

HOUSE BILL NO. 895

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXCLUSION FROM INCOME FOR INCOME TAX
PURPOSES OF A PORTION OF INCOME FROM THE SALE OF CERTAIN NEWLY CONSTRUCTED
RESIDENCES; PROVIDING A DEFINITION; AMENDING SECTIONS 15-30-2120 AND 15-31-114, MCA; AND
PROVIDING AN 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

1 in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal
2 Revenue Code, 26 U.S.C. 651 and 661;

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

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

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

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

16 (k) for a pass-through entity, estate, or trust, the amount of state income taxes deducted pursuant
17 to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3).

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

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

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

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

26 (ii) railroad retirement benefits;

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

1 (ii) the salary received by residents of Montana for active duty in the national guard. For the
2 purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national
3 guard member pursuant to:

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

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

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

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

14 (d) annual contributions and income in a medical care savings account provided for in Title 15,
15 chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the
16 employee or account holder or a dependent of the employee or account holder;

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

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

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

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

27 (i) a payment received by a private landowner for providing public access to public land pursuant
28 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) 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;

(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

(o) the amount of the property tax rebate received under 15-1-2302; and

(p) 50% of the income generated from the sale of a newly constructed single-family residence or duplex constructed and sold by the taxpayer to a third party for less than 85% of the county median residential value according to the prior periodic reappraisal provided for in 15-7-111. The subtraction provided for in this subsection (3)(p) is disallowed if the taxpayer received compensation in addition to the sales price, in cash or in any other form, that when added to the sales price exceeds 85% of the county residential median value according to the prior periodic reappraisal.

(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

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

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

8 (5) (a) An individual who contributes to one or more accounts established under the Montana
9 family education savings program or to a qualified tuition program established and maintained by another state
10 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
11 taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
12 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts.
13 Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each
14 spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions
15 to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or
16 stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not
17 apply with respect to withdrawals of contributions that reduced federal taxable income.

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

20 (6) (a) An individual who contributes to one or more accounts established under the Montana
21 achieving a better life experience program or to a qualified program established and maintained by another
22 state may reduce taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of
23 married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions
24 to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as
25 being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with
26 respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or
27 the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of
28 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.

(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.

(10) For the subtraction in subsection (3)(p), the department shall calculate the county median residential value every 2 years as part of the periodic reappraisal provided for in 15-7-111.

(11) As used in this section, "county median residential value" means the median value of a single-family residence, including the land, located in the county rounded to the nearest thousand dollars. (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.)"

1 **Section 2.** Section 15-31-114, MCA, is amended to read:

2 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
3 following deductions are allowed from the gross income received by the corporation within the year from all
4 sources:

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

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

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

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

1 federal income tax purposes.

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

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

7 (A) taxes imposed by this part;

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

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

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

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

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

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

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

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

22 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-
23 209, 81-7-118, or 81-7-201; and

24 (i) 50% of the income generated from the sale of a newly constructed single-family residence or
25 duplex constructed and sold by the taxpayer to a third party for less than 85% of the county median residential
26 value according to the prior periodic reappraisal provided for in 15-7-111. The subtraction provided for in this
27 subsection (1)(i) is disallowed if the taxpayer received compensation in addition to the sales price, in cash or in
28 any other form, that when added to the sales price exceeds 85% of the county residential median value

1 according to the prior periodic reappraisal.

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

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

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

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

13 (3) In the case of a regulated investment company or a fund of a regulated investment company,
14 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
15 that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in
16 section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or
17 renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any
18 income that is not subject to tax under this chapter when earned by the regulated investment company. For the
19 purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the
20 Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or
21 renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as
22 defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as
23 those sections may be amended or renumbered.

24 (4) For the subtraction in subsection (1)(i), the department shall calculate the county median
25 residential value every 2 years as part of the periodic reappraisal provided for in 15-7-111.

26 (5) As used in this section, "county median residential value" means the median value of a single-
27 family residence, including the land, located in the county rounded to the nearest thousand dollars."

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