

HOUSE BILL NO. 240

INTRODUCED BY M. THANE, D. BEDEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AN OUTDATED REFERENCE IN THE FAMILY EDUCATION SAVINGS ACT; AMENDING SECTION 15-62-208, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 15-62-208, MCA, is amended to read:

"15-62-208. (Temporary) Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-2110(11).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529 of the Internal Revenue Code of 1986, 26 U.S.C. 529. The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the

1 withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one
2 time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

3 (4) For the purposes of this section, all contributions made to accounts by residents of Montana
4 are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate
5 that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim
6 deductions for contributions shall report on their Montana income tax returns the amount of deductible
7 contributions made to accounts for each designated beneficiary and the social security number of each
8 designated beneficiary.

9 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
10 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

11 (a) April 30, 2001; or

12 (b) the date that is 1 year prior to the date of the withdrawal or distribution.

13 (6) The department shall use all means available for the administration and enforcement of income
14 tax laws in the administration and enforcement of this section.

15 **15-62-208. (Effective January 1, 2024) Tax on certain withdrawals of deductible contributions.**

16 (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable
17 withdrawal of amounts that were deducted from income in calculating Montana individual income taxes.

18 (2) For purposes of determining the portion of a recapturable withdrawal that reduced Montana
19 individual income taxes, all withdrawals must be allocated between income and contributions in accordance
20 with the principles applicable under section 529 of the Internal Revenue Code of 1986, 26 U.S.C. 529. The
21 portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from
22 contributions, if any, that did not reduce Montana individual income taxes, to the extent of those contributions,
23 and then to contributions that reduced Montana individual income taxes. The portion of any other withdrawal
24 that is allocated to contributions must be treated as first derived from contributions that reduced Montana
25 individual income taxes, to the extent of the contributions, and then to contributions that did not reduce Montana
26 individual income taxes.

27 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from
28 which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of

1 the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that
2 an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax
3 even if the account owner is not a Montana resident at the time of the withdrawal.

4 (b) The department may require withholding on recapturable withdrawals from an account that was
5 at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the
6 withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one
7 time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

8 (4) For the purposes of this section, all contributions made to accounts by residents of Montana
9 are presumed to have reduced the contributor's Montana individual income taxes unless the contributor can
10 demonstrate that all or a portion of the contributions did not reduce Montana individual income taxes.

11 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
12 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after ~~the later of:~~

13 ~~(a) April 30, 2001; or~~

14 ~~(b) the date that is 1 year prior to the date of the withdrawal or distribution.~~

15 (6) The department shall use all means available for the administration and enforcement of income
16 tax laws in the administration and enforcement of this section."
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18 **NEW SECTION. Section 2. Effective date.** [This act] is effective January 1, 2024.

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