

SENATE BILL NO. 347

INTRODUCED BY J. HINKLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE INCOME TAX DEDUCTION FOR TRAVEL EXPENSES INCURRED WHILE AWAY FROM HOME; PROVIDING A TAX HOME ELECTION FOR TAXPAYERS WITH INDEFINITE AND UNPREDICTABLE WORK PATTERNS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2131, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-30-2131, MCA, is amended to read:

"15-30-2131. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

- (i) items provided for in 15-30-2133;
- (ii) state income tax paid;
- (iii) premium payments for medical care as provided in subsection (1)(g)(i);
- (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and
- (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

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

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

- (i) expenses for household and dependent care services necessary for gainful employment incurred for:
 - (A) a dependent under 15 years of age for whom an exemption can be claimed;
 - (B) a dependent as allowable under 15-30-2114(5), except that the limitations for age and gross income

1 do not apply, who is unable to provide self-care because of physical or mental illness; and
2 (C) a spouse who is unable to provide self-care because of physical or mental illness;
3 (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred
4 to enable the taxpayer to be gainfully employed:
5 (A) household services that are attributable to the care of the qualifying individual; and
6 (B) care of an individual who qualifies under subsection (1)(c)(i);
7 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household
8 is furnished by an individual or, if the individual is married during the applicable period, is furnished by the
9 individual and the individual's spouse;
10 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
11 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during
12 the year only to the extent that the expenses do not exceed \$4,800;
13 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
14 employment-related expenses only if they are incurred for services in the taxpayer's household, except that
15 employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if
16 incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the
17 expenses incurred during the year do not exceed:
18 (I) \$2,400 in the case of one qualifying individual;
19 (II) \$3,600 in the case of two qualifying individuals; and
20 (III) \$4,800 in the case of three or more qualifying individuals;
21 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during
22 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by
23 one-half of the excess of the combined adjusted gross income over \$18,000;
24 (vi) for purposes of this subsection (1)(c):
25 (A) married couples shall file a joint return or file separately on the same form;
26 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred
27 are deductible only if:
28 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent
29 that they are a direct result of the employment; or
30 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

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

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

5 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year
6 and payments made to an individual with respect to whom a deduction is allowable under 15-30-2114(5) are not
7 deductible as employment-related expenses;

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

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

13 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to
14 the conditions set forth in 15-30-2143;

15 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
16 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-2366, for:

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

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

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

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

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

25 ~~and~~

26 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
27 81-7-118, or 81-7-201; and

28 (j) unreimbursed travel expenses incurred by a taxpayer in carrying on a trade or business when a
29 taxpayer makes a tax home election as provided in subsection (3).

30 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home

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

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

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

10 (3) (a) A taxpayer that is working more than 50 miles away from the taxpayer's primary residence for a
11 continued duration may make a tax home election with the department for the purpose of claiming unreimbursed
12 travel expenses that are otherwise allowable as a trade or business expense under this section. If a taxpayer
13 makes a valid tax home election:

14 (i) the taxpayer's primary residence is considered the taxpayer's home; and

15 (ii) the taxpayer is considered to be away from home in the pursuit of a trade or business for each day
16 the taxpayer is more than 50 miles away from home.

17 (b) For the purpose of subsection (3)(a), a continued duration may exceed a period of 1 year if the nature
18 of the taxpayer's employment is indefinite with unpredictable work patterns. Employment that satisfies this criteria
19 includes but is not limited to employment in the construction industry and employment involving the extraction
20 of oil, gas, coal, or other minerals."

21
22 **NEW SECTION. Section 2. Applicability.** [This act] applies to tax years beginning after December 31,
23 2017.

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