

**SUPPLEMENT
INDIVIDUAL INCOME TAX IN MONTANA
NOTABLE CHANGES MADE DURING THE 2023 LEGISLATIVE SESSION**

Prepared for the Revenue Interim Committee

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* **NOTE:** This document is a supplement to a document entitled "*Overview of the Individual Income Tax in Montana and Changes Made During the 2021 Legislative Session in Senate Bill No. 399*" dated June 2022. The original document can be found here: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/June-2022/SB399-memo.pdf> The outlining in this document reflects the subject location in the original document.

NOTABLE BILLS IMPACTING TAX CALCULATIONS STARTING IN TAX YEAR 2024:

House Bill No. 89 (2023)	Revise laws related to Montana national guard life insurance
House Bill No. 221 (2023)	Revise income tax rates for net-long term capital gains
House Bill No. 222 (2023)	Provide rebates of property taxes paid on a principal residence
House Bill No. 225 (2023)	Establish adoption tax credit
House Bill No. 447 (2023)	Provide for income tax exceptions on certain nonresidents
Senate Bill No. 104 (2023)	Exempt retired military pensions from state income tax
Senate Bill No. 121 (2023)	Reduce top marginal income tax rate and increase EITC
Senate Bill No. 294 (2023)	Establish the end of watch trust
Senate Bill No. 506 (2023)	Revise Montana charitable endowment tax credit
Senate Bill No. 550 (2023)	Generally revise income tax laws and income tax provisions

2. INDIVIDUAL INCOME TAX IN MONTANA

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

i. Step 1: Montana Gross Income Calculation

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c. *2023 Legislative Changes*

While not technically an adjustment to Montana gross income, [House Bill No. 447](#) (2023) provides for exceptions to imposition of income tax on certain nonresidents and withholding by certain employers for nonresident income in the state.

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

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c. *2023 Legislative Changes*

During the 2023 Session, the Legislature amended section [15-30-2120](#), MCA, multiple times through seven separate pieces of legislation. The amendments are highlighted below (staff comments in red):

15-30-2120. 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;

(j) for **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 **(subsection (2)(j) amendment inserted by [Senate Bill No. 550 \(2023\)](#) and [Senate Bill No. 554 \(2023\)](#))**

(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). (subsection (2)(k) inserted by [Senate Bill No. 550 \(2023\)](#) and [Senate Bill No. 554 \(2023\)](#))

(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)(o);

(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; (former subsection (3)(c)(iii) deleted by [House Bill No. 89 \(2023\)](#))~~

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

(iv) 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; **(former subsection (3)(d) deleted by [Senate Bill No. 550 \(2023\)](#))**

(d) annual contributions and income 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; **(subsection (3)(d) inserted by [Senate Bill No. 550 \(2023\)](#))**

(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 **(former subsection (3)(l) deleted by [House Bill No. 221 \(2023\)](#) and replaced by reduced long-term capital gains rates in [15-30-2103, MCA](#))**

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

(m) payments from the Montana end of watch trust as provided in [2-15-2041](#); **(subsection (3)(m) regarding end of watch trust inserted by [Senate Bill No. 294 \(2023\)](#))**

(n) (i) subject to subsection (9), a portion of military pensions or military retirement income as calculated pursuant to subsection (8) that is received by a retired member of:

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

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

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

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

(ii) subject to subsection (9), up to 50% of all income received as survivor benefits for military service provided for in subsection (3)(n)(i)(A) through (3)(n)(i)(D); and (subsection (3)(n) regarding military pensions inserted by [Senate Bill No. 104 \(2023\)](#))

(o) the amount of the property tax rebate received under [15-1-2302](#). (subsection (3)(o) regarding property tax rebate inserted by [House Bill No. 222 \(2023\)](#))

(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).

(8) (a) Subject to subsection (9), the subtraction in subsection (3)(n)(i) is equal to the lesser of:

(i) the amount of Montana source wage income on the return; or

(ii) 50% of the taxpayer's military pension or military retirement income.

(b) For the purposes of subsection (8)(a)(i), "Montana source wage income" means:

(i) wages, salary, tips, and other compensation for services performed in the state;

(ii) net income from a trade, business, profession, or occupation carried on in the state; and

(iii) net income from farming activities carried on in the state. (subsection (8) regarding military pensions inserted by [Senate Bill No. 104 \(2023\)](#))

(9) The subtractions in subsection (3)(n):

(a) may only be claimed by a person who:

(i) becomes a resident of the state after June 30, 2023; or

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

(b) may only be claimed for 5 consecutive years after satisfying the provisions of subsection (9)(a); and

(c) are not available if a taxpayer claimed the exemption before becoming a nonresident. (subsection (9) regarding military pensions inserted by [Senate Bill No. 104 \(2023\)](#)) (Subsection (3)(o) terminates June 30, 2025--sec. 10, Ch. 47, L. 2023; subsections (3)(n), (8), and (9) terminate December 31, 2033--sec. 4, Ch. 650, L. 2023.)

History: En. Sec. 1, Ch. 503, L. 2021; amd. Sec. 2, Ch. 46, L. 2023; amd. Sec. 5, Ch. 47, L. 2023; amd. Sec. 2, Ch. 128, L. 2023; amd. Sec. 1, Ch. 650, L. 2023; amd. Sec. 9, Ch. 669, L. 2023; amd. Sec. 2, Ch. 701, L. 2023; amd. Sec. 6, Ch. 702, L. 2023.

vi. Step 6: Montana Tax Calculation.

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c. 2023 Legislative Changes

During the 2023 Session, the Legislature amended section [15-30-2103](#), MCA, in two separate pieces of legislation. The amendments are highlighted below (staff comments in red):

15-30-2103. Rate of tax -- net long-term capital gains -- definitions. (1) Except as provided in [15-30-3704](#) and subsection (2) of this section subsections (2) and (3), there must be levied, collected, and paid for each tax year on 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%~~ 5.9%;

(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%~~ 5.9%;

(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%~~ 5.9%;

(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%~~ 5.9%. (Top rate reductions inserted by [Senate Bill No. 121 \(2023\)](#))

(2) Except as provided in [15-30-3704](#) and subsection (3) of this section, that portion of a taxpayer's Montana taxable income that consists of net long-term capital gains after accounting for amounts included in taxable income that is not net long-term capital gains is subject to a tax on the brackets of net long-term capital gains as follows:

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

(i) on the first \$41,000 less nonqualified taxable income of net long-term capital gains, 3.0%;

(ii) on net long-term capital gains that exceed \$41,000 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is \$41,000 or greater, all of the net long-term capital gains are taxed at 4.1%;

(b) for every head of household:

(i) on the first \$30,750 less nonqualified taxable income of net long-term capital gains, 3.0%;

(ii) on any net long-term capital gains that exceed \$30,750 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is \$30,750 or greater, all of the net long-term capital gains are taxed at 4.1%;

(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 less nonqualified taxable income of net long-term capital gains, 3.0%;

(ii) on any net long-term capital gains that exceed \$20,500 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is \$20,500 or greater, all of the net long-term capital gains are taxed at 4.1%;

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

(i) on the first \$20,500 less nonqualified taxable income of net long-term capital gains, 3.0%;

(ii) on any net long-term capital gains that exceed \$20,500 less nonqualified taxable income or any part of that income, 4.1%, except that if the total nonqualified taxable income is \$20,500 or greater, all of the net long-term capital gains are taxed at 4.1%.

(3) By November 1 of each year, the department shall multiply the bracket amounts contained in ~~subsection~~ subsections (1) and (2) 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~~ subsections (1) and (2).

(4) For the purposes of this section, the following definitions apply:

(a) "Net long-term capital gains" means net long-term capital gains as that term is defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222.

(b) "Nonqualified taxable income" means Montana taxable income that is not considered net long-term capital gains. **(Long-term capital gains provisions inserted by [House Bill No. 221 \(2023\)](#))**

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; amd. Sec. 1, Ch. 46, L. 2023; amd. Sec. 1, Ch. 50, L. 2023.

vii. Step 7: Montana Tax Credits

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c. *2023 Legislative Changes*

During the 2023 Session, the Legislature enacted and revised tax credits in multiple pieces of legislation, including but not limited to:

1. [House Bill No. 225 \(Ch. 493\)](#) Providing for an adoption tax credit; providing that the tax credit is refundable; providing rulemaking authority; providing a definition.
2. [House Bill No. 245 \(Ch. 576\)](#) Revising laws related to the trades education and training tax credit; expanding the list of qualifying trades for the trades education and training tax credit; providing the department of revenue may further expand the list through its existing rulemaking authority; providing legislative intent; extending the termination date 2 years.
3. [House Bill No. 408 \(Ch. 558\)](#) Revising the student scholarship organization and innovative educational program income tax credits; increasing the aggregate limits for the credits; limiting the amount of donations that a school district may retain; providing for redistribution of funds that exceed a school district's limit to school districts that receive advanced opportunity aid; revising the definition of innovative educational program; providing a statutory appropriation.
4. [House Bill No. 601 \(Ch. 391\)](#) Revising the credit amount for the annual job growth incentive tax credit; revising definitions.
5. [Senate Bill No. 121 \(Ch. 50\)](#) Increasing the earned income tax credit.
6. [Senate Bill No. 506 \(Ch. 690\)](#) Revising the tax credit for contributions to a qualified endowment; revising the maximum donation that qualifies for the credit; repealing the termination date of the credit.