

SENATE BILL NO. 489

INTRODUCED BY S. O'BRIEN, P. FLOWERS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CAPITAL GAINS ADJUSTMENT TO TAXABLE INCOME FOR THE PURPOSE OF FUNDING FIRST RESPONDER AND LAW ENFORCEMENT SERVICES; ELIMINATING THE CAPITAL GAINS TAX ADJUSTMENT FOR THE PURPOSE OF CALCULATING MONTANA TAXABLE INCOME WHEN FEDERAL ADJUSTED GROSS INCOME EXCEEDS A CERTAIN AMOUNT; ESTABLISHING A FIRST RESPONDER AND LAW ENFORCEMENT AGENCY STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTION 15-30-2120, 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. First responder and law enforcement agency state special revenue account. (1) There is a first responder and law enforcement agency account in the state special revenue fund. Revenue in the account is subject to appropriation by the legislature and must be used to fund first responder and law enforcement agency services using an allocation method that distributes revenue proportionately to a service area based on population of the area serviced.

(2) The department shall transfer annually to the account on May 15 and November 15 increased revenue from the reduction in the capital gains tax adjustment provided for in 15-30-2120(3)(l) as amended by [this act].

(3) The department shall report annually, in accordance with 5-11-210, to the revenue interim committee, provided for in 5-5-227, the balance of the account and whether the balance is expected to cover the anticipated appropriations.

(4) As used in this section, the following definitions apply:

(a) "First responder" has the meaning provided in 50-32-603.

(b) "Law enforcement agency" has the meaning provided in 7-32-201.

1 **Section 2.** Section 15-30-2120, MCA, is amended to read:

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

5 (2) The following are added to federal taxable income:

6 (a) to the extent that it is not exempt from taxation by Montana under federal law, interest from
7 obligations of a territory or another state or any political subdivision of a territory or another state and exempt-
8 interest dividends attributable to that interest except to the extent already included in federal taxable income;

9 (b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal
10 Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the
11 income;

12 (c) depreciation or amortization taken on a title plant as defined in 33-25-105;

13 (d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that
14 the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

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

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

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

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

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

28 (j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal

1 Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not
2 to exceed the amount required to reduce the federal itemized amount computed under section 161 of the
3 Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under
4 section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

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

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

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

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

13 (ii) railroad retirement benefits;

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

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

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

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

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

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

26 (v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans'
27 bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law,
28 Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the

1 filing of an amended return and a verified claim for refund on forms prescribed by the department in the same
2 manner as other income tax refund claims are paid.

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

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

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

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

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

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

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

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

24 (l) for each taxpayer with federal adjusted gross income of less than \$1 million, an amount equal
25 to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C.
26 1222, if and to the extent such gain is taken into account in computing federal taxable income; and

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

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

3 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections
4 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
5 wages and salaries paid regardless of the credit taken; or

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

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

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

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

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

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

6 (b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in
 7 53-25-118.

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

12
 13 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
 14 integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 1].

15
 16 **NEW SECTION. Section 4. Effective date.** [This act] is effective January 1, 2024.

17
 18 **NEW SECTION. Section 5. Applicability.** [This act] applies to income tax years beginning after
 19 December 31, 2023.

20 - END -