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HOUSE BILL NO. 447

INTRODUCED BY M. THANE, E. MCCLAFFERTY, J. COHENOUR, M. LANG, J. TREBAS, T. WELCH, B. BEARD, C. KEOGH, A. BUCKLEY, S. O'BRIEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR EXCEPTIONS TO IMPOSITION OF INCOME TAX ON CERTAIN NONRESIDENTS AND WITHHOLDING BY CERTAIN EMPLOYERS FOR NONRESIDENT INCOME IN THE STATE; PROVIDING EXCEPTIONS TO EMPLOYER WITHHOLDING PENALTIES; AMENDING SECTIONS 15-30-2104, 15-30-2502, 15-30-2503, 15-30-2504, AND 15-30-2602, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Nonresident compensation -- exclusion.** (1) Except as provided in subsection (2), compensation subject to withholding pursuant to Title 15, chapter 30, part 25, without regard to [section 2], that is received by a nonresident for employment duties performed in this state, is excluded from Montana source income if:

- (a) the nonresident performed employment duties in more than one state during the year;
  - (b) the nonresident is present in this state to perform employment duties for not more than 30 days during the tax year in which the compensation is received, where presence in this state for any part of a day constitutes presence for that day unless the presence is purely for purposes of transit through the state; and
  - (c) the nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax.
- (2) This section does not apply to compensation received by a person:
- (a) who is a professional athlete or member of a professional athletic team;
  - (b) who is a professional entertainer who performs services in the professional performing arts;
  - (c) of prominence who performs services for compensation on a per-event basis;
  - (d) who receives lottery winnings on a lottery ticket purchased in Montana;
  - (e) who performs construction services to improve real property, predominantly on construction

1 sites, as a laborer;

2 (f) who is a key employee for the year immediately preceding the current tax year; or

3 (g) who is a qualified production employee.

4 (3) This section does not prevent the operation, renewal, or initiation of any agreement with the  
5 taxing authorities of states contiguous to this state pursuant to 15-30-2621.

6 (4) This section creates an exclusion from nonresident compensation under certain de minimis  
7 circumstances and has no application to this state's jurisdiction to impose a tax under this chapter or any other  
8 tax imposed in this state on a taxpayer;

9 (5) For the purpose of this section, the following definitions apply:

10 (a) "Key employee" means an individual who, for the year immediately preceding the current tax  
11 year, had annual compensation from the employer of greater than \$500,000.

12 (b) "Qualified production employee" means a person who performs production services of any  
13 nature:

14 (i) directly in connection with a qualified production activity, as that term is defined under 15-31-  
15 1003; and

16 (ii) for compensation, provided the compensation paid to the person qualifies as compensation  
17 under 15-31-1003.

18 (c) "State of residence" means the 50 states of the United States, the District of Columbia, and any  
19 territory or possession of the United States.

21 **NEW SECTION. Section 2. Withholding from compensation -- exception.** (1) No amount is  
22 required to be deducted or retained from compensation paid to a nonresident for employment duties performed  
23 in this state if the compensation is excluded from Montana source income pursuant to [section 1], without  
24 regard to [section 1(1)(a)]. The number of days a nonresident employee is present in this state for purposes of  
25 [section 1(1)(b)] includes all days the nonresident employee is present and performing employment duties in  
26 this state on behalf of the employer or any subsidiary, division, agent, or contractor of the employer.

27 (2) An employer that has erroneously applied the exception provided by this section solely as a  
28 result of miscalculating the number of days a nonresident employee is present in this state to perform