

## HOUSE BILL NO. 652

INTRODUCED BY N. NICOL, B. USHER, J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE INCOME TAXATION FOR MILITARY PENSIONS, RETIREMENT, AND SURVIVOR BENEFITS; PROVIDING AN INCOME TAX EXEMPTION FOR MILITARY PENSIONS, RETIREMENT, AND SURVIVOR BENEFITS; REVISING A DEFINITION; AMENDING SECTIONS 15-30-2101 AND 15-30-2120, MCA; REPEALING SECTION 4, CHAPTER 650, LAWS OF 2023; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 15-30-2101, MCA, is amended to read:

**"15-30-2101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(2) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(3) "Department" means the department of revenue.

(4) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as

provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(5) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(6) "Federal adjusted gross income" means adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62.

(7) "Federal taxable income", when referring to an individual, means taxable income as defined and described in section 63 of the Internal Revenue Code, 26 U.S.C. 63, and, when referring to a trust or estate, means taxable income as defined and described in sections 641 through 692 of the Internal Revenue Code, 26 U.S.C. 641 through 692.

(8) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(9) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(10) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(11) "Head of household" means a head of household as defined and described in section 2(b) of the Internal Revenue Code, 26 U.S.C. 2(b).

(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2023.

(13) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(15) "Joint return" means one return made jointly by a married individual with that individual's spouse.

(16) "Knowingly" is as defined in 45-2-101.

(17) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(18) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(19) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(20) "Married individual" means a married individual as defined and described in section 7703 of the Internal Revenue Code, 26 U.S.C. 7703.

(21) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of

1 the state;

2 (viii) net rents from real property and tangible personal property located in the state or received or  
3 accrued while a resident of the state;

4 (ix) net royalties from real property and from tangible real property to the extent the property is  
5 used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in  
6 the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days  
7 of physical location of the property in the state during the royalty period in the tax year and the denominator of  
8 which is the number of days of physical location of the property everywhere during all royalty periods in the tax  
9 year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in  
10 the state in which it was located at the time the person paying the royalty obtained possession.

11 (x) patent royalties to the extent the person paying them employs the patent in production,  
12 fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the  
13 royalties are received or accrued while a resident of the state;

14 (xi) net copyright royalties to the extent printing or other publication originates in the state or the  
15 royalties are received or accrued while a resident of the state;

16 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or  
17 credit:

18 (A) derived from a trade, business, occupation, or profession carried on in the state;

19 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
20 property located in the state; or

21 (C) taken into account while a resident of the state;

22 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit  
23 or item of income, gain, loss, deduction, or credit:

24 (A) derived from a trade, business, occupation, or profession carried on in the state;

25 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
26 property located in the state; or

27 (C) taken into account while a resident of the state;

28 (xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state;

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks; and

(xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment factor as provided in this subsection (21)(a)(xvii) does not fairly and equitably represent the nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection (21)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security;

(iii) military pension or retirement income that is received by a retired member of:

(A) the United States armed forces, 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; or

1           (iv) all income received as survivor benefits for military service.

2           (22) "Montana taxable income" means federal taxable income as determined for federal income tax  
3 purposes and adjusted as provided in 15-30-2120.

4           (23) "Nonresident" means a natural person who is not a resident.

5           (24) "Paid" means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or  
6 incurred" must be construed according to the method of accounting used to compute federal taxable income.

7           (25) "Partner" means a member of a partnership or a manager or member of any other entity, if  
8 treated as a partner for federal income tax purposes.

9           (26) "Partnership" means a general or limited partnership, limited liability partnership, limited liability  
10 company, or other entity, if treated as a partnership for federal income tax purposes.

11           (27) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

12           (28) "Pension and annuity income" means:

13           (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that  
14 term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as  
15 the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's  
16 beneficiary upon the cessation of employment;

17           (b) payments received as the result of past service and cessation of employment in the uniformed  
18 services of the United States;

19           (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions  
20 are included in federal adjusted gross income;

21           (d) distributions from individual retirement, deferred compensation, and self-employed retirement  
22 plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to  
23 the extent that the distributions are not considered to be premature distributions for federal income tax  
24 purposes; or

25           (e) amounts received from fully matured, privately purchased annuity contracts after cessation of  
26 regular employment.

27           (29) "Purposely" is as defined in 45-2-101.

28           (30) "Received" means received or accrued, and the term "received or accrued" must be construed

1 according to the method of accounting used to compute federal taxable income.

2 (31) "Resident" applies only to natural persons and includes, for the purpose of determining liability  
3 to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the  
4 state of Montana and any other person who maintains a permanent place of abode within the state even though  
5 temporarily absent from the state and who has not established a residence elsewhere.

6 (32) "S. corporation" means an incorporated entity for which a valid election under section 1362 of  
7 the Internal Revenue Code, 26 U.S.C. 1362, is in effect.

8 (33) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in  
9 proportion to their previous holdings.

10 (34) "Surviving spouse" means a surviving spouse as defined and described in section 2(a) of the  
11 Internal Revenue Code, 26 U.S.C. 2(a).

12 (35) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

13 (36) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or  
14 other obligation imposed by this chapter and unless otherwise specifically provided does not include a C.  
15 corporation."  
16

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

18 **"15-30-2120. Adjustments to federal taxable income to determine Montana taxable income. (1)**

19 The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable  
20 income to determine Montana taxable income.

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

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

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

28 (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);

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



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

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

1 53-25-118.

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

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

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

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

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

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

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

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

13 ~~(9) The subtractions in subsection (3)(n):~~

14 ~~(a) may only be claimed by a person who:~~

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

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

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

19 and

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

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

23

24 NEW SECTION. Section 3. Repealer. Section 4, Chapter 650, Laws of 2023, is repealed.

25

26 NEW SECTION. Section 4. Effective date. [This act] is effective January 1, 2026.

27

28 NEW SECTION. Section 5. Applicability. [This act] applies to tax years beginning after December

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69th Legislature 2025

HB 652.1

1 31, 2025.

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