

SENATE BILL NO. 117

INTRODUCED BY SONJU, MILLER, TUTVEDT

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FEDERALLY QUALIFIED HIGHER EDUCATION SAVINGS PLANS OF OTHER STATES HAVE THE SAME TAX ADVANTAGES AS ALLOWED FOR THE MONTANA FAMILY EDUCATION SAVINGS PLAN; AMENDING SECTION 15-30-2110, 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 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) 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;

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

(e) 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;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after



1 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted  
2 gross income.

3 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
4 include the following, which are exempt from taxation under this chapter:

5 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a  
6 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt  
7 from taxation by Montana under federal law;

8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
9 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

10 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including  
11 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

12 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
13 received as defined in 15-30-2101;

14 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

15 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
16 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
17 excess of \$30,000 as shown on the taxpayer's return;

18 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
19 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
20 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
21 as shown on their joint return;

22 (d) all Montana income tax refunds or tax refund credits;

23 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

24 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section  
25 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January  
26 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,  
27 or lodging;

28 (g) all benefits received under the workers' compensation laws;

29 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
30 employee under federal law;

- 1 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 3 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
4 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
5 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 6 (k) principal and income in a first-time home buyer savings account established in accordance with  
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
8 of a single-family residence;
- 9 (l) contributions or earnings withdrawn from a family education savings account or ~~earnings withdrawn~~  
10 ~~from a family education savings account from a qualified tuition program established and maintained by another~~  
11 state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified  
12 higher education expenses, as defined in 15-62-103, of a designated beneficiary;
- 13 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
14 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 15 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
16 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
17 of the same estate or trust for the same tax period;
- 18 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch  
19 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction  
20 is not provided for federal income tax purposes;
- 21 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
22 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
23 taxpayer meet the filing requirements in 15-30-2602.
- 24 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
25 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 26 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and
- 27 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in  
28 15-31-163.
- 29 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
30 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as

1 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
2 is effective.

3 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
4 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
5 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  
6 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
7 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must  
8 be made to determine the amount of income or loss of the partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
11 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
12 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
13 Montana return.

14 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section  
15 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may  
16 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital  
17 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss  
18 must be split equally on each return.

19 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and  
20 who file separate Montana income tax returns are not required to recompute allowable passive losses according  
21 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal  
22 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must  
23 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

24 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a  
25 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.  
26 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is  
27 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

28 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a  
29 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate  
30 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.

1 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted  
2 gross income.

3 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and  
4 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana  
5 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The  
6 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross  
7 income.

8 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
9 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
10 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
11 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
12 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
13 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
14 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted  
15 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
16 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
17 or expected to last at least 12 months.

18 (11) (a) An individual who contributes to one or more accounts established under the Montana family  
19 education savings program or to a qualified tuition program established and maintained by another state as  
20 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted  
21 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each  
22 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses  
23 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The  
24 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account  
25 of which the account owner, ~~as defined in 15-62-103,~~ is the taxpayer, the taxpayer's spouse, or the taxpayer's  
26 child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do  
27 not apply with respect to withdrawals of contributions that reduced adjusted gross income.

28 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in  
29 15-62-208.

30 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection

1 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

2 (i) is a health care professional licensed in Montana as provided in Title 37;

3 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
4 population in a federally designated health professional shortage area, a medically underserved area or  
5 population, or a federal nursing shortage county as determined by the secretary of health and human services  
6 or by the governor;

7 (iii) has had a student loan incurred as a result of health-related education; and

8 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
9 program described in subsection (12)(b) as an incentive to practice in Montana.

10 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or  
11 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
12 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
13 as a licensed health care professional.

14 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of  
15 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are  
16 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

17 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity  
18 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)  
19 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results  
20 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the  
21 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.  
22 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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24 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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26 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the  
27 meaning of 1-2-109, to tax years beginning after December 31, 2012.

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