

FOREIGN STATES TAX CREDIT

EXPLANATION OF THE CREDIT

The credit for income taxes imposed by foreign states or countries is provided for in [15-30-2302](#) and allows a credit against individual income taxes for taxes paid to another state or a foreign country.

PURPOSE AND LEGISLATIVE HISTORY

1941: ENACTMENT OF THE CREDIT

The 1941 Legislature enacted the tax credit for taxes imposed by another state or country.¹ The Legislature did not include a purpose statement when enacting the foreign states tax credit, and legislative records from that time do not include details about the bill hearings.

Though there is little information available in the legislative record about the purpose of the foreign states tax credit, nearly every state offers a similar credit. In fact, the Supreme Court held in 2015 in *Comptroller of the Treasury of Maryland v. Wynne*, 135 S.

Ct. 1787 (2015), that Maryland violated the Commerce Clause by not granting a tax credit for county income taxes collected by the state on residents with out-of-state income.²

The foreign states tax credit prevents a taxpayer from paying taxes to two states or countries on the same income.

1959: SIMPLIFICATION

Amendments to the credit by the 1959 Legislature³ simplified the section of law by removing references to nonresidents and estates or trusts. The legislation also removed language about

¹ Ch. 28, L. 1941.

² Reporting on the *Wynne* case indicated that, in 2015, three states collected some income tax on residents with out-of-state income: Maryland, North Carolina, and Wisconsin. Richard Wolf, "[Supreme Court: Two States Can't Tax the Same Income](#)," *USA Today*, May 18, 2015.

³ Ch. 253, L. 1959.

the maximum credit and replaced it with a provision that the credit be computed by formula. The credit is calculated using Worksheet I (full-year residents) or II (part-year residents).

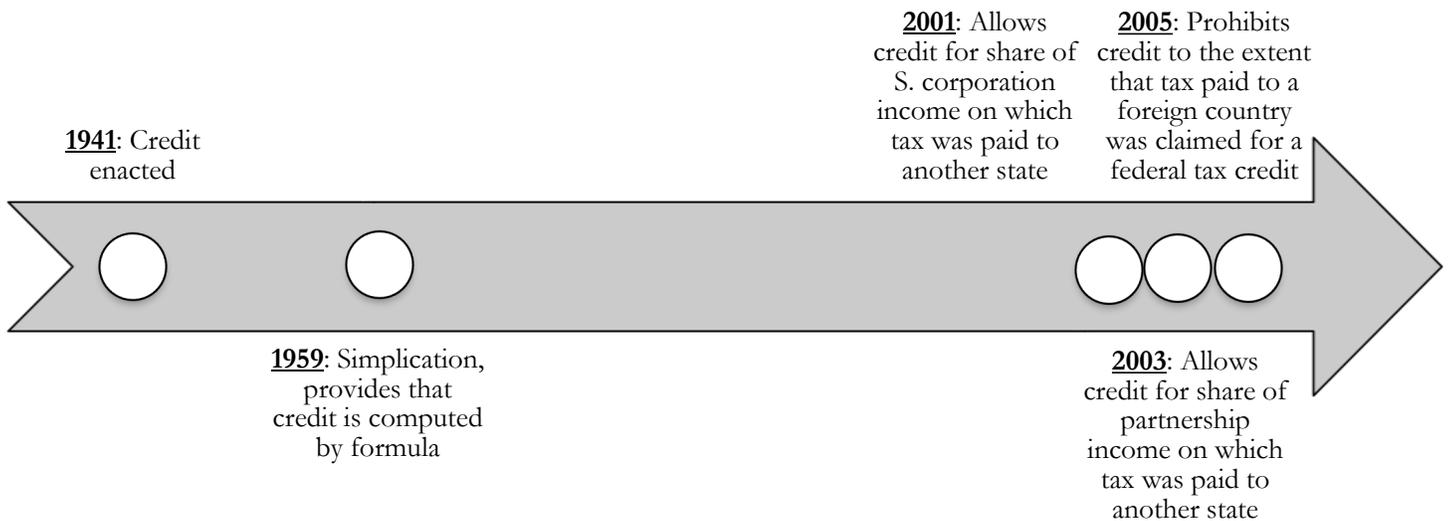
2001 AND 2003: EXTENSION TO PASS-THROUGH INCOME

In 2001, the Legislature extended the credit to a resident’s share of S. corporation income on which tax was paid to another state.⁴ The 2003 Legislature amended the credit to allow use for a resident’s partnership income.⁵

2005: PREVENTING A DOUBLE CREDIT

The most recent change to the statute was made by the 2005 Legislature, which added a provision disallowing the credit for taxes paid to a foreign country to the extent that a credit was claimed for federal income tax purposes.⁶ This prevents a taxpayer from taking a federal income tax credit and a Montana income tax credit for the same foreign taxes paid.

TIMELINE OF THE FOREIGN STATES CREDIT



⁴ Ch. 143, L. 2001.

⁵ Ch. 544, L. 2003.

⁶ Ch. 95, L. 2005.

TAXPAYER USE OF THE FOREIGN STATES TAX CREDIT

Year	Full-Year Residents			Part-Year Residents		Nonresidents		Total	
	Returns	Households	Total Full-Year	Households	Total Part-Year	Households	Total Nonresident	Households	Total Credits
1990	5,615	Data Not Available	\$3,859,669	Data Not Available					
1991	5,550		\$3,381,978						
1992	5,974		\$4,199,233						
1993	6,630		\$5,577,705						
1994	7,287		\$5,550,627						
1995	7,993		\$6,477,179						
1996	8,222		\$7,211,041						
1997	8,675	7,837	\$8,360,377	149	\$320,705	*	\$40,086	*	\$8,721,168
1998	8,982	8,108	\$14,821,950	155	\$268,653	*	\$11,703	*	\$15,102,306
1999	10,124	9,149	\$10,159,095	168	\$760,356	10	\$5,640	9,327	\$10,925,091
2000	11,268	10,114	\$12,196,826	195	\$163,393	*	\$20,890	*	\$12,381,109
2001	10,650	9,670	\$13,501,613	237	\$165,221	11	\$1,010	9,918	\$13,667,844
2002	10,119	9,182	\$14,013,510	253	\$247,496	*	\$6,829	*	\$14,267,835
2003	10,171	9,225	\$14,479,498	264	\$317,682	20	\$28,557	9,509	\$14,825,737
2004	11,160	10,038	\$17,407,297	219	\$203,653	*	\$6,716	*	\$17,617,666
2005	11,143	10,157	\$19,234,044	347	\$1,116,390	26	\$26,565	10,530	\$20,376,999

Year	Full-Year Residents			Part-Year Residents		Nonresidents		Total	
	Returns	Households	Total Full-Year	Households	Total Part-Year	Households	Total Nonresident	Households	Total Credits
2006	10,560	9,727	\$23,043,200	463	\$886,060	0	\$0	10,190	\$23,929,260
2007	10,548	9,756	\$20,278,753	630	\$720,083	0	\$0	10,386	\$20,998,836
2008	10,735	10,007	\$20,931,634	360	\$284,519	0	\$0	10,367	\$21,216,153
2009	9,765	9,139	\$16,975,208	350	\$220,394	0	\$0	9,489	\$17,195,602
2010	11,308	10,572	\$20,608,363	254	\$138,299	0	\$0	10,826	\$20,746,662
2011	11,471	10,658	\$19,090,209	275	\$294,694	0	\$0	10,933	\$19,384,903
2012	11,316	10,497	\$23,668,111	223	\$192,211	0	\$0	10,720	\$23,860,322
2013	13,106	12,202	\$27,082,006	268	\$217,481	0	\$0	12,470	\$27,299,487
2014	13,763	12,772	\$31,205,001	684	\$757,794	0	\$0	13,456	\$31,962,795
2015	14,268	13,301	\$31,375,448	925	\$855,861	0	\$0	14,226	\$32,231,309
2016	14,202	13,351	\$31,363,032	460	\$575,796	0	\$0	13,811	\$31,938,828
2017	14,974	14,070	\$33,636,066	540	\$502,006	0	\$0	14,610	\$34,138,072

ADDITIONAL CONSIDERATIONS

CONSTITUTIONAL BASIS FOR THE CREDIT

Based on the Supreme Court's ruling in *Comptroller of the Treasury of Maryland v. Wynne*, repeal of the foreign states tax credit would likely result in legal challenges by taxpayers paying taxes in two states or countries on the same income. Because there is a legal basis for this credit, the committee may wish to request legislation removing it from the cyclical review process.

ADMINISTRATION OF THE CREDIT

Staff met with the Department of Revenue and asked if the agency has any concerns about administering the credit. The agency did not raise any concerns about the credit's administration.