

HOUSE BILL NO. 221

INTRODUCED BY T. WELCH, J. DOOLING, E. BUTTREY, D. LOGE, R. FITZGERALD, J. KASSMIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAX RATES APPLICABLE TO NET LONG-TERM CAPITAL GAINS; AMENDING SECTIONS 15-30-2103 AND 15-30-2120, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 15-30-2103, MCA, is amended to read:

**"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 -- 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 ~~upon~~ 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%;

(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) 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%.

~~(2)(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."

**Section 2.** Section 15-30-2120, MCA, is amended to read:

**"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

1 subtracted from federal taxable income to determine Montana taxable income.

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

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

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

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

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

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

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

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

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

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

25 (j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal  
26 Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not  
27 to exceed the amount required to reduce the federal itemized amount computed under section 161 of the  
28 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).

(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)~~, (3)(l);

(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;

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

(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.

(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;

(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; and

~~(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~~

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

(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)."

**NEW SECTION. Section 3. Effective date.** [This act] is effective January 1, 2024.

~~COORDINATION SECTION. SECTION 4. COORDINATION INSTRUCTION. (1) IF [THIS ACT] IS PASSED AND APPROVED AND DOES NOT CONTAIN THE PERCENTAGES OF 4.1% AND 3.0% IN THE AMENDED PORTION OF [SECTION 1] OF [THIS ACT], AND IF ANY OF THE FIVE BILLS IDENTIFIED IN SUBSECTION (2) ARE NOT PASSED AND APPROVED, THEN THE PERCENTAGE OF 4.1% IN THE INTRODUCED VERSION OF [THIS ACT] IS REPLACED WITH 4.5% AND THE PERCENTAGE OF 3.0% IN THE INTRODUCED VERSION OF [THIS ACT] IS REPLACED WITH 3.5% THROUGHOUT [SECTION 1] OF [THIS ACT].~~

~~(2) THE FIVE BILLS ARE:~~

~~(A) HOUSE BILL NO. 192;~~

~~(B) HOUSE BILL NO. 212;~~

~~(C) HOUSE BILL NO. 222;~~

~~(D) HOUSE BILL NO. 251; AND~~

~~(E) HOUSE BILL NO. 267.~~

**NEW SECTION. Section 4. Applicability.** [This act] applies to tax years beginning after December 31, 2023.

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