRENEUR INCENTIVE
5 PLAN ACT; ALLOWING A TAXPAYER TO ELECT TO HAVE CERTAIN NET LONG-TERM CAPITAL GAINS
6 THAT ARE ATTRIBUTABLE TO THE SALE OR EXCHANGE OF CAPITAL STOCK OF A CORPORATION
7 ACQUIRED ON ACCOUNT OF EMPLOYMENT BY THE CORPORATION OR WHILE EMPLOYED BY THE
8 CORPORATION TO BE TAXED AT A SINGLE TAX RATE; PROVIDING RULEMAKING AUTHORITY;
9 AMENDING SECTION 15-30-2153, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
10 RETROACTIVE APPLICABILITY DATE."

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

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14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana
15 Entrepreneur Incentive Plan Act".

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17 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following definitions
18 apply:

19 (1) (a) "Capital stock" means voting or nonvoting common or preferred stock that is publicly traded by
20 a corporation.

21 (b) The term does not include stock rights, stock warrants, stock options, or debt securities.

22 (2) (a) "Corporation" means a corporation, as defined in 15-30-2101, including a unitary business, as
23 described in 15-31-312.

24 (b) The term includes a predecessor or successor corporation.

25 (3) "Net long-term capital gain" has the meaning provided in section 1222 of the Internal Revenue Code,
26 26 U.S.C. 1222.

27 (4) "Predecessor or successor corporation" means a corporation that was party to a reorganization that
28 was entirely or substantially tax-free and that occurred during or after the employment of the individual making
29 an election under [section 3].

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1 **NEW SECTION. Section 3. Election for taxation of qualifying net capital gains -- rules.** (1) Subject
2 to the provisions of this section, an individual or a trust qualifying under subsection (4)(b) may elect to have the
3 net long-term capital gain from the sale or exchange of capital stock of a corporation acquired by the individual
4 on account of employment by the corporation or while employed by the corporation taxed as provided in [section
5 4]. The elected capital stock of a qualifying individual or trust is not subject to the tax imposed under 15-30-2103
6 or 15-30-2151 and is not eligible for a capital gains credit under 15-30-2301.

7 (2) During the tax year in which the election is made by the taxpayer, the corporation must have:

8 (a) subject to subsection (3)(a), at least 36 consecutive months of business activity in the state;

9 (b) a headquarters in Montana by having more than 50% of its corporate officers residing in the state
10 during the calendar year;

11 (c) at least 30% of its employees located within the state during the calendar year;

12 (d) at least 25 full-time employees residing within the state at all times during the previous 36 months;

13 and

14 (e) at least 25 shareholders, with at least 3 shareholders who are not related to each other and each of
15 whom owns at least 10% of the capital stock of the corporation.

16 (3) (a) For the purpose of subsection (2)(a), an individual may make a contingent election if the
17 corporation does not have at least 36 consecutive months of business activity in the state. However, an individual
18 that makes a contingent election is not taxed as provided in [section 4] until the corporation satisfies the
19 requirement of subsection (2)(a).

20 (b) For the purposes of subsection (2)(e), three persons are related if:

21 (i) one person owns capital stock, either directly or indirectly, in the corporation that if directly owned
22 would be attributed to another person under section 318 of the Internal Revenue Code, 26 U.S.C. 318; or

23 (ii) one person is the brother, sister, aunt, uncle, cousin, niece, or nephew of another person who owns
24 capital stock, either directly or indirectly, in the corporation.

25 (4) (a) The election referred to in subsection (1) applies to a sale or exchange of capital stock in any tax
26 year if the sale or exchange of capital stock is in the same corporation for which the election was made.

27 (b) An election applies to the sale or exchange of capital stock of the corporation that is transferred by
28 inter vivos gift from the individual to the individual's spouse or children or to a trust for the benefit of the
29 individual's spouse or children if the capital stock was acquired as provided in subsection (1). This subsection
30 (4)(b) applies, in the case of a spouse, only if the spouse was married to the individual on the date of sale or

1 exchange of capital stock or on the date of death of the individual.

2 (c) If the individual dies without making an election, the surviving spouse or the estate of the individual
3 may make the election for capital stock that would have qualified under subsection (4)(b).

4 (5) An election is made by including a statement with the taxpayer's income tax return or an amended
5 income tax return on a form prescribed by the department. The election must be submitted after the close of the
6 calendar year in which the stock was acquired, subject to the same filing requirements as those imposed under
7 15-30-2604. The statement must identify the corporation that issued the stock.

8 (6) The department shall adopt rules to implement and administer [sections 1 through 4].

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10 **NEW SECTION. Section 4. Tax on qualifying net capital gains.** (1) Subject to the conditions of
11 [section 3], an alternative tax rate is imposed on the net long-term capital gain that is attributable to the sale or
12 exchange of capital stock of a corporation.

13 (2) The tax is 2% of the net long-term capital gain.

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15 **Section 5.** Section 15-30-2153, MCA, is amended to read:

16 **"15-30-2153. Determination of tax of estates and trusts.** The amount of tax must be determined from
17 taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying
18 the rates contained in 15-30-2103 or, if applicable, the rate contained in [section 4]. Credits allowed individuals
19 under Title 15, chapter 30, also apply to estates and trusts when applicable."

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21 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified
22 as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through
23 4].

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25 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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27 **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the
28 meaning of 1-2-109, to tax years beginning after December 31, 2016.

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