

SENATE BILL NO. 217

INTRODUCED BY D. HOWARD

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF SOCIAL SECURITY BENEFITS; MODIFYING THE FEDERAL CALCULATION FOR TAXATION OF SOCIAL SECURITY BENEFITS ON A STATE RETURN; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE 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; and
- 2 (h) certain social security and tier 1 retirement benefits as determined under subsection (5).
- 3 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
- 4 include the following, which are exempt from taxation under this chapter:
- 5 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
- 6 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
- 7 from taxation by Montana under federal law;
- 8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
- 9 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);
- 10 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
- 11 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- 12 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all
- 13 pension and annuity income received as defined in 15-30-2101;
- 14 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as
- 15 follows:
- 16 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
- 17 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
- 18 excess of \$33,910 as shown on the taxpayer's return;
- 19 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
- 20 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
- 21 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
- 22 as shown on their joint return;
- 23 (d) all Montana income tax refunds or tax refund credits;
- 24 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 25 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
- 26 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
- 27 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
- 28 or lodging;
- 29 (g) all benefits received under the workers' compensation laws;
- 30 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the

1 employee under federal law;

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

4 (j) principal and income in a medical care savings account established in accordance with 15-61-201
5 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care
6 savings account inherited by an immediate family member as provided in 15-61-202(6);

7 (k) principal and income in a first-time home buyer savings account established in accordance with
8 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
9 of a single-family residence;

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

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

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

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

22 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
23 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
24 taxpayer meet the filing requirements in 15-30-2602.

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

27 (r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
28 15-31-163;

29 (s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
30 15-30-3104; and

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

3 (u) certain social security and tier 1 retirement benefits as determined under subsection (5).

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~~ Taxpayers who are required to include part of their social
21 security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income ~~may split the~~
22 ~~federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad~~
23 ~~retirement benefits when they file separate Montana income tax returns. The federal base must be split equally~~
24 ~~on the Montana return~~ shall calculate the amount included in Montana adjusted gross income as provided for in
25 section 86 of the Internal Revenue Code, 26 U.S.C. 86, except that:

26 (a) for each taxpayer filing singly or head of household, "base amount" means \$30,000 and "adjusted
27 base amount" means \$39,000;

28 (b) in the case of married taxpayers filing jointly, "base amount" means \$60,000 and "adjusted base
29 amount" means \$72,000; and

30 (c) for each taxpayer filing married filing separately, "base amount" means \$30,000 and "adjusted base

1 amount" means \$36,000.

2 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
3 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
4 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
5 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
6 must be split equally on each return.

7 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
8 who file separate Montana income tax returns are not required to recompute allowable passive losses according
9 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
10 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
11 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

12 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
13 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
14 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
15 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

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

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

26 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
27 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
28 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
29 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
30 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the

1 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
2 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
3 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
4 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
5 or expected to last at least 12 months.

6 (11) (a) An individual who contributes to one or more accounts established under the Montana family
7 education savings program or to a qualified tuition program established and maintained by another state as
8 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
9 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
10 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
11 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
12 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
13 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
14 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
15 to withdrawals of contributions that reduced adjusted gross income.

16 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
17 15-62-208.

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

28 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
29 53-25-118.

30 (13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection

1 (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

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

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

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

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

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

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

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

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

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

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

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

1 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

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

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5 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, to tax years beginning after December 31, 2018.

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- END -