

## SENATE BILL NO. 245

INTRODUCED BY R. HOLDEN, DEVLIN, EKEGREN, MCNUTT, PEASE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA FARM AND RANCH RISK MANAGEMENT ACT; PROVIDING FOR THE CREATION OF FARM AND RANCH RISK MANAGEMENT ACCOUNTS BY ELIGIBLE PERSONS INDIVIDUALS IN THE AGRICULTURAL BUSINESS; ALLOWING DEPOSITS NOT TO EXCEED, DURING A TAX YEAR, \$20,000 OR 20% OF THE DEPOSITOR'S INCOME FROM AGRICULTURAL BUSINESS; PROVIDING AN EXCLUSION FROM TAXABLE INCOME FOR THE AMOUNT DEPOSITED INTO THE ACCOUNT; PROVIDING THAT A DEPOSIT MAY NOT REMAIN IN AN ACCOUNT MORE THAN 5 YEARS; PROVIDING THAT DISTRIBUTIONS FROM THE ACCOUNT ARE TAXABLE; PROVIDING FOR PENALTIES FOR DEPOSITS THAT ARE NOT DISTRIBUTED WITHIN 5 YEARS; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Farm and Ranch Risk Management Act".

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

- (1) "Account" means a Montana farm and ranch risk management account.
- (2) "Disqualification period" means any period of 2 consecutive tax years in which the taxpayer is not engaged in an eligible agricultural business.
- (3) (a) "Eligible agricultural business" means engaged primarily in the business of agricultural production, as agricultural is defined in 15-1-101, INCLUDING SILVICULTURE, CONDUCTED BY AN INDIVIDUAL WHOSE MAJOR ENDEAVOR AND PRIMARY SOURCE OF EARNED INCOME IS FARMING OR RANCHING AND WHO FILES FARM INCOME REPORTS FOR TAX PURPOSES AS REQUIRED BY THE UNITED STATES INTERNAL REVENUE SERVICE.
- (b) The term does not mean the business of processing, transporting, or marketing agricultural products.
- (4) "Individual" MEANS A HUMAN BEING AND INCLUDES A FAMILY FARM CORPORATION THAT CONSISTS OF IMMEDIATE FAMILY MEMBERS WHO DERIVE THEIR PRIMARY INCOME FROM THE SALE OF AGRICULTURAL PRODUCTS AND does not include an estate or trust.

**NEW SECTION. Section 3. Montana farm and ranch risk management account -- deposits -- exclusion from income.** (1) An individual engaged in an eligible agricultural business may create a Montana farm and ranch risk management account as provided in [sections 1 through 5] to use as a risk management tool for the individual's agricultural business. THE NUMBER OF RISK MANAGEMENT ACCOUNTS THAT MAY BE CREATED IS LIMITED TO ONE FOR EACH HOUSEHOLD.

(2) Deposits to the account may be excluded from adjusted gross income as provided in 15-30-111 in an amount not to exceed the lesser of 20% of the taxpayer's taxable income attributable to agricultural business or \$20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

- (a) during the tax year; or
- (b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.

(3) A deposit not distributed within 5 years is considered to have been distributed to the taxpayer as provided in [section 5].

**NEW SECTION. Section 4. Montana farm and ranch risk management account -- creation -- administration.** (1) A Montana farm and ranch risk management account is a trust created or organized in the state for the exclusive benefit of the taxpayer. The account trustee must be ~~either a bank or a credit union~~ A FINANCIAL INSTITUTION, AS DEFINED IN 15-62-103, supervised by the United States or by the state of Montana. The trust must be created by written instrument.

(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under [section 3].

(3) The assets of the trust must consist entirely of cash or of obligations that have adequate stated interest and that pay the interest at least annually.

(4) All income of the trust must be distributed currently to the grantor.

(5) The assets of the trust may not be commingled with other property except in a common trust fund or common investment fund.

**NEW SECTION. Section 5. Montana farm and ranch risk management account -- distributions.**

(1) Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

- (a) are first attributable to income and then to other deposits; and

(b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from adjusted gross income for the tax year the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the 5-year eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the fifth anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The 5-year eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the fifth anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer.

**Section 6.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, 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 of 1954 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(15);
- (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; and
- (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.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

- (a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that 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 of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);
- (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;
- (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:
  - (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;
  - (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;
- (d) all Montana income tax refunds or tax refund credits;
- (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section

3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

- (g) all benefits received under the workers' compensation laws;
- (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;
- (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- (k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;
- (l) money, not exceeding \$3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;
- (m) principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;
- (n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- (o) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; and
- (p) deposits, not exceeding the amount set forth in [section 3], deposited in a Montana farm and ranch risk management account as provided in [sections 1 through 5]; and

~~(p)(q)~~ income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

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

is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

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

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

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified

as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through 5].

**NEW SECTION. Section 8. Applicability.** [This act] applies to tax years beginning after December 31, 2001.

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