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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.

20
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

1 employment duties is not subject to penalties imposed under 15-30-2503 and 15-30-2509 if:

2 (a) the employer relied on a regularly maintained time and attendance system that:

3 (i) requires the employee to record, on a contemporaneous basis, the employee's work location

4 each day the employee is present in a state other than:

5 (A) the state of residence; or

6 (B) where services are considered performed for purposes of unemployment insurance benefits, as

7 provided in Title 39, chapter 51; and

8 (ii) is used by the employer to allocate the employee's wages between all taxing jurisdictions

9 where the employee performs duties;

10 (b) the employer does not maintain a time and attendance system described in subsection (2)(a)

11 and relied on employee travel records that the employer requires the employee to maintain and record on a

12 regular and contemporaneous basis; or

13 (c) the employer does not maintain a time and attendance system described in subsection (2)(a),

14 or require the maintenance of employee records described in subsection (2)(b), and relied on travel expense

15 reimbursement records that the employer requires the employee to submit on a regular and contemporaneous

16 basis.

17 (3) This section establishes an exception to withholding and deduction requirements and has no

18 application to the imposition of this state's jurisdiction to impose a tax under this chapter or any other tax on any

19 taxpayer.

20

21 **Section 3.** Section 15-30-2104, MCA, is amended to read:

22 **"15-30-2104. (Temporary) Tax on nonresident.** (1) (a) A tax is imposed upon each nonresident

23 equal to the tax computed under 15-30-2103 as if the nonresident were a resident during the entire tax year,

24 multiplied by the ratio of Montana source income to total income from all sources.

25 (b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or

26 credit to be counted more than once in determining the amount of Montana source income, and the department

27 may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular

28 items of income, gain, loss, deduction, expense, or credit.

1 (2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each
 2 nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and
 3 who does not own or rent real estate or tangible personal property within Montana and whose annual gross
 4 volume of sales made in Montana during the taxable year does not exceed \$100,000 may elect to pay an
 5 income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is
 6 in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales
 7 made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16
 8 and 17, of the Multistate Tax Compact.

9 **15-30-2104. (Effective January 1, 2024) Tax on nonresident.** (1) (a) Except as provided in
 10 [section 1], a tax is imposed upon each nonresident individual, estate, or trust equal to the tax computed under
 11 15-30-2103 as if the nonresident individual, estate, or trust were a resident during the entire tax year, multiplied
 12 by the ratio of Montana source income to total income from all sources.

13 (b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or
 14 credit to be counted more than once in determining the amount of Montana source income, and the department
 15 may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular
 16 items of income, gain, loss, deduction, expense, or credit.

17 (2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each
 18 nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and
 19 who does not own or rent real estate or tangible personal property within Montana and whose annual gross
 20 volume of sales made in Montana during the taxable year does not exceed \$100,000 may elect to pay an
 21 income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is
 22 in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales
 23 made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16
 24 and 17, of the Multistate Tax Compact."
 25

26 **Section 4.** Section 15-30-2502, MCA, is amended to read:

27 **"15-30-2502. Withholding of tax from wages.** (1) ~~Each~~ Except as provided in [section 2], each
 28 employer making payment of wages shall withhold from wages a tax determined in accordance with the

1 withholding tax tables prepared and issued by the department.

2 (2) An employer who maintains two or more separate establishments within this state is
3 considered to be a single employer for the purposes of this part.

4 (3) A disregarded entity and its owner are considered to be a single employer for the purposes of
5 this part."

6

7 **Section 5.** Section 15-30-2503, MCA, is amended to read:

8 **"15-30-2503. Employer liable for withholding taxes and statements.** (1) ~~Each~~ Except as provided
9 in [section 2], each employer is liable for the payments required by 15-30-2504, the amounts required to be
10 deducted and withheld under this part, and the annual statements required by 15-30-2506 and 15-30-2507. The
11 payments required by 15-30-2504 and the amounts required to be deducted and withheld, plus interest due, are
12 a tax. With respect to the tax, the employer is the taxpayer.

13 (2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to
14 the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable
15 to the state for the amounts withheld and the penalty and interest due on the amounts.

16 (3) (a) Each officer of the corporation is individually liable along with the corporation for filing
17 statements to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and
18 interest upon a determination that the officer:

19 (i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

20 (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax

21 statements or the payment of other corporate obligations and exercised that responsibility, resulting in the
22 corporation's failure to file statements required by this part or pay taxes due as required by this part.

23 (b) In determining which corporate officer is liable, the department is not limited to considering the
24 elements set forth in subsection (3)(a) to establish individual liability and may consider any other available
25 information.

26 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
27 discharge of penalty and interest against the corporation. The individual remains liable for any statements and
28 the amount of taxes, penalties, and interest unpaid by the corporation.

1 (5) For the purpose of determining liability for the filing of statements and the remittance of taxes,
2 penalties, and interest owed under this part:

3 (a) each partner of a partnership is jointly and severally liable, along with the partnership, for any
4 statements, taxes, penalties, and interest due while a partner;

5 (b) each member of a limited liability company that is treated as a partnership or as a corporation
6 for income tax purposes is jointly and severally liable, along with the limited liability company, for any
7 statements, taxes, penalties, and interest due while a member;

8 (c) the member of a single-member limited liability company that is disregarded for income tax
9 purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes,
10 penalties, and interest due while a member; and

11 (d) each manager of a manager-managed limited liability company is jointly and severally liable,
12 along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

13 (6) If the employer fails to deduct and withhold the amounts specified in 15-30-2502 and the tax
14 against which the deducted and withheld amounts would have been credited is paid, the amounts required to
15 be deducted and withheld may not be collected from the employer."
16

17 **Section 6.** Section 15-30-2504, MCA, is amended to read:

18 **"15-30-2504. Schedules for remitting income withholding taxes -- records.** (1) Subject to the due
19 date provision in 15-30-2604(1)(b) and the nonresident exclusion in [section 2], an employer shall remit the
20 taxes withheld from employee wages as follows:

21 (a) An employer whose total liability for state income tax withholding during the preceding lookback
22 period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's
23 federal due dates for federal tax deposits.

24 (b) An employer whose total liability for state income tax withholding during the preceding lookback
25 period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the
26 remittance due date is on or before the 15th day of the month following the payment of wages.

27 (c) An employer whose total liability for state income tax withholding during the preceding lookback
28 period was less than \$1,200 shall remit on an "annual schedule" for which the remittance due date is on or

1 before January 31 of the year following payment of wages.

2 (d) An employer who has no withholding to remit for a remittance period shall, on or before the due
3 date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being
4 remitted.

5 (2) An employer who has not complied with the requirements of this section shall, upon written
6 notice from the department, remit on the monthly schedule described in subsection (1)(b).

7 (3) On or before November 1 of each year, the department shall notify the employers subject to the
8 provisions of this section of the employers' remittance schedules for the following calendar year based upon the
9 department's review of the preceding lookback period.

10 (4) A new employer or an employer with no filing history is subject to the monthly remittance
11 schedule in subsection (1)(b) until the department is able to determine the employer's proper remittance
12 schedule by a review of the employer's first complete lookback period.

13 (5) An employer may elect to remit payments on a more frequent basis than is required by
14 subsection (1).

15 (6) An employer may use alternative remittance methods in conjunction with the department's
16 electronic remittance program in accordance with department rules.

17 (7) If the department has reason to believe that collection of the amount of any tax withheld is in
18 jeopardy, it may proceed as provided for under 15-1-703.

19 (8) Each employer shall keep accurate payroll records containing the information that the
20 department may prescribe by rule. Those records must be open to inspection and audit and may be copied by
21 the department or its authorized representative at any reasonable time and as often as may be necessary. An
22 employer who maintains its records outside Montana shall furnish copies of those records to the department at
23 the employer's expense."

24

25 **Section 7.** Section 15-30-2602, MCA, is amended to read:

26 **"15-30-2602. (Temporary) Returns and payment of tax -- penalty and interest -- refunds --**

27 **credits -- inflation adjustment.** (1) For both resident and nonresident taxpayers, each individual or each

28 married couple not filing a joint return and having a gross income for the tax year of more than the maximum

1 standard deduction for that filing status, as determined in 15-30-2132, is liable for a return to be filed on forms
2 and according to rules that the department may prescribe. The gross income amounts referred to in this
3 subsection (1) must be increased by the personal exemption allowance determined in 15-30-2114 for each
4 additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the
5 taxpayer's spouse under 15-30-2114(3) and (4).

6 (2) In accordance with instructions set forth by the department, each taxpayer who is married and
7 living with a husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with
8 the husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return
9 is made, the tax must be computed on the aggregate taxable income and, subject to 15-30-2646, the liability
10 with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file
11 separate returns after the time for filing the return of either has expired unless the department consents.

12 (3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an
13 authorized agent or by a guardian or other person charged with the care of the person or property of the
14 taxpayer.

15 (4) All taxpayers, including but not limited to those subject to the provisions of 15-30-2502 and 15-
16 30-2512, shall compute the amount of income tax payable and shall, on or before the date required by this
17 chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the
18 amount withheld, as provided by 15-30-2502, and any payment made by reason of an estimated tax return
19 provided for in 15-30-2512. However, the tax computed must be greater by \$1 than the amount withheld and
20 paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated
21 tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the
22 excess.

23 (5) If the department determines that the amount of tax due is greater than the amount of tax
24 computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-
25 30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

26 (6) Individual income tax forms distributed by the department for each tax year must contain
27 instructions and tables based on the adjusted base year structure for that tax year.

28 **15-30-2602. (Effective January 1, 2024) Returns and payment of tax -- penalty and interest --**

1 **refunds -- credits.** (1) (a) If required to file a federal income tax return pursuant to the Internal Revenue Code,
2 each individual, including each nonresident with Montana source income that is not eligible for the nonresident
3 exclusion in [section 1], or each estate or trust shall file a return on forms and according to rules that the
4 department may prescribe.

5 (b) A taxpayer that is not required to file a federal income tax return shall file a Montana return if
6 the taxpayer has Montana taxable income after taking into consideration the additions and subtractions to
7 federal taxable income in 15-30-2120.

8 (2) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an
9 authorized agent or by a guardian or other person charged with the care of the person or property of the
10 taxpayer.

11 (3) ~~All~~ Except as provided in [section 1], all taxpayers, including but not limited to those subject to
12 the provisions of 15-30-2502 and 15-30-2512, shall compute the amount of income tax payable and shall, on or
13 before the date required by this chapter for filing a return, pay to the department any balance of income tax
14 remaining unpaid after crediting the amount withheld, as provided by 15-30-2502, and any payment made by
15 reason of an estimated tax return provided for in 15-30-2512. However, the tax computed must be greater by
16 \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax
17 withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the
18 taxpayer is entitled to a refund of the excess.

19 (4) If the department determines that the amount of tax due is greater than the amount of tax
20 computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-
21 30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

22 (5) Individual income tax forms distributed by the department for each tax year must contain
23 instructions and tables based on the Montana income tax structure for that tax year."
24

25 **NEW SECTION. Section 8. Codification instruction.** (1) [Section 1] is intended to be codified as an
26 integral part of Title 15, chapter 30, part 21, and the provisions of Title 15, chapter 30, part 21, apply to [section
27 1].

28 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 25, and the

Amendment - 1st Reading/2nd House-blue - Requested by: Daniel Zolnikov - (S) Taxation

- 2023

68th Legislature 2023

Drafter: Jaret Coles, 406-444-4022

HB0447.001.001

1 provisions of Title 15, chapter 30, part 25, apply to [section 2].

2

3 NEW SECTION. **Section 9. Effective date.** [This act] is effective January 1, 2024.

4

5 NEW SECTION. **Section 10. Applicability.** [This act] applies to income tax years beginning after
6 December 31, 2023.

7

- END -

AMENDED