

SENATE BILL NO. 53

INTRODUCED BY G. HERTZ

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TAX LAWS; REVISING INCOME TAX LAWS TO IMPLEMENT CHANGES FROM PRIOR INCOME TAX SIMPLIFICATION LEGISLATION; REVISING MARITAL FILING STATUS REFERENCES; PROVIDING FOR A DEADLINE EXTENSION WHEN A DEADLINE FALLS ON A RECOGNIZED FEDERAL FILING HOLIDAY; PROVIDING A REFERENCE TO THE INTERNAL REVENUE CODE FOR WHAT IS CONSIDERED A QUALIFIED WITHDRAWAL FROM AN EDUCATION SAVINGS ACCOUNT; REMOVING THE REQUIREMENT OF PROVIDING A CERTIFICATE FROM THE DEPARTMENT OF REVENUE TO THE CLERK OF THE COURT REGARDING THE ESTATE TAX IN A PROBATE PROCEEDING; AMENDING SECTIONS 15-30-2120, 15-30-2339, 15-30-2342, 15-30-2538, 15-62-103, 15-62-207, AND 53-25-117, MCA; REPEALING SECTION 72-3-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

"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

(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).

(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);

- 1 (b) if exempt from taxation by Montana under federal law:
- 2 (i) interest from obligations of the United States government and exempt-interest dividends
- 3 attributable to that interest; and
- 4 (ii) railroad retirement benefits;
- 5 (c) (i) salary received from the armed forces by residents of Montana who are serving on active
- 6 duty in the regular armed forces and who entered into active duty from Montana;
- 7 (ii) the salary received by residents of Montana for active duty in the national guard. For the
- 8 purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national
- 9 guard member pursuant to:
- 10 (A) Title 10, U.S.C.; or
- 11 (B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency
- 12 operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland
- 13 defense activity or contingency operation.
- 14 (iii) the amount received by a beneficiary pursuant to 10-1-1201; and
- 15 (iv) all payments made under the World War I bonus law, the Korean bonus law, and the veterans'
- 16 bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law,
- 17 Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the
- 18 filing of an amended return and a verified claim for refund on forms prescribed by the department in the same
- 19 manner as other income tax refund claims are paid.
- 20 (d) annual contributions and income in a medical care savings account provided for in Title 15,
- 21 chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the
- 22 employee or account holder or a dependent of the employee or account holder;
- 23 (e) contributions or earnings withdrawn from a family education savings account provided for in
- 24 Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as
- 25 provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified
- 26 education expenses, as defined in 15-62-103, of a designated beneficiary;
- 27 (f) interest and other income related to contributions that were made prior to January 1, 2024, that
- 28 are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal

- 1 for payment of eligible costs for the first-time purchase of a single-family residence;
- 2 (g) for each taxpayer that has attained the age of 65, an additional subtraction of \$5,500;
- 3 (h) the amount of a scholarship to an eligible student by a student scholarship organization
- 4 pursuant to 15-30-3104;
- 5 (i) a payment received by a private landowner for providing public access to public land pursuant
- 6 to Title 76, chapter 17, part 1;
- 7 (j) the amount of any refund or credit for overpayment of income taxes imposed by this state or
- 8 any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not
- 9 previously allowed as a deduction for Montana income tax purposes;
- 10 (k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that
- 11 the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 12 (l) the amount of the gain recognized from the sale or exchange of a mobile home park as
- 13 provided in 15-31-163;
- 14 (m) payments from the Montana end of watch trust as provided in 2-15-2041;
- 15 (n) (i) subject to subsection (9), a portion of military pensions or military retirement income as
- 16 calculated pursuant to subsection (8) that is received by a retired member of:
- 17 (A) the armed forces of the United States, as defined in 10 U.S.C. 101;
- 18 (B) the Montana army national guard or the army national guard of other states;
- 19 (C) the Montana air national guard or the air national guard of other states; or
- 20 (D) a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces; and
- 21 (ii) subject to subsection (9), up to 50% of all income received as survivor benefits for military
- 22 service provided for in subsection (3)(n)(i)(A) through (3)(n)(i)(D); and
- 23 (o) the amount of the property tax rebate received under 15-1-2302.
- 24 (4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's
- 25 business deductions:
- 26 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections
- 27 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
- 28 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, a head of household, or a married individual who files a separate return on a separate form pursuant to 15-30-2113 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~~ Married taxpayers who file a joint return are entitled to a reduction, not in excess of ~~\$3,000~~ \$6,000, for ~~the spouses'~~ their 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, a head of household, or a married individual who files a separate return on a separate form pursuant to 15-30-2113 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~~ Married taxpayers filing a joint return are entitled to a reduction, not to exceed ~~\$3,000~~ \$6,000, for ~~the spouses'~~ their 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

1 taxable income under this subsection (6)(a) applies only ~~with respect to~~ contributions to an account for which
2 the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's
3 child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply ~~with respect to~~
4 withdrawals of contributions that reduced taxable income.

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

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

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

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

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

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

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

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

17 (iii) net income from farming activities carried on in the state.

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

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

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

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

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

25 (c) are not available if a taxpayer claimed the exemption before becoming a nonresident.

26 (Subsection (3)(o) terminates June 30, 2025--sec. 10, Ch. 47, L. 2023; subsections (3)(n), (8), and (9) terminate
27 December 31, 2033--sec. 4, Ch. 650, L. 2023.)"

Section 2. Section 15-30-2339, MCA, is amended to read:

"15-30-2339. Residential property tax credit for elderly -- filing date. (1) Except as provided in subsection (3), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought. If April 15 falls on a holiday that defers a filing date that is recognized by the internal revenue service and that is not observed in Montana, the claim may be made on the first business day after the holiday.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(4) In the event that an individual who would have a claim under 15-30-2337 through 15-30-2341 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(5) The department or an individual may revise a return and make a claim under 15-30-2337 through 15-30-2341 within 3 years from the last day prescribed for filing a claim for relief."

Section 3. Section 15-30-2342, MCA, is amended to read:

"15-30-2342. Credit for preservation of historic buildings. (4) There is allowed as a credit against the taxes imposed by 15-30-2103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

~~(2) — The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners."~~

Section 4. Section 15-30-2538, MCA, is amended to read:

"15-30-2538. Withholding required on mineral royalty payments. Except as provided in 15-30-2539, each remitter shall withhold from each royalty payment made to a royalty owner an amount equal to 6% 5.9% THE HIGHEST MARGINAL TAX RATE IN EFFECT UNDER 15-30-2103 of the net amount payable to the royalty

1 owner."

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3 **Section 5.** Section 15-62-103, MCA, is amended to read:

4 **"15-62-103. Definitions.** As used in this chapter, the following definitions apply:

5 (1) "Account" means an individual account established under this chapter.

6 (2) "Account owner" means the person who enters into a participation agreement and establishes
7 an account on behalf of a designated beneficiary.

8 (3) "Board" means the board of regents of higher education established by Article X, section 9,
9 subsection (2), of the Montana constitution and 2-15-1505.

10 (4) "Committee" means the family education savings program oversight committee established in
11 20-25-901.

12 (5) "Contributor" means a person who makes a contribution to an account for the benefit of a
13 designated beneficiary.

14 (6) "Designated beneficiary" means, with respect to an account, the person designated at the time
15 that the account is opened as the person whose education expenses are expected to be paid from the account
16 or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated
17 beneficiary.

18 (7) "Education expense" means expenses for tuition, fees, books, supplies, equipment required for
19 an education program, principal or interest on any qualified education loan, and any other typical education
20 expense associated with an education program up to the maximum amount allowable under section 529 of the
21 Internal Revenue Code, 26 U.S.C. 529, as amended.

22 (8) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings
23 and loan association, credit union, insurance company, trust company, investment company, or other similar
24 entity that is authorized to do business in this state.

25 (9) "Higher education institution" means an eligible educational institution as defined in section 529
26 of the Internal Revenue Code, 26 U.S.C. 529.

27 (10) "Investment products" means, without limitation, certificates of deposit, savings accounts
28 paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(11) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(12) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

(13) "Participation agreement" means an agreement between the board, as trustee and as administrator of the program, and the account owner that creates a trust interest in the trust and provides for participation in the program.

(14) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of education.

(15) "Qualified education expenses" means any education expense permitted by section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(16) "Qualified tuition program" means a qualified tuition program as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(17) "Qualified withdrawal" means:

(a) a withdrawal from an account to pay the qualified education expenses of the designated beneficiary of the account; or

(b) a special rollover from an account to a Roth IRA as provided for in section 529(c)(3)(E) of the Internal Revenue Code, 26 U.S.C. 529(c)(3)(E).

(18) "Trust" means the family education savings trust established by 15-62-301.

(19) "Trust interest" means an account owner's interest in the trust created by a participation agreement and held for the benefit of a designated beneficiary.

(20) "Trustee" means the board in its capacity as trustee of the trust."

Section 6. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-2120, ~~by the total amount of the contributions, but not more than \$3,000.~~ The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

Section 7. Section 53-25-117, MCA, is amended to read:

"53-25-117. Deductions for contributions. An individual who contributes to one or more accounts established pursuant to this chapter in a tax year is entitled to reduce the individual's Montana taxable income, in accordance with 15-30-2120, ~~by the total amount of the contributions, but not more than \$3,000,~~ if the individual is:

- (1) the designated beneficiary;
- (2) the spouse of the designated beneficiary; or
- (3) a parent, grandparent, sibling, or child related to the designated beneficiary by blood, marriage, or legal adoption."

NEW SECTION. **Section 8. Repealer.** The following section of the Montana Code Annotated is repealed:

72-3-1006. Certificate.

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, ~~2024~~ 2023.

- END -