

HOUSE BILL NO. 88

INTRODUCED BY K. ABBOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS; CONTINUING THE DEDUCTION FOR CONTRIBUTIONS TO ABLE ACCOUNTS MAINTAINED BY ANOTHER STATE; ALLOWING RESIDENTS OF ANOTHER STATE TO USE MONTANA'S ABLE PROGRAM; AMENDING SECTIONS 15-30-2110, 53-25-104, AND 53-25-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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

1 of the same estate or trust for the same tax period; and

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

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

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

9 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
10 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

11 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
12 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

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

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

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

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

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

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

26 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
27 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
28 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
29 or lodging;

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

- 1 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
2 employee under federal law;
- 3 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
4 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 5 (j) principal and income in a medical care savings account established in accordance with 15-61-201
6 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care
7 savings account inherited by an immediate family member as provided in 15-61-202(6);
- 8 (k) principal and income in a first-time home buyer savings account established in accordance with
9 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
10 of a single-family residence;
- 11 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
12 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
13 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
14 a designated beneficiary;
- 15 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
16 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 17 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
18 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
19 of the same estate or trust for the same tax period;
- 20 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
21 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
22 is not provided for federal income tax purposes;
- 23 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
24 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
25 taxpayer meet the filing requirements in 15-30-2602.
- 26 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
27 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 28 (r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
29 15-31-163;
- 30 (s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to

1 15-30-3104; and

2 (t) a payment received by a private landowner for providing public access to public land pursuant to Title
3 76, chapter 17, part 1.

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

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

10 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
11 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
12 salaries paid regardless of the credit taken; or

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

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

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

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

30 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and

1 who file separate Montana income tax returns are not required to recompute allowable passive losses according
2 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
3 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
4 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

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

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

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

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

29 (11) (a) An individual who contributes to one or more accounts established under the Montana family
30 education savings program or to a qualified tuition program established and maintained by another state as

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

9 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
10 15-62-208.

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

21 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
22 53-25-118.

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

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

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

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

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

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

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

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

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

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

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

18 (16) By November 1 of each year, the department shall multiply the amount of pension and annuity
19 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
20 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
21 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
22 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
23 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(s) terminates December 31, 2023--sec.
24 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

25

26 **Section 2.** Section 53-25-104, MCA, is amended to read:

27 **"53-25-104. Program administration -- rulemaking.** (1) If the department creates the Montana
28 achieving a better life experience program, it shall ensure that the program meets the requirements for an
29 achieving a better life experience program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.
30 The program administrator may request a private letter ruling from the internal revenue service or the United

1 States secretary of health and human services and shall take any necessary steps to ensure that the program
2 qualifies under federal law.

3 (2) The department may contract with an independent service provider as program administrator, in
4 consultation with the committee. In considering potential independent service providers, the department shall
5 consider each prospective provider's prior experience with disabled individuals and programs for disabled
6 individuals, along with its other qualifications. If the department appoints one of its employees to act as program
7 administrator, the department may contract with independent service providers to provide services including but
8 not limited to establishing accounts, providing information about investment choices, meeting notice requirements,
9 providing account statements, and other services typically utilized by investment and savings plans. The
10 department may require participating financial institutions to pay the costs of the independent service provider.

11 ~~(3) The department may implement the program by contracting with another state as provided under 26~~
12 ~~U.S.C. 529A(e)(7).~~ If the department creates the program, it shall:

13 (a) establish by rule the terms and conditions of the program subject to the requirements of this chapter
14 and section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

15 (b) as required under section 529A(d) of the Internal Revenue Code, 26 U.S.C. 529A(d), require the
16 program administrator to submit:

17 (i) upon the establishment of each account, a notice to the United States secretary of the treasury
18 containing the name and state of residence of the designated beneficiary and any other information the secretary
19 may require; and

20 (ii) electronically on a monthly basis to the United States commissioner of social security, statements on
21 the relevant distributions and account balances of all accounts in the state.

22 (4) If the department creates the Montana achieving a better life experience program, the department
23 may ~~contract with other states~~ to allow the residents of ~~those~~ other states access to the program.

24 ~~(5) If the department contracts with another state to allow Montana residents access to the other state's~~
25 ~~program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C.~~
26 ~~529A."~~

27

28 **Section 3.** Section 53-25-109, MCA, is amended to read:

29 **"53-25-109. Program requirements -- application -- establishment of account -- contributions. (1)**

30 The program must be operated through use of accounts in the trust established by account owners. Payments

1 to the trust for participation in the program must be made by or on behalf of account owners pursuant to
2 participating trust agreements. A person who wishes to participate in the program and open an account into which
3 funds will be deposited to pay the qualified disability expenses of a designated beneficiary shall:

4 (a) enter into a participating trust agreement pursuant to which an account of the trust will be established;

5 (b) complete an application on a form prescribed by the department that includes:

6 (i) the name, address, and social security number or employer identification number of the contributor;

7 (ii) the name, address, and social security number of the account owner if the account owner is not the
8 contributor;

9 (iii) the name, address, and social security number of the designated beneficiary;

10 (iv) the certification relating to no excess contributions adopted by the department;

11 (v) the designation of the financial institution with which the funds in the account will be invested; and

12 (vi) any other information required by the department;

13 (c) pay the one-time application fee established by the department;

14 (d) make the minimum contribution required by the department; and

15 (e) designate the type of account to be opened if more than one type of account is offered.

16 ~~(2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that
17 has entered into a contract with Montana to provide its residents access to the program.~~

18 ~~(3)(2)~~ Each account must be maintained separately from each other account under the program.

19 ~~(4)(3)~~ Separate records and accounting must be maintained for each account for each designated
20 beneficiary.

21 ~~(5)(4)~~ Contributions to an account are subject to the requirements of section 529A(b)(2) of the Internal
22 Revenue Code, 26 U.S.C. 529A(b)(2), prohibiting noncash contributions and contributions in excess of the annual
23 contribution limit.

24 ~~(6)(5)~~ A contributor to, account owner of, or designated beneficiary of an account may not direct the
25 investment of any contributions to an account or the earnings generated by an account in violation of section
26 529A of the Internal Revenue Code, 26 U.S.C. 529A, and may not pledge the interest of an account or use an
27 interest in an account as security for a loan.

28 ~~(7)(6)~~ The financial institution shall provide statements to account owners whose accounts are invested
29 with the institution at least once each year within 31 days after the 12-month period to which they relate. Each
30 statement must identify the contributions made during the preceding 12-month period, the total contributions

1 made through the end of the period, the value of the account as of the end of the period, distributions made during
2 the period, and any other matters that the department requires to be reported to the account owner.

3 ~~(8)(7)~~ Statements and information returns relating to accounts must be prepared and filed to the extent
4 required by federal or state tax law or by administrative rule.

5 ~~(9)(8)~~ Application fees provided for in subsection (1)(c) must be deposited in the state special revenue
6 fund to the credit of the department for the administration of the achieving a better life experience program."

7

8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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