



AN ACT PROVIDING FOR AN OPTIONAL PASS-THROUGH ENTITY TAX; PROVIDING THE ENTITY TAX IS IN LIEU OF THE COMPOSITE TAX; ESTABLISHING PROCEDURES TO MAKE THE OPTIONAL ELECTION; PROVIDING THAT A DISTRIBUTIVE SHARE OF THE ENTITY TAX PAID IS CLAIMED AS A REFUNDABLE CREDIT; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110 AND 15-30-2120, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in [sections 2 through 4] and this section, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Electing pass-through entity" means a partnership or an S. corporation that elects to be subject to an entity tax.
- (2) "Entity tax" means a tax that an electing pass-through entity elects to pay under [sections 1 through 4].
- (3) "Nonresident owner" means an individual, estate, or trust that is not a resident owner.
- (4) "Owner" means a shareholder of an S. corporation or a partner in a partnership.
- (5) "Resident owner" means an individual, estate, or trust owner that is a resident of the state.

**Section 2. Pass-through entity tax.** (1) Each electing pass-through entity shall, on or before the due date of the pass-through entity's tax return, pay an entity tax. The entity tax is equal to the highest marginal tax rate in effect under 15-30-2103 for the tax year the election is made multiplied by the distributive share of Montana source income calculated under 15-30-3302 for all owners taxed under this chapter. Electing entities may substitute the distributive share of Montana source income allocated to owners who are residents as

defined in 15-30-2101 for the distributive share of Montana source income calculated under 15-30-3302 for all resident owners taxed under this chapter for the computation of the tax.

(2) An electing pass-through entity shall allocate the entity tax to its owners based on their distributive share of Montana source income used to calculate the entity tax in subsection (1).

(3) The entity tax is in lieu of the tax paid under 15-30-3312 and 15-30-3313. If the owner of an electing pass-through entity is a partnership or S. corporation that does not elect to pay the entity tax, any amount of Montana source income in addition to the income subject to the entity tax is subject to the tax paid under 15-30-3313. When the provisions under 15-30-3313 apply, the withholding threshold under 15-30-3313(1) must be determined without regard to the entity tax.

(4) The electing entity shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-2512(5)(a) computed on the entity tax liability included on the pass-through entity return.

(5) The entity tax under this section is subject to penalties and interest under 15-1-216.

(6) A nonresident owner is not required to file an income tax return under the provisions of 15-30-2602 for a tax year if, for the tax year, all of the nonresident owner's Montana source income is subject to the entity tax.

(7) The department may adopt rules and prescribe forms necessary to administer and enforce the provisions of [sections 1 through 4].

**Section 3. Making pass-through entity tax election.** (1) The election must be made annually no later than the due date, including extensions, of the pass-through entity's tax return as prescribed by 15-30-3302. The election for a tax year is irrevocable for the year it is made.

(2) The pass-through entity must designate a Montana pass-through entity representative who is authorized to make the election to subject the pass-through entity to the tax provided for in [sections 1 through 4].

(a) The Montana pass-through entity representative acts on behalf of the pass-through entity for the applicable tax year.

(b) With respect to an action required or permitted to be taken by a pass-through entity under

[sections 1 through 4] and a proceeding under 15-1-211 with respect to the action, the Montana pass-through entity representative for the tax year has the sole authority to act on behalf of the pass-through entity, and the pass-through entity's direct owners and indirect owners are bound by those actions.

(c) The department may establish reasonable qualifications and procedures for designating a person to be the Montana pass-through entity representative.

(3) Nothing in this section prevents a pass-through entity that does not have business activity in the state during the tax year but that does have resident owners from electing to pay the entity tax.

**Section 4. Pass-through entity tax -- refundable credit -- credit for taxes paid to another state.**

(1) An owner that is not a pass-through entity may claim the distributive share of the owner's entity tax paid by an electing pass-through entity as a refundable credit against the taxes under this chapter.

(2) An owner that is an electing pass-through entity shall claim its distributive share of entity tax paid by another pass-through entity as a refundable credit against the taxes under 15-30-3312, 15-30-3313, or [section 2(1)].

(3) An owner that is not an electing pass-through entity must allocate its distributive share of entity tax paid by another pass-through entity and any amount of estimated tax paid to owners subject to tax under this chapter based on the owner's share of profit and loss. The owner that is not an electing pass-through entity may claim the remainder as an overpayment or refund.

(4) [Sections 1 through 4] do not prevent a resident owner from claiming a credit for taxes paid to another state as provided in 15-30-2302.

**Section 5.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. (Temporary) Adjusted gross income.** (1) Subject to subsection (15), 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 (16);
  - (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 to the extent that the dividend is not included in federal adjusted gross income; and
  - (h) for a pass-through entity, estate, or trust, the amount of state income taxes deducted pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3).
- (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:
- (a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that 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 (2)(a)(i);
  - (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
  - (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

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

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

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

(l) contributions or earnings withdrawn from an account established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained

by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C.

529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

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

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

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

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

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

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

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

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

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

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

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections

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 wages and salaries paid regardless of the credit taken; or

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

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

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

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

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

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

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

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

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as 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 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's



child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

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

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

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

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as

defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed \$5,000, from the taxpayer's adjusted gross income.

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

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

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

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

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

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021; subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017; subsection (2)(s) terminates December 31, 2029--sec. 20, Ch. 480, L. 2021.)"

**Section 6.** Section 15-30-2120, MCA, is amended to read:

**"15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

- (2) The following are added to federal taxable income:
- (a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;
  - (b) 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;
  - (c) depreciation or amortization taken on a title plant as defined in 33-25-105;
  - (d) 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;
  - (e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;
  - (f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;
  - (g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;
  - (h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;
  - (i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; ~~and~~
  - (j) for ~~a~~ an individual taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c); and

(k) for a pass-through entity, estate, or trust, the amount of state income taxes deducted pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3).

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

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

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

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

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

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

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

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

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

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

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

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

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

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

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

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 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 wages and salaries paid regardless of the credit taken; or

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

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

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state 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 taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

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

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

respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

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

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

**Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to [sections 1 through 4].

**Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 6] is effective January 1, 2024.

**Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022.

- END -

I hereby certify that the within bill,  
SB 554, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.



SENATE BILL NO. 554

INTRODUCED BY G. HERTZ

AN ACT PROVIDING FOR AN OPTIONAL PASS-THROUGH ENTITY TAX; PROVIDING THE ENTITY TAX IS IN LIEU OF THE COMPOSITE TAX; ESTABLISHING PROCEDURES TO MAKE THE OPTIONAL ELECTION; PROVIDING THAT A DISTRIBUTIVE SHARE OF THE ENTITY TAX PAID IS CLAIMED AS A REFUNDABLE CREDIT; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110 AND 15-30-2120, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.