

1 SENATE BILL NO. 537  
2 INTRODUCED BY J. SMALL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TAX INCENTIVES FOR THE PURCHASE AND SALE  
5 OF MONTANA-PRODUCED FOOD; PROVIDING A SUBTRACTION FROM INDIVIDUAL INCOME AND  
6 CORPORATE INCOME FOR THE COST OF MONTANA-PRODUCED FOOD AND FOR INCOME FROM  
7 SELLING MONTANA-PRODUCED FOOD; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-30-2120,  
8 15-31-113, AND 15-31-114, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN  
9 APPLICABILITY DATE."

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

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

14 **"15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine**  
15 **Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are  
16 subtracted from federal taxable income to determine Montana taxable income.

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

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

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

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

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

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

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

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

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

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

12 (j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal  
 13 Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not  
 14 to exceed the amount required to reduce the federal itemized amount computed under section 161 of the  
 15 Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under  
 16 section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

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

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

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

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

25 (ii) railroad retirement benefits;

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

28 (ii) the salary received by residents of Montana for active duty in the national guard. For the

1 purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national  
2 guard member pursuant to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (n) income from the sale of Montana-produced food as those terms are defined in 15-31-113; and

14 (o) expenses paid or incurred for purchasing for resale Montana-produced food as those terms are  
15 defined in 15-31-113.

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

18 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections  
19 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  
20 wages and salaries paid regardless of the credit taken; or

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

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

28 (5) (a) An individual who contributes to one or more accounts established under the Montana

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

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

12 (6) (a) An individual who contributes to one or more accounts established under the Montana  
13 achieving a better life experience program or to a qualified program established and maintained by another  
14 state may reduce taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of  
15 married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions  
16 to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as  
17 being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with  
18 respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or  
19 the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of  
20 subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

21 (b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in  
22 53-25-118.

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

27 (8) For the subtractions provided for in subsections (3)(n) and (3)(o), the taxpayer shall report the  
28 expenses and income from food identified as Montana-produced by the vendor."

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2           **Section 2.** Section 15-31-113, MCA, is amended to read:

3           **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income  
4 recognized in determining the corporation's gross income for federal income tax purposes and:

5           (a) including:

6           (i) interest exempt from federal income tax and exempt-interest dividends as defined in section  
7 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

8           (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal  
9 corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those  
10 sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not  
11 subject to Montana income or corporate income tax under Title 15, chapter 30 or chapter 31, as appropriate, on  
12 the gain passing through to the stockholders pursuant to federal law; and

13           (b) excluding:

14           (i) gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant  
15 to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered,  
16 when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this  
17 section; and

18           (ii) income from the sale of Montana-produced food.

19           (2) The term "net income" means the gross income of the corporation less the deductions set forth  
20 in 15-31-114.

21           (3) A corporation is not exempt from the corporate income tax unless specifically provided for  
22 under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt  
23 from the corporate income tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporate  
24 income tax purposes in the same manner as a corporation that is subject to or liable for federal income tax  
25 according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the  
26 taxable year.

27           (4) For the exclusion provided for in subsection (1)(b)(ii), the taxpayer shall report the income from  
28 food identified as Montana-produced by the vendor.

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

2           (a) (i) "Food" means articles normally used by humans as food or drink, including alcoholic and  
3 nonalcoholic beverages and articles used for components of articles normally used by humans as food or drink.

4           (ii) The term does not include food prepared for onsite consumption.

5           (b) "Montana-produced" means planted, cultivated, grown, harvested, raised, collected, processed,  
6 or manufactured in the state."

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8           Section 15-31-114, MCA, is amended to read:

9           **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the  
10 following deductions are allowed from the gross income received by the corporation within the year from all  
11 sources:

12           (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the  
13 maintenance and operation of its business and properties, including reasonable allowance for salaries for  
14 personal services actually rendered, subject to the limitation contained in this section, and rentals or other  
15 payments required to be made as a condition to the continued use or possession of property to which the  
16 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries  
17 paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations  
18 are taxed on income derived from outside the state, salaries of officers paid in connection with securing the  
19 income are deductible.

20           (b) (i) all losses actually sustained and charged off within the year and not compensated by  
21 insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property  
22 used in the trade or business. The allowance is determined according to the provisions of section 167 of the  
23 Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the  
24 same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid  
25 out for any buildings, permanent improvements, or betterments made to increase the value of any property or  
26 estate, and a deduction may not be made for any amount of expense of restoring property or making good the  
27 exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is  
28 not allowed on a title plant as defined in 33-25-105(15).

1           (ii)       There is allowed as a deduction for the taxable period a net operating loss deduction  
2 determined according to the provisions of 15-31-119.

3           (c)       in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable  
4 allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined  
5 according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under  
6 the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and  
7 intangible drilling expenses for corporate income tax purposes must be the same as the elections made for  
8 federal income tax purposes.

9           (d)       the amount of interest paid within the year on its indebtedness incurred in the operation of the  
10 business from which its income is derived. Interest may not be allowed as a deduction if paid on an  
11 indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business  
12 unless the income from the property or business would be taxable under this part.

13           (e)       (i) taxes paid within the year, except the following:

14                   (A)       taxes imposed by this part;

15                   (B)       taxes assessed against local benefits of a kind tending to increase the value of the property  
16 assessed;

17                   (C)       taxes on or according to or measured by net income or profits imposed by authority of the  
18 government of the United States;

19                   (D)       taxes imposed by any other state or country upon or measured by net income or profits.

20           (ii)       Taxes deductible under this part must be construed to include taxes imposed by any county,  
21 school district, or municipality of this state.

22           (f)       that portion of an energy-related investment allowed as a deduction under 15-32-103;

23           (g)       (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that  
24 qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

25           (ii)       The public service commission may not allow in the rate base of a regulated corporation the  
26 inclusion of contributions made under this subsection.

27           (iii)       A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the  
28 annuity is a qualified charitable gift annuity as defined in 33-20-701.

1 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-  
2 209, 81-7-118, or 81-7-201; and

3 (i) expenses paid or incurred in the tax year for purchasing for resale Montana-produced food as  
4 those terms are defined in 15-31-113.

5 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair  
6 market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated  
7 technological equipment or apparatus intended for use with the computer donated to an elementary, secondary,  
8 or accredited postsecondary school located in Montana if:

9 (a) the contribution is made no later than 5 years after the manufacture of the donated property is  
10 substantially completed;

11 (b) the property is not transferred by the donee in exchange for money, other property, or services;  
12 and

13 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept  
14 the property and representing that the use and disposition of the property will be in accordance with the  
15 provisions of subsection (2)(b).

16 (3) In the case of a regulated investment company or a fund of a regulated investment company,  
17 as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as  
18 that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in  
19 section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or  
20 renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any  
21 income that is not subject to tax under this chapter when earned by the regulated investment company. For the  
22 purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the  
23 Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or  
24 renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as  
25 defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as  
26 those sections may be amended or renumbered.

27 (4) For the deduction provided for in subsection (1)(i), the taxpayer shall report the expense from  
28 food identified as Montana-produced by the vendor."

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

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

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