

1 SENATE BILL NO. 412

2 INTRODUCED BY L. JONES

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO INCOME TAX
5 CREDITS FOR ELEMENTARY AND SECONDARY EDUCATION; PROVIDING FOR DISTRIBUTION OF
6 SUPPLEMENTAL FUNDING TO PUBLIC SCHOOLS THROUGH DIRECTED TAX PAYMENTS; CREATING A
7 STATE SPECIAL REVENUE ACCOUNT; ALLOWING TAX CREDITS FOR DONATIONS TO STUDENT
8 SCHOLARSHIP ORGANIZATIONS; ESTABLISHING OPERATING REQUIREMENTS, REVIEW PROCESSES,
9 AND TERMINATION PROCEDURES FOR STUDENT SCHOLARSHIP ORGANIZATIONS; PROVIDING THAT
10 A SCHOLARSHIP IS NOT TAXABLE INCOME; PROVIDING RULEMAKING AUTHORITY; PROVIDING THAT
11 THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING
12 SECTIONS 15-30-2110 AND 20-9-543, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
13 APPLICABILITY DATE."

14

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

16

17 NEW SECTION. **Section 1. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of
18 innovative educational programs is to enhance the curriculum of public schools with supplemental private
19 contributions through tax replacement programs.

20

21 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions
22 apply:

23

(1) "Eligible public school" means a Montana public school.

24

(2) "Geographic region" has the meaning provided in [section 3].

25

(3) "Innovative educational program" means an advanced academic program that enhances the
26 curriculum or academic program of an eligible public school and that is not part of the regular academic program
27 of an eligible public school. The instruction, program, or other activities offered through an innovative educational
28 program must include at least one of the following characteristics:

29

(a) provides different focus, methodology, skill training, or delivery, including internet-based and distance
30 learning technologies, than is provided in a typical academic program of a public school;

1 (b) is accessible before or after public school hours, on weekends, as a year-round program, as an
2 extension of the public school year, or in a combination of these characteristics;

3 (c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

4 (d) uses internships and other work-based learning opportunities for a student that supplements the
5 curriculum or academic program of a student and provides a student with the opportunity to apply the knowledge
6 and skills learned in the academic program; or

7 (e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year
8 or 4-year college or university.

9 (4) "Large district" has the meaning provided in [section 3].

10 (5) "Quality educator" has the meaning provided in 20-4-502.

11 (6) "Taxpayer" has the meaning provided in 15-30-2101.

12

13 **NEW SECTION. Section 3. Establishment of geographic regions and large districts -- innovative**

14 **educational program.** (1) (a) Geographic regions are established on the basis of county boundaries and are
15 designed to achieve approximate statewide equity among the eleven regions in terms of the number of trustees
16 on school boards located within the applicable regions. The equity must be reviewed periodically by the
17 superintendent of public instruction by dividing the number of trustees serving on school boards located within
18 the applicable region, including trustees on school boards referenced in subsection (2), by the total number of
19 geographic regions and large districts.

20 (b) The geographic regions are established as follows:

21 (i) 1st region: Flathead, Lake, and Lincoln Counties;

22 (ii) 2nd region: Blaine, Hill, and Phillips Counties;

23 (iii) 3rd region: Daniels, Roosevelt, Sheridan, and Valley Counties;

24 (iv) 4th region: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux Counties;

25 (v) 5th region: Cascade, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland
26 Counties;

27 (vi) 6th region: Mineral, Missoula, Ravalli, and Sanders Counties;

28 (vii) 7th region: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties;

29 (viii) 8th region: Broadwater, Gallatin, Meagher, Park, and Sweet Grass Counties;

30 (ix) 9th region: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone Counties;

- 1 (x) 10th region: Carter, Custer, Fallon, Powder River, and Rosebud Counties; and
2 (xi) 11th region: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole Counties.
3 (2) (a) Large districts are established as each of the seven largest school districts in the state based on
4 combined pupil enrollment from kindergarten through the 12th grade.
5 (b) The seven largest school districts are established as follows:
6 (i) Billings;
7 (ii) Butte;
8 (iii) Bozeman;
9 (iv) Great Falls;
10 (v) Helena;
11 (vi) Kalispell; and
12 (vii) Missoula.
13 (3) The superintendent of public instruction shall make recommendations to the education and local
14 government interim committee regarding any adjustments to the regions and large districts necessary to preserve
15 equity and fairness.

16
17 **NEW SECTION. Section 4. Distribution of supplemental revenue to public schools -- innovative**
18 **educational program.** (1) The superintendent of public instruction shall:

- 19 (a) obligate at least 95% of its annual revenue from the educational improvement account provided for
20 in [section 5] for supplemental funding to eligible public schools for innovative educational programs and
21 technology deficiencies;
22 (b) provide innovative educational program or technology deficiency supplemental funding to eligible
23 public schools; and
24 (c) distribute supplemental funding from the educational improvement account to each geographic region
25 and each large district in a manner that provides proportionate funding based on the amount of money directed
26 by taxpayers under [section 13] in each of the respective geographic regions and large districts. In distributing
27 the supplemental funding, the superintendent of public instruction shall set the maximum receivable amount for
28 each school in a geographic region or large district based on a ratio of the school's number of quality educators
29 to the total number of quality educators in the school's geographic region or large district.
30 (2) (a) Subject to subsection (2)(b), the superintendent of public instruction shall use the taxpayer's

1 residential address and allocate the supplemental funding to the geographic region or large district schools that
 2 serve the taxpayer's residence. If a residential address is served by schools that are part of a large district and
 3 a smaller district, then the superintendent of public instruction must allocate the supplemental funding between
 4 the large district and the geographic region of the smaller district based on the number of grades served by each
 5 district.

6 (b) A taxpayer may specify the geographic region or large district in which the supplemental funding must
 7 be used.

8 (3) The supplemental funding must be deposited in the district's school flexibility fund provided for in
 9 20-9-543.

10
 11 NEW SECTION. **Section 5. Educational improvement account -- revenue allocated --**
 12 **appropriations from account.** (1) There is an educational improvement account in the state special revenue
 13 fund established in 17-2-102. The funds in the account must be administered by the superintendent of public
 14 instruction.

15 (2) Taxpayer-directed tax payments must be paid into the account as provided in [section 13].

16 (3) Interest and earnings on the account must be deposited in the account.

17 (4) Appropriations may be made from the account to the superintendent of public instruction for
 18 administrative expenses and for supplemental funding to public schools as provided in [section 4].

19
 20 NEW SECTION. **Section 6. Rulemaking.** The superintendent of public instruction may adopt rules,
 21 prepare forms, and maintain records that are necessary to implement and administer [sections 1 through 6].

22
 23 NEW SECTION. **Section 7. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of
 24 student scholarship organizations is to provide parental and student choice in education with private contributions
 25 through tax replacement programs.

26
 27 NEW SECTION. **Section 8. Definitions.** As used in [sections 7 through 17], the following definitions
 28 apply:

29 (1) "Department" means the department of revenue provided for in 2-15-1301.

30 (2) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on

1 or before September 10 of the year of attendance and has not yet reached 19 years of age.

2 (3) "Geographic region" has the meaning provided in [section 3].

3 (4) "Large district" has the meaning provided in [section 3].

4 (5) "Partnership" has the meaning provided in 15-30-2101.

5 (6) "Pass-through entity" has the meaning provided in 15-30-2101.

6 (7) "Qualified education provider" means an education provider that:

7 (a) is not a public school;

8 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or
9 national accreditation organization; or

10 (ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing
11 at the time of enrollment that the provider is not accredited and is not seeking accreditation;

12 (c) is not a home school as referred to in 20-5-102(2)(e);

13 (d) administers a nationally recognized standardized assessment test or criterion-referenced test and:

14 (i) makes the results available to the child's parents or legal guardian; and

15 (ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a
16 publicly accessible private website or provides the composite results of the test to the office of public instruction
17 for posting on its website;

18 (e) satisfies the health and safety requirements prescribed by law for private schools in this state; and

19 (f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

20 (8) "Small business corporation" has the meaning provided in 15-30-3301.

21 (9) "Student scholarship organization" means a charitable organization in this state that:

22 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
23 U.S.C. 501(c)(3);

24 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any
25 qualified education provider; and

26 (c) provides educational scholarships to eligible students without limiting student access to only one
27 education provider.

28 (10) "Taxpayer" has the meaning provided in 15-30-2101.

29

30 **NEW SECTION. Section 9. Requirements for student scholarship organizations.** (1) A student

1 scholarship organization:

2 (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:

3 (i) the cost of the annual fiscal review provided for in [section 11(1)(b)] may be paid out of the total
4 contributions before calculation of the 90% minimum obligation amount; and

5 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year
6 must be paid out in scholarships within the 3 calendar years following the contribution.

7 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular
8 type of education provider and shall allow an eligible student to enroll with any qualified education provider of the
9 parents' or legal guardian's choice;

10 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education
11 provider;

12 (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the
13 per-pupil average of total public school expenditures calculated in [section 22];

14 (e) shall ensure that the organization's average scholarship for an academic year does not exceed 30%
15 of the per-pupil average of total public school expenditures calculated in [section 22];

16 (f) shall maintain separate accounts for scholarship funds and operating funds;

17 (g) may transfer funds to another student scholarship organization;

18 (h) shall maintain an application process under which scholarship applications are accepted, reviewed,
19 approved, and denied; and

20 (i) shall comply with payment and reporting requirements in accordance with [sections 10 and 11].

21 (2) An organization that fails to satisfy the conditions of this section is subject to termination as provided
22 in [section 16].

23

24 **NEW SECTION. Section 10. Tuition payment limitation.** (1) A student scholarship organization shall
25 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian
26 of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the
27 parents or legal guardian that the payment was received.

28 (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from
29 a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the
30 per-pupil average of total public school expenditures calculated in [section 22]. This limitation applies to each

1 eligible student of a parent or legal guardian.

2

3 **NEW SECTION. Section 11. Reporting requirements for student scholarship organizations.** (1)

4 Each student scholarship organization shall:

5 (a) submit a notice to the department of its intent to operate as a student scholarship organization prior
6 to accepting donations;

7 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within
8 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar
9 years:

10 (i) the total number and dollar value of individual and corporate contributions;

11 (ii) the total number and dollar value of scholarships obligated to eligible students;

12 (iii) the total number and dollar value of scholarships awarded to eligible students; and

13 (iv) the cost of the annual fiscal review;

14 (c) submit the annual fiscal review report to the department within 150 days of the close of the calendar
15 year.

16 (2) The department shall provide written notice to a student scholarship organization that fails to submit
17 the annual fiscal review report, and the organization has 30 days from receipt of the notice to submit the report.

18 (3) An organization that fails to satisfy the conditions of this section is subject to termination as provided
19 in [section 16].

20

21 **NEW SECTION. Section 12. Student scholarship organizations -- listing on website.** (1) The
22 department shall maintain on its website a hyperlink to a current list of all:

23 (a) student scholarship organizations that have provided notice pursuant to [section 11(1)(a)]; and

24 (b) qualified education providers that accepted scholarship funds from a student scholarship organization.

25 (2) The list must include:

26 (a) a statistical compilation of the information received from the student scholarship organizations; and

27 (b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly
28 accessible private website or to the office of public instruction's website pursuant to [section 8(7)(d)(ii)].

29

30 **NEW SECTION. Section 13. Credit for providing supplemental funding to public schools --**

1 **directed tax payment -- innovative educational program.** (1) Subject to subsection (5), a taxpayer or
2 corporation is allowed a credit against the tax imposed by chapter 30 or 31 for taxpayer-directed tax payments
3 to the educational improvement account provided for in [section 5] for the purpose of providing supplemental
4 funding to public schools for innovative educational programs and technology deficiencies. The donor may direct
5 a contribution to a geographic region or a large district. The amount of the credit allowed for the taxpayer-directed
6 tax payment is equal to the amount of the donation, not to exceed \$150.

7 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through
8 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same
9 proportion as used to report the entity's income or loss.

10 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust
11 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's
12 income from the estate or trust for Montana income tax purposes.

13 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

14 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must
15 be applied in the year the directed tax payment is made, as determined by the taxpayer's accounting method.

16 (5) (a) (i) The aggregate amount of taxpayer-directed tax payments allowed under this section is \$3
17 million beginning in tax year 2017.

18 (ii) Beginning in 2018, by August 1 of each year, the department shall determine if \$3 million in directed
19 tax payments were made by taxpayers or preapproved by the department. If this condition is satisfied, the
20 aggregate amount of directed tax payments allowed must be increased by 10% for each succeeding tax year.

21 (b) The department shall approve the amount of credits for taxpayers on a first-come, first-served basis
22 and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a
23 directed tax payment after total directed tax payments claimed exceeds the aggregate limit, the taxpayer's return
24 will be processed without regard to the credit. If a disallowance creates an underpayment of tax liability, then the
25 department shall notify the taxpayer of the disallowed claim and the taxpayer has 60 days to pay the
26 underpayment that is attributable to the disallowed claim before interest and penalties are assessed under
27 15-1-216.

28 (c) Subject to subsection (7), to claim credit under this section, a taxpayer shall attach a form that is
29 approved by the department to the taxpayer's tax return confirming that a directed tax payment was made.

30 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for

1 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of
2 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

3 (a) claiming a credit under this section instead of a deduction; or

4 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for
5 which the credit is allowed under this section.

6 (7) After consultation with the superintendent of public instruction, the department may develop an
7 internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit
8 before making a contribution.

9

10 **NEW SECTION. Section 14. Qualified education tax credit for contributions to student scholarship**

11 **organizations.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed
12 by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or
13 designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the
14 credit allowed is equal to the amount of the donation, not to exceed \$150.

15 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through
16 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same
17 proportion as used to report the entity's income or loss.

18 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust
19 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's
20 income from the estate or trust for Montana income tax purposes.

21 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

22 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must
23 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

24 (5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax
25 year 2017.

26 (ii) Beginning in 2018, by August 1 of each year, the department shall determine if \$3 million in tax credits
27 were claimed by taxpayers or preapproved by the department. If this condition is satisfied, the aggregate amount
28 of tax credits allowed must be increased by 10% for each succeeding tax year.

29 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served
30 basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes

1 a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed
 2 without regard to the credit. If a disallowance creates an underpayment of tax liability, then the department shall
 3 notify the taxpayer of the disallowed claim and the taxpayer has 60 days to pay the tax that is attributable to the
 4 disallowed claim before interest and penalties are assessed under 15-1-216.

5 (c) Subject to subsection (7), to claim the tax credit under this section, a taxpayer shall attach a form that
 6 is approved by the department to the taxpayer's tax return confirming that a donation was made. The form must
 7 be signed by the student scholarship organization and include the taxpayer's name, address, tax identification
 8 number, the amount of the contribution, and the date of the contribution.

9 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for
 10 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of
 11 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

- 12 (a) claiming a credit under this section instead of a deduction; or
 13 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for
 14 which the credit is allowed under this section.

15 (7) The department may develop an internet-based registration system that provides donors with the
 16 opportunity to obtain preapproval for a tax credit before making a contribution.

17
 18 **NEW SECTION. Section 15. Report to revenue and transportation interim committee -- student**
 19 **scholarship organizations.** Each biennium, the department shall provide to the revenue and transportation
 20 interim committee a list of student scholarship organizations receiving contributions from businesses and
 21 individuals that are granted tax credits under [section 14]. The listing must detail the tax credits claimed under
 22 the individual income tax in chapter 30 and the corporate income tax in chapter 31.

23
 24 **NEW SECTION. Section 16. Review determination -- termination -- confidentiality.** (1) Subject to
 25 subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to
 26 determining whether a student scholarship organization is in compliance with [sections 8, 9, and 11].

27 (2) If a student scholarship organization is not in compliance, the department shall provide to the
 28 organization written notice of the specific failures and the organization has 30 days from the date of the notice
 29 to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final
 30 written notice of the failure to the organization. The organization may appeal the department's determination of

1 failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the
2 notice.

3 (3) (a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not
4 resolved, the department shall issue a final department decision.

5 (b) The final department decision for a student scholarship organization must provide that the student
6 scholarship organization:

7 (i) will be removed from the list of eligible student scholarship organizations provided in [section 12] and
8 notified of the removal;

9 (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

10 (A) cease all operations as a student scholarship organization and transfer all scholarship account funds
11 to a properly operating student scholarship organization; and

12 (B) provide written notice to all applicants that have been preapproved for a tax credit that the
13 organization is not allowed to operate as a student scholarship organization and that the applicant has 45 days
14 from the date the organization was removed from the eligible list to transfer preapproval status to another student
15 scholarship organization.

16 (4) A student scholarship organization that receives a final department decision may seek review of the
17 decision from the state tax appeal board pursuant to 15-2-302.

18 (5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial
19 review pursuant to 15-2-303.

20 (6) If a student scholarship organization files an appeal pursuant to this section, the organization may
21 continue to operate until the decision of the court is final.

22 (7) The identity of donors who make directed tax payments to the educational improvement account
23 provided for in [section 5] or donations to a student scholarship organization is confidential tax information that
24 is subject to the provisions of 15-30-2618.

25
26 **NEW SECTION. Section 17. Rulemaking.** The department may adopt rules, prepare forms, and
27 maintain records that are necessary to implement and administer [sections 7 through 17].

28
29 **NEW SECTION. Section 18. Credit for providing supplemental funding to public schools --**
30 **directed tax payment -- innovative educational program.** There is a credit against tax liability under this

1 chapter for a taxpayer-directed tax payment to the educational improvement account as provided in [section 13].

2

3 **NEW SECTION. Section 19. Qualified education individual income tax credit for contributions to**
 4 **student scholarship organization.** There is a credit against tax liability under this chapter for a charitable
 5 donation made to a student scholarship organization as provided in [section 14].

6

7 **NEW SECTION. Section 20. Credit for providing supplemental funding to public schools --**
 8 **corporate directed tax payment -- innovative educational program.** There is a credit against tax liability under
 9 this chapter for a taxpayer-directed tax payment to the educational improvement account as provided in [section
 10 13].

11

12 **NEW SECTION. Section 21. Qualified education corporate credit for contributions to student**
 13 **scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made
 14 to a student scholarship organization as provided in [section 14].

15

16 **NEW SECTION. Section 22. Statewide average per-pupil spending.** (1) The superintendent of public
 17 instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second
 18 most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation
 19 available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total
 20 pupils calculated in subsection (3).

21 (2) Funds to be included in total school expenditures for the second most recently completed school year
 22 include but are not limited to:

23 (a) district general fund expenditures;

24 (b) transportation;

25 (c) bus depreciation;

26 (d) food services;

27 (e) tuition;

28 (f) retirement;

29 (g) miscellaneous programs;

30 (h) traffic education;

- 1 (i) nonoperating fund;
- 2 (j) lease-rental agreement;
- 3 (k) compensated absence fund;
- 4 (l) metal mines tax reserve;
- 5 (m) state mining impact;
- 6 (n) impact aid;
- 7 (o) litigation reserve;
- 8 (p) technology acquisition;
- 9 (q) flexibility fund;
- 10 (r) debt service;
- 11 (s) building reserve; and
- 12 (t) interlocal agreement.

13 (3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB
14 average provided in 20-9-311, for Montana school districts for the second most recently completed school year.

15

16 **Section 23.** Section 15-30-2110, MCA, is amended to read:

17 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
18 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
19 and in addition includes the following:

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

23 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
24 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

30 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the

1 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

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

5 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
6 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
7 gross income.

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

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

13 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
14 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

15 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
16 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

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

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

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

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

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

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

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
30 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January

- 1 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
2 or lodging;
- 3 (g) all benefits received under the workers' compensation laws;
- 4 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
5 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;
- 6 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
7 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 8 (j) principal and income in a medical care savings account established in accordance with 15-61-201
9 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
10 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 11 (k) principal and income in a first-time home buyer savings account established in accordance with
12 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
13 of a single-family residence;
- 14 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
15 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
16 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
17 a designated beneficiary;
- 18 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
19 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 20 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
21 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
22 of the same estate or trust for the same tax period;
- 23 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
24 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
25 is not provided for federal income tax purposes;
- 26 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
27 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
28 taxpayer meet the filing requirements in 15-30-2602.
- 29 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
30 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

1 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and
2 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
3 15-31-163; and
4 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
5 [section 10].

6 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall
7 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
8 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
9 is effective.

10 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
11 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
12 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
13 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
14 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
15 be made to determine the amount of income or loss of the partnership or small business corporation.

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

21 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
22 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
23 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
24 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
25 must be split equally on each return.

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

1 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
2 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
3 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
4 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

5 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
6 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
7 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
8 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
9 gross income.

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

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

25 (11) (a) An individual who contributes to one or more accounts established under the Montana family
26 education savings program or to a qualified tuition program established and maintained by another state as
27 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
28 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
29 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
30 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The

1 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
2 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
3 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
4 to withdrawals of contributions that reduced adjusted gross income.

5 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
6 15-62-208.

7 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
8 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

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

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

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

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

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

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

24 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
25 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
26 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
27 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
28 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
29 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

30

1 **Section 24.** Section 20-9-543, MCA, is amended to read:

2 **"20-9-543. School flexibility fund -- uses.** (1) (a) The trustees of a district shall establish a school
3 flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

4 (i) technological equipment enhancements and expansions considered by the trustees to support
5 enhanced educational programs in the classroom;

6 (ii) facility expansion and remodeling considered by the trustees to support the delivery of educational
7 programs or the removal and replacement of obsolete facilities;

8 (iii) supplies and materials considered by the trustees to support the delivery of enhanced educational
9 programs;

10 (iv) student assessment and evaluation;

11 (v) the development of curriculum materials;

12 (vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational
13 programs;

14 (vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing
15 for classroom teachers;

16 (viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom
17 teachers and other certified staff, subject to collective bargaining when applicable; ~~or~~

18 (ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district
19 in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other
20 resources of the district; or

21 (x) innovative educational programs as defined in [section 2] and technology deficiencies.

22 (b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal
23 year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund
24 to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

25 (2) The trustees of a district shall fund the school flexibility fund with the money allocated under [section
26 4] and 20-9-542 and with the money raised by the levy under 20-9-544.

27 (3) The financial administration of the school flexibility fund must be in accordance with the financial
28 administration provisions of this title for a budgeted fund."

29

30 NEW SECTION. **Section 25. Codification instruction.** (1) [Sections 1 through 6] are intended to be

1 codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1
2 through 6].

3 (2) [Sections 7 through 17] are intended to be codified as an integral part of Title 15, and the provisions
4 of Title 15 apply to [sections 7 through 17].

5 (3) [Sections 18 and 19] are intended to be codified as an integral part of Title 15, chapter 30, part 23,
6 and the provisions of Title 15, chapter 30, part 23, apply to [sections 18 and 19].

7 (4) [Sections 20 and 21] are intended to be codified as an integral part of Title 15, chapter 31, and the
8 provisions of Title 15, chapter 31, apply to [sections 20 and 21].

9 (5) [Section 22] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions
10 of Title 20, chapter 9, apply to [section 22].

11

12 NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.

15

16 NEW SECTION. **Section 27. Effective date.** [This act] is effective upon approval by the electorate.

17

18 NEW SECTION. **Section 28. Applicability.** [This act] applies to tax years beginning after December
19 31, 2016.

20

21 NEW SECTION. **Section 29. Submission to electorate.** [This act] shall be submitted to the qualified
22 electors of Montana at the general election to be held in November 2016 by printing on the ballot the full title of
23 [this act] and the following:

24 YES on Legislative Referendum ____.

25 NO on Legislative Referendum ____.

26 - END -