

1 SENATE BILL NO. 184

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5 BY REQUEST OF THE GOVERNOR

6

7 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA ENTREPRENEUR MAGNET
8 ACT; PROVIDING TAXPAYERS WITH CERTAIN NET LONG-TERM CAPITAL GAINS THAT ARE
9 ATTRIBUTABLE TO THE SALE OR EXCHANGE OF CAPITAL STOCK OF A CORPORATION ACQUIRED
10 ON ACCOUNT OF EMPLOYMENT BY THE CORPORATION OR WHILE EMPLOYED BY THE
11 CORPORATION TO BE TAXED AT A SINGLE TAX RATE; ~~PROVIDING RULEMAKING AUTHORITY;~~
12 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2103 AND 15-30-2153, MCA; AND
13 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
14

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

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17 NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana
18 Entrepreneur Magnet Act".

19

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

22 (1) (a) "Capital stock" means voting or nonvoting common or preferred stock acquired as the result of
23 employment or service as an employee or director with a corporation.

24 (b) The term does not include stock rights or debt securities.

25 (2) (a) "Corporation" means a corporation, as defined in 15-30-2101, including a unitary business, as
26 described in 15-31-301.

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

28 (c) THE TERM DOES NOT INCLUDE EITHER A BUSINESS ENTITY OR A BUSINESS ENTITY WITH A FINANCIAL

1 INTEREST IN ANOTHER BUSINESS ENTITY THAT IS DIRECTLY OR INDIRECTLY ENGAGED IN A BUSINESS ACTIVITY THAT IS
 2 ILLEGAL UNDER FEDERAL LAW, REGARDLESS OF HOW THE BUSINESS ENTITY IS ORGANIZED.

3 (3) "Net long-term capital gain" has the meaning provided in section 1222(7) of the Internal Revenue
 4 Code, 26 U.S.C. 1222(7).

5 (4) "Predecessor or successor corporation" means a corporation that was party to a reorganization
 6 that was entirely or substantially tax-free and that occurred during or after the employment of an individual
 7 claiming the rate under [section 4].

8
 9 NEW SECTION. Section 3. Taxation of qualifying net capital gains from sale of capital stock --

10 conditions --rulemaking -- RULEMAKING. (1) For a taxpayer to qualify for the tax rate under [section 4], as of
 11 the date on which the sale or exchange of capital stock is made by the taxpayer, the corporation must have:

12 (a) at least 60 consecutive months of new business activity in the state, with the first activity occurring
 13 on or after January 1, 2021;

14 (b) more than 50% of its corporate officers residing in the state for the previous 36 months;

15 (c) at least 30% of its employees residing in the state for the previous 12 months; and

16 (d) at least 25 full-time employees residing in the state for the previous 36 months.

17 (2) In order for a taxpayer to qualify for the tax rate under [section 4], the corporation whose capital
 18 stock was sold or exchanged may not be organized primarily for the purpose of land or real estate investment
 19 and in no case may more than 50% of the capital gain from the sale be attributable to gains on real property.

20 ~~(3) The department shall adopt rules to implement and administer [sections 1 through 4].~~

21 (3) THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT AND ADMINISTER [SECTIONS 1 THROUGH 4].

22
 23 NEW SECTION. Section 4. Tax on qualifying net capital gains. Subject to the conditions of
 24 [section 3], an alternative tax rate of 0% is imposed on the net long-term capital gain that is attributable to the
 25 sale or exchange of capital stock of a corporation.

26

27 **Section 5.** Section 15-30-2103, MCA, is amended to read:

28 **"15-30-2103. Rate of tax.** (1) ~~There~~ Except as provided in [section 4], there must be levied, collected,

1 and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance
 2 for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- 3 (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- 4 (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- 5 (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- 6 (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- 7 (e) on the next \$3,000 of taxable income or any part of that income, 5%;
- 8 (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- 9 (g) on any taxable income in excess of \$17,400 or any part of that income, 6.9%.

10 (2) By November 1 of each year, the department shall multiply the bracket amount contained in
 11 subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest
 12 \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for
 13 imposition of the tax in subsection (1) of this section."

14

15 **Section 6.** 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
 17 from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by
 18 applying the rates contained in 15-30-2103 or, if applicable, the rate contained in [section 4]. Credits allowed
 19 individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

20

21 NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 4] are intended to be
 22 codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections
 23 1 through 4].

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

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27 NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the
 28 meaning of 1-2-109, to income tax years beginning after December 31, 2020.

