

# OVERVIEW OF THE INDIVIDUAL INCOME TAX IN MONTANA AND CHANGES MADE DURING THE 2021 LEGISLATIVE SESSION IN SENATE BILL NO. 399\*

Prepared for the Revenue Interim Committee

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\*LINK TO BILL TEXT: <https://leg.mt.gov/bills/2021/billpdf/SB0399.pdf>

## 1. INDIVIDUAL INCOME TAX IN THE UNITED STATES

The Sixteenth Amendment to the United States Constitution authorizing an unapportioned income tax was adopted on March 1, 1913.<sup>1</sup> Eight months after the amendment, Congress passed a statute that taxed individual income at a rate of 1%, with progressive surtaxes when net income exceeded \$20,000.<sup>2</sup> The original 1913 tax form was primarily designed for individuals, as opposed to married couples. The instructions stated that a “return shall be made by every citizen of the United States”.<sup>3</sup> And, while a “joint return” was an option for married individuals, there was no tax advantage to filing one. In fact, the early instructions during this era cautioned that when spouses each had separate income they “should make a separate return”.<sup>4</sup> This advice was especially true for high-income taxpayers that were subject to highly progressive surtaxes. In 1918, these rates started at 1% for individuals with \$6,000 in net income to 65% for those with incomes above \$1,000,000.<sup>5</sup>

In order to understand the structures of the Montana filing system, a basic understanding of the federal individual income tax filing system is helpful. Federal individual income tax liability<sup>6</sup> is generally calculated by taking into account the following major steps:

1. Determine **gross income**;
2. Determine federal **adjusted gross income** (above the line deductions or AGI) by subtracting certain “super” deductions from gross income;
3. Calculate allowable federal **itemized deductions** (below the line deductions);
  - a. Note: The itemized deduction calculations can be dependent on the adjusted gross income calculation.

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<sup>1</sup> Patricia A. Cain, Symposium, *Taxing Families Fairly*, 48 SANTA CLARA L. REV. 805, 808 (2008).

<sup>2</sup> *Id.*

<sup>3</sup> United States Internal Revenue, *1913 Form 1040*, at 4 (instructions).

<sup>4</sup> United States Internal Revenue, *1918 Form 1040*, at 3 (instructions).

<sup>5</sup> *Id.* at 3 (table and instructions for calculation of surtax).

<sup>6</sup> See IRS Form 1040 (2021), available at: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/June-2022/1040.pdf> and IRS Schedule A (2021), available at: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/June-2022/1040-schedule-A.pdf>

- b. Note: Certain itemized deductions are limited by federal statute and may be eliminated for the failure to meet a certain percentage of AGI, or may be reduced or phased out based on AGI being too high.
  - c. Note: [Tax Cuts and Jobs Act of 2017](#) eliminated certain itemized deductions while eliminating miscellaneous itemized deductions for tax years 2018 through 2025.
  - d. Note: Typically taxpayers reduce AGI by the higher of the itemized deductions or the federal **standard deduction** (specific dollar amount in statute) – see step 5.
4. Depending on the tax year, determine the federal **personal exemption** deduction. Note, the [Tax Cuts and Jobs Act of 2017](#) eliminated the federal personal exemption for tax years 2018 through 2025, but the federal standard deduction was increased.
  5. Calculate **taxable income** as follows:
    - Federal AGI minus the higher of itemized deductions **or** the federal standard deduction and minus any qualified business income deduction (personal exemptions are subtracted after tax year 2025);
  6. Apply the progressive tax rate structure (the more you make the higher the percentage of tax) against taxable income using tax tables in order to determine tax liability; and
  7. Calculate the amount of refund or amount of tax that is remitted to the IRS by subtracting wage withholdings and any allowable tax credits from the tax figure derived from step 6.

## 2. INDIVIDUAL INCOME TAX IN MONTANA

Montana enacted a graduated income tax in 1933 during the Great Depression, and it is currently the largest source of state tax revenue. As enacted, a “taxpayer” was defined as any person or fiduciary.<sup>7</sup> A person, in turn, was required to “make, under oath, a return stating specifically the items of his gross income and the deductions and credits allowed.”<sup>8</sup> However, the tax return requirement did not kick in unless the person had a certain level of income. Specifically, a single person (or married but not living with or supporting a husband, wife, or family) was entitled to earn \$999.99 net income before the filing requirement came into play, while a married person who was living with the other spouse was entitled to earn \$1,999.99 net income. However, if both of the spouses earned income the statute provided that no more than \$2,499.99 in “aggregate net income” could be earned before a return was required.<sup>9</sup>

The structure of Montana’s personal income tax is based upon federal tax law. As such, whenever Congress adds another exclusion or deduction the same feature can automatically appear (*i.e.*, rolling conformity) in the Montana income tax without any action from the Legislature. The Internal Revenue Code is referenced 39 times in Montana’s Individual Income Tax Code ([Title 15, Chapter 30](#), MCA). When a reference appears to a specific provision of the Internal Revenue Code it encompasses “those provisions as they may be otherwise labeled or further amended.” § [15-30-2101](#), MCA. Additionally, in the event a term is not defined in

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<sup>7</sup> Sec. 1, Ch. 181, L. 1933.

<sup>8</sup> *Id.* § 14.

<sup>9</sup> *Id.* There were also gross income guidelines.

Montana law “the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code”. § [15-30-2620\(2\)](#), MCA. A tie to the federal system reduces the Department’s (DOR’s) costs of administering the income tax and taxpayers’ costs of complying.<sup>10</sup>

**A. CALCULATION OF MONTANA INCOME TAX LIABILITY BEFORE AND AFTER SENATE BILL NO. 399**

**i. Step 1: Montana Gross Income Calculation**

*a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

The Montana income tax starts by adopting the federal concept of gross income. Pursuant to § [15-30-2101](#), MCA, gross income “means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.” As stated above, the federal definition of gross income is comprehensive. Likewise, the Montana definition of gross income is comprehensive.

*b. Starting in 2024 – [Senate Bill No. 399](#)*

[Senate Bill No. 399](#) eliminated the definition of gross income for Montana income tax purposes.

- ✓ Step1 is not required to prepare a Montana individual income tax return starting in 2024.

**ii. Step 2: Montana Adjusted Gross Income and Exemptions**

*a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

The Montana definition of adjusted gross income has evolved substantially since 1933 and is eliminated beginning in tax year 2024. Pursuant to § [15-30-2110](#), MCA, except as otherwise provided “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”. Consequently, decisions of Congress can have a direct impact on Montana AGI. However, there are multiple items that are specifically included in Montana AGI regardless of what Congress does. According to the DOR’s most recent [Biennial Report](#),<sup>11</sup> some Montana additions to federal AGI were used regularly, while other additions were used sparingly. The [Biennial Report](#) (page 77) contains the following statistics based on full-year residents’ returns:

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<sup>10</sup> Montana Department of Revenue, [Biennial Report](#): July 1, 2008 – June 30, 2010, p. 54 (2010).

<sup>11</sup> Montana Department of Revenue, [Biennial Report](#): July 1, 2018 – June 30, 2020 (2020), available at: <https://mtrevenue.gov/wp-content/uploads/2021/03/2019-20-Biennial-Report.pdf>

## Montana Individual Income Tax Additions Reported on Full-Year Residents' Returns - 2018 and 2019

Montana Additions to Federal Adjusted Gross Income	2018		2019	
	Count	Total	Count	Total
Taxable Federal Refunds	79,541	\$110,230,309	53,082	\$80,618,443
Recoveries of Amounts Deducted in Earlier Years	184	\$442,945	257	\$373,100
Interest on Other States' Municipal Bonds	18,527	\$70,739,186	19,794	\$96,561,068
Dividends Not Included in Federal Adjusted Gross Income	838	\$450,209	895	\$466,351
Adjustment for Smaller Federal Estate and Trust Taxable Distributions	105	\$311,352	200	\$790,762
Medical Savings Account Nonqualified Withdrawals	192	\$348,943	231	\$426,060
First-Time Homebuyer's Account Nonqualified Withdrawals	10	\$31,301	16	\$17,465
Allocation of Compensation to Spouse	287	\$5,013,436	310	\$5,398,137
Federal Net Operating Loss Carryover	5,276	\$615,109,935	6,069	\$619,319,297
Dependent Care Assistance Credit Adjustment	38	\$73,125	70	\$150,066
Farm and Ranch Risk Management Account Taxable Distributions	*	\$3,443	*	\$6,293
Federal Taxes Paid by Your S Corporation	57	\$150,990	164	\$531,569
Title Plant Depreciation and Amortization	*	\$25	*	\$13
Other Additions	1,973	\$16,644,230	1,773	\$10,374,795
Addition to Taxable Social Security Benefits	9,787	\$17,749,604	10,059	\$18,118,699
<b>Total Montana Additions</b>	<b>106,396</b>	<b>\$837,094,385</b>	<b>83,737</b>	<b>\$833,120,879</b>

*\*Not disclosed due to confidentiality concerns*

There are also multiple items that are specifically subtracted in Montana AGI regardless of what Congress does. According to the DOR's [Biennial Report](#), some Montana subtractions from federal AGI were used regularly, while other subtractions were used sparingly. The [Biennial Report](#) (page 78) contains the following statistics based on full-year residents' returns:

## Montana Individual Income Tax Subtractions Reported on Full-Year Residents' Returns - 2018 and 2019

Montana Subtractions from Federal Adjusted Gross Income	2018		2019	
	Count	Total	Count	Total
State Tax Refunds Included in Federal Adjusted Gross Income	90,945	\$96,274,735	17,182	\$16,053,866
Federal Bonds Exempt Interest	23,434	\$31,134,949	26,628	\$47,045,746
Elderly Interest Exclusion	83,935	\$36,035,566	89,775	\$41,744,457
Larger Federal Estate and Trust Taxable Distributions	525	\$2,680,457	536	\$3,055,140
Exempt Income of Child Taxed to Parent	166	\$429,180	132	\$393,519
Recoveries of Amounts Deducted in Earlier Years	67	\$237,419	44	\$117,097
Exempt Unemployment Compensation	19,899	\$80,750,167	19,820	\$82,795,091
Exempt Tribal Income	6,095	\$238,297,833	5,922	\$230,915,588
Exempt Tip Income	20,399	\$81,593,214	22,048	\$88,982,140
Exempt Worker's Comp Benefits	185	\$1,111,653	156	\$882,827
Exempt Health Insurance Premiums Taxed to Employee	151	\$743,590	133	\$550,391
Student Loan Repayments Taxed to Health Care Professional	461	\$1,422,858	479	\$1,535,563
Exempt Active Duty Military Salary	4,897	\$198,113,363	5,247	\$214,409,324
Exempt Life Insurance Premiums Reimbursement (National Guard)	15	\$17,792	22	\$34,481
Medical Care Savings Account Exempt Deposits	6,856	\$19,589,251	7,186	\$22,651,337
First-Time Homebuyer Exempt Savings Account Deposits	265	\$731,601	280	\$753,212
Family Education Savings Account Exempt Deposits	5,686	\$13,454,571	6,296	\$15,038,959
ABLE Account Exempt Deposits	86	\$171,910	124	\$242,259
Subtraction for Spouse Filing Joint Return: Capital Loss Adjustment	440	\$885,627	324	\$933,981
Subtraction for Spouse Filing Joint Return: Passive Loss Carryover	76	\$621,161	179	\$1,362,812
Allocation of Compensation to Spouse	287	\$5,013,436	310	\$5,398,137
Montana Net Operating Loss Carryover	4,681	\$510,426,578	5,870	\$585,477,718
Business Expense of Recycled Material	107	\$938,108	112	\$617,354
Wage Deduction Reduced by Federal Targeted Jobs Credit	65	\$589,177	284	\$2,304,272
Medical Marijuana Provider Expenses	58	\$982,343	62	\$4,306,185
Sales of Land to Beginning Farmers	*	\$3,955	*	\$33,234
Capital Gains from Small Business Investment Companies	17	\$79,928	24	\$10,486
Certain Gains Recognized by Liquidating Corporation	0	\$0	*	\$198,419
Farm and Ranch Risk Management Accounts Exempt Deposits	*	\$1,154	0	\$0
Donation of Mineral Exploration Information	*	\$1,476	*	\$715
Gain on Eligible Sale of Mobile Home Park	0	\$0	*	\$1,506,856
Passthrough Subtractions Reported on K-1	0	\$0	488	\$3,822,260
Exempt Retirement Disability Income (under age 65)	38	\$161,933	28	\$115,731
Subtraction for Federal Taxable Tier II Railroad Retirement	3,228	\$52,442,866	3,196	\$53,205,289
Exempt Pension Income	46,857	\$174,904,162	47,656	\$182,365,023
Subtraction to Federal Taxable Social Security/Tier 1 Railroad Retirement	44,885	\$209,461,679	47,282	\$232,823,623
<b>Total Montana Subtractions</b>	<b>244,390</b>	<b>\$1,759,303,692</b>	<b>202,384</b>	<b>\$1,841,683,092</b>

\*Not disclosed due to confidentiality concerns

Section [15-30-2110](#), MCA, is a lengthy provision that has been amended 64 times since 1933. It is also a provision that can have a big impact on tax policy, what taxpayers pay, and general fund revenue.

*b. Starting in 2024 – [Senate Bill No. 399](#)*

The Montana specific adjustments to federal adjusted gross income are subject to repeal on January 1, 2024, based on the repeal of section [15-30-2110](#), MCA, in sections 65 and 70(1) of [Senate Bill No. 399](#). The elimination of the definition results in the elimination of the additions and subtractions to federal adjusted gross income for Montana income tax purposes. However, some of the additions and subtractions that are eliminated in 2024 are now accounted for as an adjustment to federal taxable income. These adjustments occur in section 1 of [Senate Bill No. 399](#), which is codified as section [15-30-2120](#), MCA. Adjustments that were eliminated include Montana Medical Savings Account contributions (earnings from contributions made before January 1, 2024, can still be subtracted), Montana First-time Homebuyer Account contributions made after January 1, 2024 (contributions and earnings from contributions made before January 1, 2024, can still be subtracted), Farm and Ranch Risk Management Account contributions, income of a child taxed to a parent, unemployment that is subject to federal taxation, workers' compensation, tips for certain service industry workers, health insurance premiums taxed to an employee, student loan repayments for health care professionals and qualified educators, and partial retirement disability income.<sup>12</sup>

- ✓ Step 2 is not required to prepare a Montana individual income tax return starting in 2024.

**iii. Step 3: Montana Itemized vs. Montana Standard Deduction**

*a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

Similar to the federal income tax, Montana allows taxpayers to choose between itemized deductions or a standard deduction.<sup>13</sup> Generally Montana income tax will be less if a taxpayer takes the larger of the itemized deductions or the standard deduction. The determination of what is allowed for purposes of claiming itemized deductions starts out with a reference to the federal tax code. Pursuant to § [15-30-2131](#), MCA, the items referred to in I.R.C. sections [161](#) and [211](#) are deductible, with some exceptions. Additionally, Montana taxpayers are allowed to take some deductions regardless of what Congress does. The following deductions are **not allowed** as itemized deductions (computing net income), regardless of what Congress does:

- (1) Personal, living, or family expenses (§§ [15-30-2131](#)(1)(a)(i), [15-30-2133](#)(1), MCA);
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate (§§ [15-30-2131](#)(1)(a)(i), [15-30-2133](#)(2), MCA);

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<sup>12</sup> See also Montana Department of Revenue, Simplification of Montana Income Taxation (Nov. 29, 2021), available at: <https://mtrevenue.gov/2021/11/29/simplification-of-montana-income-taxation/>

<sup>13</sup> I.R.C. § 63(b), (e); § [15-30-2132](#)(1), MCA.



- (3) Any amount expended in restoring property or in making good the exhaustion of the property for which an allowance is or has been made (§§ [15-30-2131\(1\)\(a\)\(i\)](#), [15-30-2133\(3\)](#), MCA);
- (4) Premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under the policy (§§ [15-30-2131\(1\)\(a\)\(i\)](#), [15-30-2133\(4\)](#), MCA);
- (5) Expenses that are generally associated with the production of exempt or excludable income (§§ [15-30-2131\(1\)\(a\)\(i\)](#), [15-30-2133\(4\)](#), MCA);
- (6) State income taxes paid (§ [15-30-2131\(1\)\(a\)\(ii\)](#), MCA); and
- (7) A charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity under Montana law (§§ [15-30-2131\(1\)\(a\)\(v\)](#), and [33-20-701](#), MCA).

The following deductions are **allowed** as itemized deductions (computing net income), regardless of what Congress does:

- (1) Federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly (§ [15-30-2131\(1\)\(b\)](#), MCA);
- (2) Subject to a variety of limitations, expenses of household and dependent care services (§ [15-30-2131\(1\)\(c\)](#), MCA);
- (3) Political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978 (§ [15-30-2131\(1\)\(d\)](#), MCA);
- (4) That portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct and not otherwise deducted in computing taxable income (§ [15-30-2131\(1\)\(e\)](#), MCA);
- (5) Subject to conditions, contributions to the child abuse and neglect prevention program (§ [15-30-2131\(1\)\(f\)](#), MCA);
- (6) The entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed for qualified elderly care expenses (§ [15-30-2131\(1\)\(g\)](#), MCA);
- (7) Montana light vehicle registration fees (§ [15-30-2131\(1\)\(h\)](#), MCA);
- (8) Montana per capita livestock fees (§ [15-30-2131\(1\)\(i\)](#), MCA);
- (9) Donations to the veterans' services account and the state veterans' cemetery program and the patriotic license plate surcharge (§ [15-30-2142](#), MCA).

According to the DOR's [Biennial Report](#), some Montana income tax deductions were used regularly, while other subtractions were used sparingly. The [Biennial Report](#) (page 79) contains the following statistics based on full-year residents' returns:

## Montana Individual Income Tax Deductions Reported on Full-Year Residents' Returns - 2018 and 2019

Deductions	2018		2019	
	Count	Total	Count	Total
Deductible Medical Expenses	56,630	\$305,327,291	53,691	\$297,489,660
Medical Insurance Premiums Not Deducted Elsewhere	116,959	\$520,492,426	117,747	\$507,233,583
Long-Term Care Insurance Premiums	12,263	\$28,930,381	12,200	\$29,512,592
<b>Federal Income Tax</b>				
Federal Income Tax Withheld**	266,373	\$1,872,214,262	252,686	\$1,871,052,699
Federal Income Tax Estimated Payments**	46,157	\$597,154,276	49,776	\$817,709,158
Last Year's Federal Income Tax Paid (e.g. with return)**	67,870	\$457,650,599	68,121	\$609,615,209
Federal Income Tax from Previous Years**	3,652	\$18,423,317	1,895	\$7,652,418
<b>Total Federal Income Tax Deduction</b>	<b>293,287</b>	<b>\$1,199,661,055</b>	<b>280,719</b>	<b>\$1,153,558,682</b>
State or Local Sales Tax	490	\$432,273	456	\$419,587
Local Income Taxes	551	\$278,573	546	\$239,736
Real Estate Taxes	217,237	\$535,606,789	217,143	\$582,358,801
Personal Property Taxes	154,569	\$53,869,207	147,637	\$53,788,168
Combined State and Local Tax Deduction	236,259	\$553,904,721	234,203	\$589,498,152
Montana Light Vehicle Registration Fee	35,272	\$8,020,495	36,545	\$8,148,599
Per Capita Livestock Fee	591	\$66,935	581	\$81,369
Other Deductible Taxes	9,950	\$3,901,158	7,860	\$3,372,436
Home Mortgage Interest	157,012	\$903,558,507	156,781	\$987,393,435
Investment Interest	6,943	\$35,605,093	7,209	\$41,266,474
Contributions by Cash or Check	154,503	\$447,461,011	149,644	\$494,466,799
Contributions Other than Cash or Check	69,241	\$73,875,268	62,778	\$126,426,919
Carryover of Contributions from Previous Years	2,702	\$33,969,667	2,474	\$30,647,375
Child and Dependent Care Expenses	384	\$886,905	340	\$705,164
<b>Deductions</b>				
Casualty and Theft Losses	457	\$4,442,831	331	\$1,560,011
Political Contributions	9,769	\$939,555	8,326	\$780,893
Gambling Losses	1,460	\$18,712,466	1,420	\$22,720,462
Other Miscellaneous Deductions	2,127	\$6,464,034	1,976	\$15,410,097
<b>Total Itemized Deductions</b>	<b>321,490</b>	<b>\$4,147,710,325</b>	<b>314,612</b>	<b>\$4,310,272,702</b>
Standard Deductions	247,225	\$1,000,131,650	271,893	\$1,138,161,928
<b>Total Deductions</b>	<b>568,715</b>	<b>\$5,147,841,975</b>	<b>586,505</b>	<b>\$5,448,434,630</b>

\*\* Items either are part of another line or include another line. They are not part of the total.

Additionally, as shown in the above table 247,225 and 271,893 full-year resident returns used the standard deduction in tax years 2018 and 2019, respectively. Pursuant to § [15-30-2132](#), MCA, the minimum standard deduction is the greater of \$1,980 (plus a statutory adjustment for inflation) or 20% of AGI and the maximum standard deduction is \$4,460 (plus a statutory



adjustment for inflation). Taking the inflation factor<sup>14</sup> into account, the maximum standard deduction was \$4,830 for a single filer in tax year 2021.

*b. Starting in 2024 – [Senate Bill No. 399](#)*

The Montana specific itemized and standard deductions are subject to repeal on January 1, 2024, based on the repeal of sections [15-30-2131](#) and [15-30-2132](#) in sections 65 and 70(1) of [Senate Bill No. 399](#).

- ✓ Step 3 is not required to prepare a Montana individual income tax return starting in 2024.

**iv. Step 4: Montana Personal Exemptions**

*a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

Similar to the federal income tax before the passage of the *Tax Cuts and Jobs Act of 2017*, Montana allows taxpayers to claim personal exemptions.<sup>15</sup> Pursuant to § [15-30-2114](#), MCA, the personal exemption is adjusted for inflation and is calculated by multiplying the dollar amount of the exemption by the number of exemptions (*i.e.*, taxpayer, spouse, children, dependents, additional exemption for age 65 and above, additional exemption for blind). Taking the inflation factor into account, the personal exemption was \$2,580 in tax year 2021.

*b. Starting in 2024 – [Senate Bill No. 399](#)*

The Montana specific personal exemption is subject to repeal on January 1, 2024, based on the repeal of section [15-30-2114](#), MCA, in sections 65 and 70(1) of [Senate Bill No. 399](#).

- ✓ Step 4 is not required to prepare a Montana individual income tax return starting in 2024.

**v. Step 5: Calculate Montana Taxable Income**

*a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

Pursuant to § [15-30-2101](#), MCA, Montana taxable income “means the adjusted gross income of a taxpayer less the deductions and exemptions provided for” under the Montana tax code. As such, taxable income is calculated using Montana AGI, the higher of itemized deductions or the standard deduction, and allowable personal exemptions.

*b. Starting in 2024 – [Senate Bill No. 399](#)*

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<sup>14</sup> Pursuant to § [15-30-2101](#), MCA, inflation factor “means a number determined for each tax year by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2015.”

<sup>15</sup> [I.R.C. § 151](#); § [15-30-2114](#), MCA.

Starting in tax year 2024, steps one through four are no longer required to file a Montana income tax return. Instead, the starting point for determining Montana taxable income is federal taxable income with state specific adjustments in newly codified section [15-30-2120](#), MCA, which is also section 1 of [Senate Bill No. 399](#). See section [15-30-2101](#), MCA (definitions of federal taxable income and Montana taxable income in version effective January 1, 2024).

If the past is any indication of the future, section [15-30-2120](#), MCA, will be an area where the Legislature will further define Montana tax policy to differentiate itself with the federal income tax system, just like it did in section [15-30-2110](#), MCA. Section [15-30-2120](#), MCA, provides multiple adjustments for state specific policy decisions as follows (staff comments in red):

[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; (similar to [section 15-30-2110\(1\)\(a\)\(i\)-\(ii\)](#), MCA)

(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; (similar to [section 15-30-2110\(1\)\(c\)](#), MCA)

(c) depreciation or amortization taken on a title plant as defined in [33-25-105](#); (similar to [section 15-30-2110\(1\)\(d\)](#), MCA)

(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; (similar to [section 15-30-2110\(1\)\(b\)](#), MCA)

(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; (somewhat similar to [section 15-30-2110\(1\)\(b\) and \(16\)](#), MCA)

(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; (similar to [section 15-30-2110\(1\)\(f\)](#), MCA)

(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; (similar to [section 15-30-2110\(1\)\(g\)](#), MCA)

(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; (similar to [section 15-30-2110\(1\)\(h\)](#), MCA)

(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 **(new provision to prevent the federal qualified business income deduction at the state level)**

(j) for a 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). **(similar to section [15-30-2110\(1\)\(a\)\(j\)](#), MCA)**

(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); **(similar to section [15-30-2110\(2\)\(n\)](#), MCA)**

(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 **(similar to section [15-30-2110\(2\)\(a\)\(i\)](#), MCA)**

(ii) railroad retirement benefits; **(new provision that codifies policy of Montana not taxing railroad retirement if prohibited by federal law)**

(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; **(similar to section [15-30-2117\(2\)\(a\)](#), MCA)**

(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: **(similar to section [15-30-2117\(2\)\(b\)\(i\)](#), MCA)**

(A) Title 10, U.S.C.; or **(similar to section [15-30-2117\(2\)\(b\)\(ii\)\(A\)](#), MCA)**

(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. **(similar to section [15-30-2117\(2\)\(b\)\(ii\)\(b\)](#), MCA)**

(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; **(similar to section [15-30-2117\(3\)](#), MCA)**

(iv) the amount received by a beneficiary pursuant to **10-1-1201**; and **(similar to section [15-30-2117\(4\)](#), MCA)**

(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. **(similar to section [15-30-2117\(1\)](#), MCA)**

(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; **(new provision that grandfathers qualified contributions to former medical care savings accounts – see section [15-30-2110\(2\)\(j\)](#), MCA)**

(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; **(similar to section [15-30-2110\(2\)\(l\)](#), MCA)**

(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; **(new provision that grandfathers qualified contributions to former first-time home buyer savings accounts – see section [15-30-2110\(2\)\(k\)](#), MCA)**

(g) for each taxpayer that has attained the age of 65, an additional subtraction of \$5,500; **(new provision – see section [15-30-2110\(2\)\(b\)](#) MCA, providing an \$800 interest income exemption for a taxpayer that is at least 65 and section [15-30-2110\(2\)\(c\)](#), MCA, providing a \$4,070 (plus an inflation adjustment) pension and annuity income exemption subject to a phase out)**

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to **15-30-3104**; **(similar to section [15-30-2110\(2\)\(s\)](#), MCA)**

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1; **(similar to section [15-30-2110\(2\)\(t\)](#), MCA)**

(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; **(similar to section [15-30-2110\(2\)\(l\)](#), MCA)**

(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; **(similar to section [15-30-2110\(2\)\(m\)](#), MCA)**

(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 **(new provision - see section [15-30-2301](#), MCA, for capital gains credit that is repealed starting in tax year 2024)**

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in **15-31-163**. **(similar to section [15-30-2110\(2\)\(r\)](#), MCA)**

(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 **(similar to section [15-30-2110\(4\)\(a\)\(i\)](#), MCA)**

(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. **(similar to section [15-30-2110\(4\)\(a\)\(ii\)](#), MCA)**

(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. **(similar to section [15-30-2110\(4\)\(b\)](#), MCA)**

(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. **(similar to section [15-30-2110\(11\)\(a\)](#), MCA)**

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in **15-62-208**. **(similar to section [15-30-2110\(11\)\(b\)](#), MCA)**

(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. **(similar to section [15-30-2110\(12\)\(a\)](#), MCA)**

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in **53-25-118. (similar to section 15-30-2110(12)(b), MCA)**

(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). **(similar to section 15-30-2110(17), MCA, but applied to the new \$5,000 exemption for individuals that are at least 65)**

**History:** En. Sec. 1, Ch. 503, L. 2021.

## **vi. Step 6: Montana Tax Calculation.**

### *a. Tax Years 2022 and 2023 – Before [Senate Bill No. 399](#)*

Montana uses a single rate structure for all taxpayers, regardless of filing status.<sup>16</sup> The rate structure is modified by the DOR on a yearly basis by the inflation factor for the tax year, as rounded to the nearest \$100.<sup>17</sup> Montana’s rate structure is progressive, since taxpayers with higher incomes pay a higher percentage of their income in tax. However, unlike the federal brackets Montana’s rates max out at a fairly low level of taxable income. The easiest way to calculate total Montana tax is to use the tax tables published by the DOR. These tables have already taken into account the progressive rates of tax and the inflation factor. [Montana’s tax tables](#) for tax years 2021 and 2022 are as follows:

### 2021 Individual Income Tax Rates

If your taxable income is more than	but not more than	Your tax is	minus
\$0	\$3,100	1% of your taxable income	\$0
\$3,100	\$5,500	2% of your taxable income	\$31
\$5,500	\$8,400	3% of your taxable income	\$86
\$8,400	\$11,400	4% of your taxable income	\$170
\$11,400	\$14,600	5% of your taxable income	\$284
\$14,600	\$18,800	6% of your taxable income	\$430
\$18,800		6.9% of your taxable income	\$599

<sup>16</sup> See § [15-30-2103](#), MCA.

<sup>17</sup> *Id.* Montana’s inflation factor was enacted the first time by initiative in 1980. Sec. 2, I.M. No. 86, approved Nov. 4, 1980.



## 2022 Individual Income Tax Rates

If your taxable income is more than	But not more than	Your tax is	Minus
\$0	\$3,300	1% of your taxable income	\$0
\$3,300	\$5,800	2% of your taxable income	\$33
\$5,800	\$8,900	3% of your taxable income	\$91
\$8,900	\$12,000	4% of your taxable income	\$180
\$12,000	\$15,400	5% of your taxable income	\$300
\$15,400	\$19,800	6% of your taxable income	\$454
\$19,800		6.75% of your taxable income	\$603

*b. Starting in 2024 – [Senate Bill No. 399](#)*

Starting in tax year 2024, the seven rates in section [15-30-2103](#), MCA are replaced with two rates. Additionally, instead of having one set of rates regardless of filing status, there are now rates for joint filers, a surviving spouse, head of household, and every other individual. This approach is similar to the federal system of having different rate tables based on filing status. Moreover, in the event a taxpayer claims a joint filing status at the federal level, the same filing status must be claimed on a Montana income tax return unless one of the individuals is a nonresident for any part of the year. *See* section 15-30-2113(3), MCA.

Section [15-30-2103](#), MCA, provides as follows:

[15-30-2103](#). *(Temporary) Rate of tax.* (1) Except as provided in **15-30-3704** there must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

- (a) on the first \$2,900 of taxable income or any part of that income, 1%;
- (b) on the next \$2,200 of taxable income or any part of that income, 2%;
- (c) on the next \$2,700 of taxable income or any part of that income, 3%;
- (d) on the next \$2,700 of taxable income or any part of that income, 4%;
- (e) on the next \$3,000 of taxable income or any part of that income, 5%;
- (f) on the next \$3,900 of taxable income or any part of that income, 6%;
- (g) on any taxable income in excess of \$17,400 or any part of that income, [6.75%].

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the

tax in subsection (1) of this section. *(Bracketed language is temporarily amended to "6.9%" on occurrence of contingency for income tax years 2022 and 2023 until December 31, 2023--secs. 8, 10, Ch. 488, L. 2021--see compiler's comment.)*

15-30-2103. (Effective January 1, 2024) **Rate of tax.** (1) Except as provided in **15-30-3704** and subsection (2) of this section, there must be levied, collected, and paid for each tax year upon the Montana taxable income of each taxpayer subject to this chapter a tax on the brackets of taxable income as follows:

(a) for every married individual who files a joint return and for every surviving spouse:

(i) on the first \$41,000 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of \$41,000 or any part of that income, 6.5%;

(b) for every head of household:

(i) on the first \$30,750 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of \$30,750 or any part of that income, 6.5%;

(c) for every individual other than a surviving spouse or head of household who is not a married individual:

(i) on the first \$20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of \$20,500 or any part of that income, 6.5%;

(d) for every married individual who does not make a joint return and for every estate or trust not exempt from taxation under the Internal Revenue Code:

(i) on the first \$20,500 of Montana taxable income or any part of that income, 4.7%;

(ii) on any Montana taxable income in excess of \$20,500 or any part of that income, 6.5%.

(2) By November 1 of each year, the department shall multiply the bracket amounts contained in subsection (1) by the inflation factor for the following tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that following tax year and must be used as the basis for imposition of the tax in subsection (1).

**History:** En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; re-en. Sec. 2295.2, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969; R.C.M. 1947, 84-4902; amd; Sec. 2, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 43, Ch. 544, L. 2003; Sec. 15-30-103, MCA 2007; redes. 15-30-2103 by Sec. 1, Ch. 147, L. 2009; amd. Sec. 2, Ch. 418, L. 2015; amd. Sec. 5, Ch. 458, L. 2021; amd. Secs. 1, 2, and 3, Ch. 488, L. 2021; amd. Sec. 9, Ch. 503, L. 2021.

## **vii. Step 7: Montana Tax Credits**

Similar to federal income taxes, the final computation deals with applying Montana tax credits and payments made through withholdings or estimated payments toward the tax in order to determine the size of the refund or the amount of money due. In some situations, a tax credit can reduce tax dollar for dollar. Also, unlike deductions, when Congress adds another federal tax credit it does not generally appear automatically as a credit for Montana individual income tax purposes.

Tax credits can be separated into three categories: nonrefundable credits with no carryover, nonrefundable credits with a carryover, and refundable credits. When a credit is nonrefundable, a taxpayer can only offset tax liability with the credit. In the event tax liability is less than the amount of the credit, a refund will not be issued, and the taxpayer cannot reduce tax liability below zero. However, if a nonrefundable credit has a carryover provision the taxpayer may be able to utilize the remaining portion of the credit in another tax year. Moreover, if a tax credit is refundable the taxpayer may receive a refund in situations where tax liability is less than the amount of the credit.

[Senate Bill No. 399](#) eliminated the following tax credits starting after tax year 2021:

- [Adoption Credit](#)
- [Alternative Energy Production Credit](#)
- [Alternative Energy System Credit](#)
- [Alternative Fuel Credit](#)
- [Biodiesel and Blending Credit](#)
- [College Contribution Credit](#)
- [Dependent Care Assistance and Referral Credit](#)
- [Elderly Care Credit](#)
- [Emergency Lodging Credit](#)
- [Empowerment Zone Credit](#)
- [Energy Conservation Installation Deduction](#)
- [Geothermal System Credit](#)
- [Health Insurance for Uninsured Montanans Credit](#)
- [Mineral and Coal Exploration Incentive Credit](#)
- Oilseed Crush Facility Credit

## **B. TRANSITION TO SENATE BILL NO. 399**

[Senate Bill No. 399](#) has two transition sections to make the shift to taxable income easier. The first transition section allows a taxpayer to carryforward any unused tax credits that were permitted before the repeal of the credits. The second transition section is more involved and provides for various positive and negative adjustments. The second transition section is not

effective until January 1, 2024, so the Legislature can make changes to this sections in the 2023 legislative session if required. The language for the second transition section originated from similar<sup>18</sup> income tax legislation that was introduced in prior sessions and has been adjusted based on input received. The second transition section provides as follows:

**Section 67. Transition.** (1) As used in this section, the following definitions apply:

(a) "Transition adjustment" means the net sum of all positive and negative adjustments to a taxpayer's Montana taxable income related to transition items provided in subsection (3).

(b) "Transition item" means any difference arising prior to January 1, 2024, from a difference in federal and Montana income tax laws in:

(i) the amount, character, realization, or recognition of income or an item of income, gain, or credit;

(ii) the amount, character, allowance, or disallowance of loss or an item of loss, deduction, or expense; or

(iii) the basis of an asset or liability that will not, after December 31, 2023, increase or decrease a taxpayer's federal taxable income.

(2) An adjustment to Montana taxable income may not be made to take transition items into account except as provided in subsection (3).

(3) On or before the due date, including extensions, of a return for the tax year ending after December 31, 2023, and before January 1, 2025, a taxpayer may, on forms prescribed by the department, file an election to make a transition adjustment to Montana taxable income. The election must specify and account for all transition items, including but not limited to the following:

(a) If a taxpayer has a disallowed passive activity loss within the meaning of section 469 of the Internal Revenue Code that is carried over to a tax year ending after December 31, 2023, and before January 1, 2025, and if the amount of the federal carryover is not the same amount as the Montana carryover:

(i) the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana carryover is smaller than the federal carryover; and

(ii) the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana carryover is larger than the federal carryover.

(b) If a taxpayer has excess long-term or short-term net capital loss described in section 1212(b)(1) of the Internal Revenue Code that is carried over to a tax year ending after December 31, 2023, and before January 1, 2025, and if the amount of the federal carryover is not the same amount as the Montana carryover:

(i) the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana carryover is smaller than the federal carryover; and

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<sup>18</sup> A similar transition section was in section 51 of Senate Bill No. 173 (2001): <https://leg.mt.gov/bills/2001/billhtml/SB0173.htm>; section 59 of Senate Bill No. 282 (2013): <https://leg.mt.gov/bills/2013/billhtml/SB0282.htm>; and section 71 of Senate Bill No. 171 (2015): <https://leg.mt.gov/bills/2015/billhtml/SB0171.htm>.

(ii) the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana carryover is larger than the federal carryover.

(c) If a taxpayer or a taxpayer and the taxpayer's spouse made an election on the taxpayer's federal return to defer income ratably because of a conversion from an IRA, other than a Roth IRA, to a Roth IRA pursuant to section 408A(d)(3) of the Internal Revenue Code but included all the income in the taxpayer's Montana income tax return, the sum of the balance of the federal deferred amount as of January 1, 2024, is a negative adjustment to the taxpayer's Montana taxable income.

(d) Notwithstanding the deduction that a taxpayer would be allowed for net operating loss carryovers and net operating loss carrybacks under section 172(a) of the Internal Revenue Code in a tax year ending after December 31, 2023, and before January 1, 2025, if the taxpayer's federal net operating loss is different from the taxpayer's Montana net operating loss as of December 31, 2023, no adjustment to the taxpayer's Montana taxable income may be made.

(e) If a taxpayer has an asset with a different adjusted basis for federal and Montana income tax purposes after taking into account the effect of the adjustments provided in subsections (3)(a), (3)(b), and (3)(c):

(i) the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is higher than the federal adjusted basis; and

(ii) the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is lower than the federal adjusted basis.

(f) If a taxpayer has a liability with a different adjusted basis for federal and Montana income tax purposes after taking into account the effect of the adjustments provided in subsections (3)(a), (3)(b), and (3)(c):

(i) the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is higher than the federal adjusted basis; and

(ii) the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is lower than the federal adjusted basis.

(g) If a taxpayer received a refund of federal income tax the deduction of which in a tax year beginning after December 31, 2022, resulted in a reduction of Montana income tax liability, the refund is, to the extent the deduction resulted in a reduction of Montana income tax liability, a positive adjustment to the taxpayer's Montana taxable income.

(4) The department of revenue is authorized to adopt rules and require facts and information to be reported that it considers necessary to administer the transition adjustment provided in this section.