



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF REVENUE**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 42-1088**

**Summary**

Adoption of NEW RULES I through III, amendment of ARM 42.15.108 through 42.15.110, 42.15.119, 42.15.120, 42.15.204, 42.15.216, 42.15.220, 42.15.301, 42.15.303, 42.15.315 through 42.15.317, 42.15.319, 42.15.327, 42.15.328, 42.15.602, 42.15.603, 42.15.802 through 42.15.807, 42.15.906, 42.15.1002 through 42.15.1004, amendment and transfer of ARM 42.15.112, 42.15.214 and 42.15.415, and repeal of ARM 42.15.205, 42.15.206, 42.15.213, 42.15.215, 42.15.217 through 42.15.219, 42.15.221, 42.15.222, 42.15.312, 42.15.318, 42.15.321, 42.15.322, 42.15.401 through 42.15.403, 42.15.427, 42.15.510, 42.15.523 through 42.15.527, and 42.15.902 pertaining to the implementation of Senate Bill 399 (2021) (SB 399), Senate Bill 104 (2023) (SB 104), House Bill 221 (2023) (HB 221), and House Bill 447 (2023) (HB 447) regarding Montana individual income taxes

**Previous Notice(s) and Hearing Information**

On November 22, 2024, the Department of Revenue published MAR Notice No. 42-1088 pertaining to the public hearing on the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 2457 of the 2024 Montana Administrative Register, Issue Number 22.

On December 16, 2024, the department held a public hearing to consider the proposed adoption, amendment, amendment and transfer, and repeal. No interested persons appeared at the hearing.

One written comment was received by the department from Walter Kero, Kero Byington & Associates, CPAs, which is described below.

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**Final Rulemaking Action – Effective January 25, 2025**

## **ADOPT AS PROPOSED**

The agency has adopted the following rules as proposed:

**New Rule I**

**New Rule II**

**New Rule III**

## **AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**42.15.108 DETERMINING TAX LIABILITY**

**42.15.109 RESIDENCY**

**42.15.110 TAXATION OF PART-YEAR RESIDENTS AND NONRESIDENTS**

**42.15.119 ALTERNATIVE TAX**

**42.15.120 APPORTIONABLE AND NONAPPORTIONABLE INCOME - APPORTIONMENT OR ALLOCATION - INDIVIDUALS, ESTATES, AND TRUSTS**

**42.15.204 DEFINITIONS**

**42.15.216 EXCLUSION OF INTEREST ON OBLIGATIONS**

**42.15.220 EXEMPTION OF CERTAIN INCOME OF ENROLLED TRIBAL MEMBERS**

**42.15.301 WHO MUST FILE RETURNS**

**42.15.303 RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN**

**42.15.315 ORIGINAL AND AMENDED RETURNS**

**42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS**

**42.15.317 FILING DATE**

**42.15.319 DATE AND PLACE OF FILING AND PAYMENT**

**42.15.327 STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT RETURN**

**42.15.328 FORM OF CLAIM FOR REFUND**

**42.15.602 MEDICAL CARE SAVINGS ACCOUNT REPORTING AND PAYMENTS**

**42.15.603 MEDICAL CARE SAVINGS ACCOUNT - WITHDRAWALS, PENALTIES, AND TRANSFERS**

**42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS**

**42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS AND RECAPTURE TAX**

**42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS**

**42.15.805 DEFINITIONS**

**42.15.806 TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS**

**42.15.807 EFFECTIVE DATE OF CONTRIBUTION FOR TAX PURPOSES**

**42.15.906 TAX EXEMPTION FOR FIRST-TIME HOME BUYER**

**42.15.1002 DEDUCTION FOR CONTRIBUTIONS TO AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT**

**42.15.1003 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT RECAPTURE TAX**

**42.15.1004 VERIFICATION OF ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT CONTRIBUTIONS AND WITHDRAWALS**

#### **TRANSFER AND AMEND AS PROPOSED**

The agency has transferred and amended the following rules as proposed:

**42.15.415 DEDUCTIONS FOR SALE OF LAND TO A BEGINNING FARMER**

#### **TRANSFER AND AMEND WITH CHANGES**

The agency has amended and transferred the following rules with the following changes from the original proposal, stricken matter interlined, new matter underlined:

**42.15.1510 NONRESIDENT MILITARY SERVICEMEMBERS**

- (1) Nonresident members of the armed forces living in the state solely for compliance with military orders donot become residents and their military compensation is not Montana source income. Nonresident spouses who move to Montana solely to be with nonresident military servicemembers may retain their home residence and, subject to certain rules and limitations described in (6), their wage and other personal services income is not Montana source income.

- (2) Nonresident military servicemembers and their spouses are, except as provided in (4), subject to Montana individual income tax in the same manner and to the same extent as any other nonresident with Montana source income.
- (3) As provided in 1-1-215, MCA, if a person claims a residence within Montana for any purpose, such as obtaining a resident hunting or fishing license, Montana is their residence for all purposes, including Montana individual income tax, unless there is a specific statutory exception. Provided, however, 87-2-102, MCA, allows exceptions for certain nonresident military servicemembers and their dependents to obtain resident hunting, fishing, and trapping licenses without subjecting them to individual income tax liability as residents.
- (4) While the Montana income tax liability of nonresidents is usually determined by calculating the tax as if they were residents, then multiplying that calculation by their ratio of Montana source income to total income, the Military Family Tax Relief Act of 2003 requires states to implement special rules for military servicemembers. If a nonresident military servicemember with Montana source income or their spouse is required to file a Montana individual income tax return, the exempt military income must be excluded from both the numerator and the denominator in determining the ratio of Montana source income to total income as provided in ARM 42.15.110.
- (5) An example of how the tax liability would be calculated is:
  - (a) A nonresident military servicemember and their nonresident spouse who do not claim an exemption as described in (6)(b) are filing a joint return have the following income:

Military compensation	\$40,000
Spouse's - Montana source income	\$30,000
Interest income - Joint	\$500
Dividend income - Joint	\$1,000
Total Income	\$71,500

- (b) The exempt military compensation is a subtraction that reduces Montana taxable income:

Gross income	\$71,500
Less exempt military compensation	(\$40,000)
Montana taxable income	\$31,500

- (c) The tax, determined on the taxable income, is multiplied by the ratio of Montana source income to total income from all sources except the exempt military compensation:

Montana source income	\$ 30,000
Total income from all sources except military compensation (\$30,000 + 500 + 1,000) =	\$ 31,500
Ratio \$30,000/\$31,500 =	.9523

- (d) If the tax determined on the taxable income were \$1,000, the Montana tax liability would be \$952, the Montana tax liability of \$1,000 multiplied by .9523, the ratio of \$30,000 to \$31,500.
- (6) The Military Spouses Residency Relief Act, Public Law No. 11197 (MSRRA), enacted special rules that affect how Montana and other states tax the wage and other personal service income earned by nonmilitary spouses (for simplicity, the term "wages" will be used to describe all personal services income).
- (a) If a military servicemember and nonmilitary spouse are residents of the same state (the "home state") when the nonmilitary spouse moves to Montana to be with the military servicemember as described in (1), the MSRRA allows the nonmilitary spouse to remain a resident of the home state and only the home state may tax the nonmilitary spouse's wages. Wages earned in Montana that are sourced to the home state are not Montana source income.
- (b) Qualified nonmilitary spouses must claim exemption from wage withholding annually by completing Form MW-4 – Employee's Withholding and Exemption Certificate which they submit each year to their employer by end of the first payroll period in January.
- (c) If a nonmilitary spouse no longer meets the requirements of the MSRRA, their wages will be sourced to Montana, as provided in 15-30-2101, MCA. The following events disqualify the nonmilitary spouse's wages under the MSRRA:
- (i) the military servicemember leaves the military;
  - (ii) the nonmilitary spouse becomes a resident of Montana;
  - (iii) the marriage to the military servicemember terminates; or
  - (iv) the military servicemember is reassigned out of Montana but the nonmilitary spouse remains in Montana.

**Authorizing statute(s):** 15-30-2620, MCA

**Implementing statute(s):** 15-30-2101, MCA

#### **42.15.1510 RESIDENT MILITARY SALARY EXCLUSION**

- (1) The following items of military compensation received by a resident military servicemember are exempt from Montana income tax:
  - (a) basic, special, and incentive pay received for serving on active duty as a member of the armed forces;
  - (b) basic, special, and incentive pay received for serving on active duty as a member of the National Guard;
  - (c) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "contingency operation" as defined in 10 USC 101; and
  - (d) basic, special, and incentive pay received by a member of the National Guard performing a "homeland defense activity" as defined in 32 USC 901.
- (2) Military compensation that is not exempt from Montana income tax includes:
  - (a) salary received for annual training and inactive duty training for service not described in (1)(b) through (1)(d);
  - (b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) through (1)(d);
  - (c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) through (1)(d); and
  - (d) retired, retainer, or equivalent pay, or allowances that do not fall under the subtraction for military retirement income found in 15-30-2120, MCA.

**Authorizing statute(s):** 15-30-2620, MCA

**Implementing statute(s):** 15-30-2101, 15-30-2120, MCA

#### **REPEAL AS PROPOSED**

The agency has repealed the following rules as proposed:

#### **42.15.205 REFUNDS OF FEDERAL INCOME TAX**

**42.15.206 ADDITIONS AND SUBTRACTIONS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS**

**42.15.213 SMALL BUSINESS CORPORATION DIVIDEND AND CAPITAL GAIN EXCLUSION**

**42.15.215 SENIOR INTEREST INCOME EXCLUSION**

**42.15.217 DISABILITY INCOME EXCLUSION**

**42.15.218 CAPITAL GAIN EXCLUSION FOR PRE-1987 SALES**

**42.15.219 PENSION AND ANNUITY INCOME EXCLUSION**

**42.15.221 DEPENDENT CHILD UNEARNED INCOME EXCLUSION**

**42.15.222 RAILROAD RETIREMENT AND SOCIAL SECURITY BENEFIT EXCLUSION**

**42.15.312 ACCEPTANCE OF REPRODUCED TAX FORMS**

**42.15.318 MONTANA NET OPERATING LOSSES**

**42.15.321 JOINT RETURNS**

**42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS**

**42.15.401 DEFINITIONS**

**42.15.402 PERSONAL EXEMPTIONS**

**42.15.403 EXEMPTIONS FOR DEPENDENTS**

**42.15.427 DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES**

**42.15.510 DEFINITIONS**

**42.15.523 STANDARD DEDUCTION**

**42.15.524 ITEMIZED DEDUCTIONS OF MARRIED TAXPAYERS**

**42.15.525 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS**

**42.15.526 SMALL BUSINESS LIABILITY FUNDS**

**42.15.527 DEDUCTION PROVIDED UNDER INTERNAL REVENUE CODE SECTION 199A NOT ALLOWED**

**42.15.902 FIRST-TIME HOME BUYER ACCOUNT ADMINISTRATOR REGISTRATION**

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## Statement of Reasons

The department discovered two minor typographical errors in the rule numbers proposed for the transfer and amendment of ARM 42.15.112 and 42.15.214. Both rules had been proposed to be transferred to ARM 42.15.1510. The department intended to transfer ARM 42.15.112 to 42.15.1511 and ARM 42.15.214 to 42.15.1512. NEW RULE I was intended to be numbered ARM 42.15.1510. The department has corrected the final rule numbers in this adoption notice.

The department has considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

Comment 1: Mr. Kero suggested that the department modify proposed ARM 42.15.315(8)(b), to include "including extensions" after the words "prescribed filing date." Mr. Kero did not provide any statement or rationale for the suggestion.

Response 1: While the department appreciates Mr. Kero's participation and suggestion for the rulemaking, the department cannot add the suggested text because a taxpayer must file their return within three years of the original due date to receive a refund for provision under (8)(b); extensions are not allowed under statute. The department refers Mr. Kero to 15-30-2607 and 15-30-2609, MCA.

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## Contact

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## Rule Reviewer

Todd Olson

## Approval

Brendan Beatty

Director of Revenue