

1 SENATE BILL NO. 104
2 INTRODUCED BY J. FULLER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE INCOME TAXATION FOR MILITARY
5 PENSIONS, RETIREMENT, AND SURVIVOR BENEFITS; EXEMPTING A PORTION OF MILITARY
6 PENSIONS OR RETIREMENT INCOME AND SURVIVOR BENEFITS FROM INCOME TAXATION;
7 PROVIDING THE EXEMPTION TO RETIRED MEMBERS OF THE ARMED FORCES, A RESERVE
8 COMPONENT, OR THE NATIONAL GUARD THAT BECOME A RESIDENT OF THE STATE OR REMAINS A
9 RESIDENT AFTER RECEIVING CERTAIN RETIREMENT BENEFITS; PROVIDING RULEMAKING
10 AUTHORITY; AMENDING SECTION 15-30-2120, MCA; AND PROVIDING EFFECTIVE DATES, AND AN
11 APPLICABILITY DATE, AND A TERMINATION DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 15-30-2120, MCA, is amended to read:
16 **"15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine**
17 **Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are
18 subtracted from federal taxable income to determine Montana taxable income.

- 19 (2) The following are added to federal taxable income:
- 20 (a) to the extent that it is not exempt from taxation by Montana under federal law, interest from
21 obligations of a territory or another state or any political subdivision of a territory or another state and exempt-
22 interest dividends attributable to that interest except to the extent already included in federal taxable income;
- 23 (b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal
24 Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the
25 income;
- 26 (c) depreciation or amortization taken on a title plant as defined in 33-25-105;
- 27 (d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that

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1 the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

2 (e) an item of income, deduction, or expense to the extent that it was used to calculate federal
3 taxable income if the item was also used to calculate a credit against a Montana income tax liability;

4 (f) a deduction for an income distribution from an estate or trust to a beneficiary that was included
5 in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal
6 Revenue Code, 26 U.S.C. 651 and 661;

7 (g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for
8 a purpose other than an eligible medical expense or long-term care of the employee or account holder or a
9 dependent of the employee or account holder;

10 (h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63,
11 used for a purpose other than for eligible costs for the purchase of a single-family residence;

12 (i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A
13 of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction
14 claimed; and

15 (j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal
16 Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not
17 to exceed the amount required to reduce the federal itemized amount computed under section 161 of the
18 Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under
19 section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

20 (3) To the extent they are included as income or gain or not already excluded as a deduction or
21 expense in determining federal taxable income, the following are subtracted from federal taxable income:

22 (a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance
23 with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the
24 additions and subtractions in subsections (2) and (3)(b) through ~~(3)(m)~~ (3)(N);

25 (b) if exempt from taxation by Montana under federal law:

26 (i) interest from obligations of the United States government and exempt-interest dividends
27 attributable to that interest; and

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- 1 (ii) railroad retirement benefits;
- 2 (c) (i) salary received from the armed forces by residents of Montana who are serving on active
3 duty in the regular armed forces and who entered into active duty from Montana;
- 4 (ii) the salary received by residents of Montana for active duty in the national guard. For the
5 purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national
6 guard member pursuant to:
- 7 (A) Title 10, U.S.C.; or
- 8 (B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency
9 operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland
10 defense activity or contingency operation.
- 11 (iii) the amount received pursuant to 10-1-1114 or from the federal government by a service
12 member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;
- 13 (iv) the amount received by a beneficiary pursuant to 10-1-1201; and
- 14 (v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans'
15 bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law,
16 Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the
17 filing of an amended return and a verified claim for refund on forms prescribed by the department in the same
18 manner as other income tax refund claims are paid.
- 19 (d) interest and other income related to contributions that were made prior to January 1, 2024, that
20 are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for
21 payment of eligible medical expenses or for the long-term care of the employee or account holder or a
22 dependent of the employee or account holder;
- 23 (e) contributions or earnings withdrawn from a family education savings account provided for in
24 Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as
25 provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified
26 education expenses, as defined in 15-62-103, of a designated beneficiary;
- 27 (f) interest and other income related to contributions that were made prior to January 1, 2024, that

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1 are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal
2 for payment of eligible costs for the first-time purchase of a single-family residence;

3 (g) for each taxpayer that has attained the age of 65, an additional subtraction of \$5,500;

4 (h) the amount of a scholarship to an eligible student by a student scholarship organization
5 pursuant to 15-30-3104;

6 (i) a payment received by a private landowner for providing public access to public land pursuant
7 to Title 76, chapter 17, part 1;

8 (j) the amount of any refund or credit for overpayment of income taxes imposed by this state or
9 any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not
10 previously allowed as a deduction for Montana income tax purposes;

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

13 (l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the
14 Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing
15 federal taxable income; ~~and~~

16 (m) the amount of the gain recognized from the sale or exchange of a mobile home park as
17 provided in 15-31-163; and

18 (n) (i) up to 50% of all SUBJECT TO SUBSECTION (9), A PORTION OF military pensions or military
19 retirement income AS CALCULATED PURSUANT TO SUBSECTION (8) THAT IS received by a retired member of:

20 (A) the armed forces of the United States, as defined in 10 U.S.C. 101;

21 (B) the Montana army national guard or the army national guard of other states;

22 (C) the Montana air national guard or the air national guard of other states; or

23 (D) a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces; and

24 (ii) SUBJECT TO SUBSECTION (9), up to 50% of all income received as survivor benefits for military
25 service provided for in subsection (3)(n)(i)(A) THROUGH (3)(N)(i)(D).

26 (4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's
27 business deductions:

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1 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections
2 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the
3 wages and salaries paid regardless of the credit taken; or

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

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

11 (5) (a) An individual who contributes to one or more accounts established under the Montana
12 family education savings program or to a qualified tuition program established and maintained by another state
13 as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce
14 taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
15 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts.
16 Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each
17 spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions
18 to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or
19 stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not
20 apply with respect to withdrawals of contributions that reduced federal taxable income.

21 (b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for
22 in 15-62-208.

23 (6) (a) An individual who contributes to one or more accounts established under the Montana
24 achieving a better life experience program or to a qualified program established and maintained by another
25 state may reduce taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of
26 married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions
27 to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as

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1 being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with
2 respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or
3 the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of
4 subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

5 (b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in
6 53-25-118.

7 (7) By November 1 of each year, the department shall multiply the subtraction from federal taxable
8 income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for
9 that tax year, rounding the result to the nearest \$10. The resulting amount is effective for that tax year and must
10 be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g).

11 (8) ~~(A) THE SUBJECT TO SUBSECTION (9), THE SUBTRACTION IN SUBSECTION (3)(N)(I) IS EQUAL TO THE~~
12 ~~LESSER OF:~~

13 ~~(I) THE AMOUNT OF MONTANA SOURCE WAGE INCOME ON THE RETURN; OR~~

14 ~~(II) 50% OF THE TAXPAYER'S MILITARY PENSION OR MILITARY RETIREMENT INCOME.~~

15 (B) FOR THE PURPOSES OF SUBSECTION (8)(A)(I), "MONTANA SOURCE WAGE INCOME" MEANS:

16 (I) WAGES, SALARY, TIPS, AND OTHER COMPENSATION FOR SERVICES PERFORMED IN THE STATE;

17 (II) NET INCOME FROM A TRADE, BUSINESS, PROFESSION, OR OCCUPATION CARRIED ON IN THE STATE; AND

18 (III) NET INCOME FROM FARMING ACTIVITIES CARRIED ON IN THE STATE.

19 (9) THE SUBTRACTIONS IN SUBSECTION (3)(N):

20 (A) MAY ONLY BE CLAIMED BY A PERSON WHO:

21 ~~(i) BECOMES A RESIDENT OF THE STATE AFTER JUNE 30, 2023; or~~

22 ~~(ii) was a resident of the state before receiving military pension or military retirement income and~~
23 ~~remained a resident after receiving military pension or military retirement income;~~

24 (B) MAY ONLY BE CLAIMED FOR 5 CONSECUTIVE YEARS AFTER ~~BECOMING A RESIDENT OF THE STATE~~
25 ~~satisfying the provisions of subsection (9)(a); AND~~

26 (C) ARE NOT AVAILABLE IF A TAXPAYER CLAIMED THE EXEMPTION BEFORE BECOMING A NONRESIDENT."
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1 NEW SECTION. Section 2. Effective dates. (1) Except as provided in subsection (2), [this act] is
2 effective on passage and approval

3 (2) [Section 1] is effective January 1, 2024.
4

5 NEW SECTION. Section 3. Applicability. [This act] applies to military retirement or pension income
6 or survivor benefits received after December 31, 2023.
7

8 NEW SECTION. SECTION 4. TERMINATION. [SECTION 1] TERMINATES DECEMBER 31, ~~2029~~ 2033.
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- END -