

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV and the	)	PROPOSED ADOPTION AND
amendment of ARM 42.15.802,	)	AMENDMENT
42.15.803, 42.15.804, and 42.15.805	)	
pertaining to Montana Achieving a	)	
Better Life Experience (ABLE)	)	
program accounts and family	)	
education plan savings accounts	)	

TO: All Concerned Persons

1. On December 14, 2020, at 10:00 a.m., the Department of Revenue will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested persons may access the public hearing in the following ways:

- (a) Join Zoom Meeting: <https://mt-gov.zoom.us/j/95193183803>, Meeting ID: 951 9318 3803;
- (b) Dial by Telephone: +1.406.444.9999 or +1.646.558.8656, Meeting ID: 951 9318 3803;
- (c) Join by SIP: [95193183803@zoomcrc.com](mailto:95193183803@zoomcrc.com);
- (d) Join by H.323 (Polycom): 162.255.37.11## 95193183803; or
- (e) Join by Skype for Business: <https://mt-gov.zoom.us/skype/95193183803>.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 27, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 66th Montana Legislature enacted House Bills 88 (HB 88) and 288 (HB 288), both of which revised requirements relating to the Montana Achieving a Better Life Experience (ABLE) Act, 53-25-101, et. seq., MCA (Act). HB 88 allows the tax deduction for contributions to ABLE accounts maintained by another state and residents of another state to use Montana's ABLE program. HB 288 generally revised ABLE program account requirements, expanded which family members are eligible to receive a tax deduction for contributions made to an ABLE account, and revised recapture tax matters for nonqualified (i.e., recapturable) withdrawals.

The department proposes to adopt New Rules I through IV to implement necessary portions of the Act into the department's rules and implement HB 88 and HB 288's respective revised ABLE account provisions, the administration and enforcement of which are legislatively delegated to the department under 53-25-118,

MCA. The department proposes to locate the new rules into a new subchapter within ARM Title 42, chapter 15, which the department intends will establish guidance, procedures, and information reporting requirements not sufficiently provided for in the Act for individuals utilizing or benefitting from ABLE accounts, ABLE program administrators, and the department.

In addition to the department's proposed adoption of New Rules I through IV, the department also conducted a periodic review of the family education savings program account rules found in ARM Title 42, chapter 15, subchapter 8, and proposes the amendments described below because the rules currently contain certain redundancies to statute, provisions with waning efficacy given the passage of time and changes in department policy, or rule text that can be restated more plainly and concisely.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoptions and amendments, it is supplemented below to explain rule-specific proposals.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "ABLE account" or "account" mean the same as "account," which is defined in 53-25-103, MCA.

(2) "Achieving a better life experience (ABLE) program" or "program" means the same as "program," which is defined in 53-25-103, MCA.

(3) "Contributor" means the same as the term is defined in 53-25-103, MCA, and includes the individuals listed in [NEW RULE II] that have contributed to one or more accounts established under the Montana ABLE program or to a qualified program established by another state, and are eligible for a deduction to adjusted gross income under 15-30-2110(12), MCA.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: 53-25-104, 53-25-117, 53-25-118, MCA

**REASONABLE NECESSITY:** In addition to the general statement of reasonable necessity, the department proposes New Rule I because there are terms defined in the Act that pertain to the department's administration of income tax matters arising from the Act, but are not included in Title 15, MCA. The department's inclusion of terminology from the Act into rule is consistent with similar instances where statutory programs involve more than one agency and more than one area in statute, and this coordination with the Act proves more beneficial to stakeholders and tax preparers than providing a cross-reference.

NEW RULE II DEDUCTION FOR CONTRIBUTIONS TO AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT (1) In addition to the individuals listed in 15-30-2110(12), MCA, the following contributors identified in 53-25-117, MCA, are also allowed a deduction from Montana adjusted gross income for a contribution made to an ABLE account:

(a) the designated beneficiary;  
(b) the spouse of the designated beneficiary; or  
(c) a parent, grandparent, sibling, or child related to the designated beneficiary by blood, marriage, or legal adoption.

(2) The deduction provided under 15-30-2110(12), MCA, for contributions to an ABLE account is available to resident and nonresident individuals. If a nonresident individual contributes to an account, the deduction is only allowed if the designated beneficiary is the nonresident's child or stepchild and is also a Montana resident.

(3) A contributor must provide a written report to the designated beneficiary or agent, by the end of the tax year in which the contribution is made to an ABLE account, detailing the amount of the contributions that will reduce adjusted gross income for that tax year.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: 15-30-2110, 53-25-104, 53-25-117, 53-25-118, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to adopt New Rule II to implement 53-25-104 and 53-25-117, MCA, because HB 288 removed the definition of "account owner," from the Act, but did not remove the definition from 15-30-2110(12), MCA. Until such time as HB 288's social services and taxation requirements amendments are statutorily coordinated, it is necessary for the department's rules to reflect the definitions in 50-25-103, MCA, and the expanded eligibility requirements included in 53-25-104 and 53-25-117, MCA. The purpose of (3) is to provide necessary contributor reporting and recordkeeping requirements to a designated beneficiary or agent so they are able to keep accurate records and also determine any recapture taxes due based on contributions by someone other than the designated beneficiary.

NEW RULE III ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT RECAPTURE TAX (1) There is a recapture tax, payable by a designated beneficiary, regardless of residency status, on recapturable withdrawals from an ABLE account. Recapturable withdrawals and the amount of the recapture tax are provided in 53-25-118, MCA.

(2) A recapturable withdrawal of amounts that previously reduced a contributor's Montana adjusted gross income under 15-30-2110(12), MCA, is Montana source income to the designated beneficiary in the year of the recapturable withdrawal, as described in 15-30-2101(18)(a)(xvi), MCA.

(3) The recapture tax must be determined and withheld by the designated beneficiary or agent and reported to the department based on the recapturable withdrawal that occurred and the report detailing the contributions as required in [NEW RULE II(3)]. The designated beneficiary or agent must maintain records showing the reported contributions and withdrawals.

(4) The agent shall withhold and remit the recapture tax on a Montana individual income tax return for the tax year of the withdrawal if the recapturable withdrawal occurred from an account for which the designated beneficiary is no longer a resident of Montana.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA  
IMP: 15-30-2103, 15-30-2110, 53-25-118, MCA

**REASONABLE NECESSITY:** In addition to the general statement of reasonable necessity, the department proposes to adopt New Rule III to implement HB 288 amendments to 53-25-118, MCA, related to the payment and reporting of the recapture tax.

Section (1) provides information, guidance, and the department's statutory authority involving recapturable withdrawals. Section (1) also reflects and supports the requirement that the designated beneficiary is responsible to pay the recapture tax instead of the ABLE account owner, which was the case prior to the HB 288 amendments.

Section (2) is proposed to inform all ABLE account contributors that recapturable withdrawals are Montana source income. Further, if contributions are made to an ABLE account for a nonresident designated beneficiary, those amounts are considered Montana source income because the contributor previously received a Montana tax benefit for those deductions. Conversely, if a deduction is taken and the designated beneficiary makes a withdrawal that is not allowable, the tax benefit does not apply and would be subject to the recapture tax.

The purpose of (3) is to provide necessary contributor reporting and recordkeeping requirements to a designated beneficiary or agent so they are able to determine recapture taxes based on contributions by someone other than the designated beneficiary. The reporting and recordkeeping requirements for contributors are also necessary because the department cannot provide confidential tax information to the designated beneficiary or agent under state and federal law. HB 288 allows the department to collect withholding on any recapturable withdrawals from an account that is owned by a designated beneficiary who is no longer a Montana resident. To ensure the withholding is received, the department proposes (4) designating the agent as responsible for the withholding requirements in 53-25-118, MCA.

**NEW RULE IV VERIFICATION OF ACHIEVING A BETTER LIFE  
EXPERIENCE (ABLE) ACCOUNT CONTRIBUTIONS AND WITHDRAWALS**

(1) Each program manager shall submit a report to the department via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of the preceding tax year which identifies all contributions and withdrawals for ABLE accounts of Montana resident designated beneficiaries. The report must also include contributions made to accounts of designated beneficiaries who were residents at the time the account was opened.

(2) The report must be in an electronic format sortable by the following contributor and designated beneficiary information:

- (a) full name;
- (b) last reported address;
- (c) social security number;
- (d) amount of the contributions;

(e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and

(f) a notation as to whether a distribution is a recapturable withdrawal, and if the withdrawal is made in violation of IRC 592A, when applicable.

(3) At the request of the department, a program manager shall provide complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or to the Montana Department of Public Health and Human Services.

(4) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, or agent for the reporting information described herein.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: 15-30-2110, 53-25-118, MCA.

**REASONABLE NECESSITY:** In addition to the general statement of reasonable necessity, the department proposes New Rule IV because prior to HB 288's amendments to the Act, recapture taxes were payable by an "account owner." HB 288 changed responsibility for the recapture tax to the designated beneficiary. New Rule IV proposes to require program managers file a report with the department so that it may receive information about account contributions and withdrawals. New Rule IV proposes requiring documentation of account contributions so that the department can verify they were reported properly on the contributor's tax return and to ensure that a recapture tax is paid.

If a program administrator fails to file a report with the department, the department reserves the right to directly contact those individuals with the necessary information (e.g., contributor, designated beneficiary, or agent) regarding contributions and withdrawals to ensure the contributor and designated beneficiary are compliant with 15-30-2110(12) and 53-25-118, MCA.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) The program administrator determines who can be an account owner and from whom it will accept contributions to an account. ~~More information regarding the administration of the program can be found at [www.mfesp.com](http://www.mfesp.com).~~ Account ownership and the acceptance of contributions are not necessarily related to the ability of the contributor to reduce Montana taxable income. ~~A person is not necessarily entitled to reduce their Montana adjusted gross income because they made a contribution or are an account owner.~~ Entitlement to the tax benefit deduction depends on meeting specific statutory requirements set forth in Title 15, chapter 62, MCA, and these rules.

(2) An individual, including a nonresident, ~~is allowed to~~ may reduce their Montana adjusted gross income by the lesser of the total contributions they actually make to one or more ~~Montana family education savings~~ accounts as provided in

15-30-2110 and 15-62-207, MCA, during the tax year, or \$3,000.

~~(a) Except as provided in (i), (ii), and (iii), a deduction is allowed only for contributions an individual makes to an account owned by the individual (or jointly with their spouse).~~

~~(i) Section 15-62-207, MCA, provides that a qualifying contribution can also be made to an account owned by the individual's child or stepchild if that child or stepchild is a Montana resident. The department interprets that provision to allow:~~

~~(A) a parent or stepparent to claim a deduction for an amount they contribute to an account owned by their minor child or stepchild as provided in (ii); and~~

~~(B) a parent or stepparent to claim a deduction for an amount they contribute to an account owned by their adult child or stepchild as provided in (iii).~~

~~(ii) If a parent or stepparent supplies the funds they use to establish an account under the Montana Uniform Transfers to Minors Act for which their minor child or stepchild is both the owner and designated beneficiary, and if the child or stepchild is a Montana resident, the parent or stepparent may elect to reduce their own Montana adjusted gross income by the amount they provided even if for other purposes the transaction would be treated as if they made a gift of cash to the child or stepchild who in turn contributed the money to a family education savings account they own entitling the child or stepchild to reduce the child or stepchild's Montana adjusted gross income.~~

~~(iii) If a parent or stepparent contributes funds to an account owned by their adult child or stepchild and if that adult child or stepchild is a Montana resident when the contribution is made, the contributor may claim a deduction for their contribution. It does not matter whether the designated beneficiary of the account is:~~

~~(A) the contributor's adult child or stepchild;~~

~~(B) a grandchild or other relative of the contributor;~~

~~(C) related to the account owner; or~~

~~(D) a resident or nonresident.~~

~~(b) The reduction in Montana adjusted gross income for a contribution can be claimed only for the tax year the contribution is made.~~

~~(c) An account owner is not required to be a resident and a nonresident may reduce their Montana adjusted gross income, if any, for their contributions to an account they own. Except as provided in (2)(a), however, contributions to an account, whether by a resident or nonresident, if made to an account they do not own, cannot reduce their own Montana adjusted gross income.~~

~~(3) For purposes of the \$3,000 reduction to Montana adjusted gross income, contributions must be made to a Montana family education savings account. Contributions made to other state or private family education savings accounts do not qualify for the Montana reduction to income.~~

~~(4) (3) A rollover from one account to another or from one 529 plan program to another state program is not a contribution for which a deduction may be claimed.~~

~~(5) (4) For Montana tax purposes, deductible contributions to a family education savings an account do not include the earnings on the account.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, 15-62-201, 15-62-207, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes striking rule text for brevity and removing the reference to the web address for the program because it is not maintained by the department, has changed several times since adoption of this rule, and requires rulemaking to change a web address. The department has also added text to specify programs and individuals subject to the rule's requirements and for improved clarity.

The department proposes revising (2) and striking (2)(a) through (c) because 15-30-2110(11) and 15-62-207, MCA, both provide clear guidance on who is eligible for a deduction for a contribution to a family education savings account.

The department proposes striking (3) because a Montana income tax deduction for other state qualified tuition plans are eligible for a deduction under 15-30-2110(11), MCA. This section requires updating because of contradictions with 15-30-2110(11), 15-62-207, MCA, and ARM 42.15.808(1).

42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS AND RECAPTURE TAX ~~(1) Earnings withdrawn from family education savings accounts, other than in a qualified withdrawal, must be included in the distributee's Montana adjusted gross income in the year withdrawn.~~

~~(2) The earnings portion of a qualified withdrawal is not included in Montana adjusted gross income.~~

(3) remains the same but is renumbered (1).

~~(4) Internal Revenue Code, 26 USC 529(c)(3) shall apply for purposes of determining what portion of a withdrawal is a withdrawal of contributions and what portion is a withdrawal of earnings.~~

(2) A rollover from one account to another or to an ABLE account is allowed under the same terms described under IRC 529. However, if the funds are rolled over to an account owned by an individual who is not a resident of Montana, then the amount rolled over is a recapturable withdrawal, which is defined in 15-62-208, MCA.

~~(5) (3) A recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103, MCA, is imposed on the recoverable recapturable withdrawal of contributions to a family education savings account deducted by the contributor. Except as provided in (10), the recapture tax is payable by the owner of the account from which the withdrawal was made even if the account owner did not make the deductible contribution. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.~~

(6) remains the same but is renumbered (4).

~~(7) (5) The portion of a recoverable recapturable withdrawal that is not treated as the withdrawal of earnings shall be treated as:~~

(a) and (b) remain the same.

(8) remains the same but is renumbered (6).

~~(9) (7) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a recoverable recapturable withdrawal is a withdrawal of deductible contributions.~~

(8) A recapturable withdrawal of amounts that previously reduced Montana adjusted gross income under 15-30-2110(11), MCA, is Montana source income pursuant to 15-30-2101(18)(a)(xvi), MCA.

(9) Nonresidents are subject to the recapture tax under ARM 42.15.803 and 42.15.804.

(10) If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the custodian of that account is subject to any recapture tax on a recapturable withdrawal.

AUTH: 15-30-2620, 15-62-201, MCA

IMP: 15-30-2110, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.15.803 to use the terms already defined in 15-62-201, MCA. The department proposes amendments in current (1), (2), and (4) to remove tax reporting requirements which are substantively redundant to those provided under IRC 529. The department has stricken the word "recoverable" and replaced it with "recapturable," because "recoverable" is a term of art not defined in statute, where 'recapturable' is defined in 15-62-208, MCA.

The department also proposes adding language to clarify that a rollover to an account owned by a nonresident is a recapturable withdrawal, subject to the recapture tax, which is consistent with statute.

Finally, the department proposes the addition of (8) through (10) to address the recapture tax as it relates to nonresidents and custodial accounts established under the Montana Uniform Transfers to Minors Act (UTMA). If nonresidents have previously claimed a deduction for an eligible contribution and a recapturable withdrawal occurred, they are subject to the recapture tax just as a resident. A minor that is an owner of a custodial account established under the UTMA does not have control over the account until the minor reaches the age of 21. The custodian of the account controls the account, and makes decisions related to withdrawals and contributions. The custodian, therefore, could make a recapturable withdrawal from the account without the account owner's knowledge.

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Each program manager shall ~~provide~~ submit a report to the department ~~for each tax year a report via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of the preceding tax year which identifies~~ identifying all contributions and withdrawals made during such year to ~~for~~ family education savings accounts for which the account owner is, or was at the time the account was opened, a Montana resident. ~~Such~~ The report shall ~~must be submitted in an electronic format in an electronic form that may be sorted by names and social security numbers and shall be submitted within two months following the close of the year. The form shall include~~ sortable by the following information for each contributor, ~~and designated beneficiary, account owner, and distributee~~ the following:

(a) and (b) remain the same.

(c) ~~amount of the contributions~~ social security number; and

(d) ~~social security number~~ amount of the contributions;

~~(2) Each program manager shall provide to the department for each tax year a report identifying all withdrawals made during such year from family education savings accounts during such year for which the account owner is, or was at the time the account was opened, a Montana resident. Such report shall be in electronic form that may be sorted by names and social security numbers of the account owners and the distributees, and shall be submitted within two months following the close of the year. The report shall include for each account owner and distributee the following:~~

~~(a) full name;~~

~~(b) last reported address;~~

~~(c) (e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and~~

~~(d) social security number; and~~

~~(e) (f) in the case of the account owner, a notation as to whether the distribution is an early or nonqualified withdrawal.~~

~~(3) (2) At the request of the department, each a program manager shall provide to the department complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or the Montana Board of Regents. These reports shall contain the same information and be provided in the same format as those provided to either the Internal Revenue Service or the Montana Board of Regents.~~

~~(4) (3) For purposes of this section, a A program manager shall report a withdrawal as an early withdrawal if the withdrawal is made within three years of the date that the account was opened (unless the account was opened before April 1, 2001).~~

~~(5) (4) A program manager shall withhold the potential recapture tax from any potentially recoverable recapturable withdrawal from an account that was at any time owned by a resident of Montana but that at the time of the withdrawal is not owned by a person who is a resident of Montana. For purposes of this provision, the program manager shall be entitled to assume that the account owner's address is the last address that the account owner reported to the program manager.~~

~~(6) (5) Any potential recapture tax that is withheld shall be paid to the department not later than the last day of the month following the month in which such withholding occurred. A program manager shall have no liability to the department for failure to withhold potential recapture tax if such error was made in good faith.~~

~~(7) (6) A taxpayer who desires to makes a potentially recoverable recapturable withdrawal, for which withholding would be required, may petition the department in writing to determine the proper amount of the potential recapture tax. The petition shall include all facts relevant to the proposed withdrawal, including information about the account and other accounts owned by the taxpayer and evidence to show that all or a portion of the contributions component of the potentially recoverable withdrawal is are not attributable to deductible previously~~

deducted contributions. If the department is satisfied with the evidence, it shall issue a letter determining the ~~potential~~ recapture tax to be withheld by the program manager.

(7) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, account owner, or distributee for the reporting information described herein.

AUTH: 15-30-2620, 15-62-201, MCA  
IMP: 15-30-2110, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.15.804 for brevity and improved clarity.

The department has updated (1) and (2) to specify a method and a date for the filing of the required report of contributions and withdrawals.

The department proposes to strike the terms "potential" and "potentially recoverable" in several places as the terms are proposed for removal in ARM 42.15.802 and 42.15.805.

The department proposes new (7) to reserve the right to directly contact the contributor, account owner, designated beneficiary, or distributee regarding contributions and withdrawals to ensure the contributor, account owner, designated beneficiary, and distributee are compliant with 15-30-2110(11), 15-62-207, and 15-62-208, MCA.

42.15.805 DEFINITIONS In addition to the terms ~~found defined~~ in 15-62-103, MCA, ~~which may be used in the rules of this subchapter,~~ the following definitions also apply to terms used in this subchapter:

(1) and (2) remain the same.

(3) "Distributee" means the account owner or designated beneficiary who withdraws the funds. If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the distributee is the custodian of that account.

~~(4) The "potential recapture tax" is the lesser of the:~~

~~(a) recapture tax that would be applicable if the potentially recoverable withdrawal were a recoverable withdrawal and the entire contributions component of the withdrawal (as reasonably determined by the program manager) were attributable to deductible contributions; or~~

~~(b) amount the department determines to be the potential recapture tax.~~

~~(5) A "potentially recoverable withdrawal" is any withdrawal that the program manager would be required to report under ARM 42.15.804 as an early withdrawal and any other withdrawal that the account owner did not certify to the program manager as a qualified withdrawal or a withdrawal on account of the death, disability, or scholarship of the designated beneficiary.~~

~~(6)~~ (4) "Program" means the family education savings program established pursuant to the Act, or any other program established and maintained under another state that qualifies as a qualified tuition program under IRC 529.

(7) remains the same but is renumbered (5).

~~(8) "Recoverable withdrawal" means a nonqualified withdrawal, or a withdrawal from an account opened after April 30, 2001, if the withdrawal is made within three years of the date that the account was opened.~~

AUTH: 15-30-2620, 15-62-201, MCA

IMP: 15-30-2110, 15-62-103, 15-62-201, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.15.805 to remove the definitions in (4), (5), and (8) because the terms are not necessary as they are included in 15-62-301 and 15-62-208, MCA. The use of the word "potential" is unnecessary as the recapture tax and recapturable withdrawal are defined in 15-62-103, MCA.

The department proposes to expand the definition of "distribute" to address family education savings accounts established under the Montana Uniform Transfers to Minors Act (UTMA). These accounts are owned by the minor, but the minor does not have control over the account until the age of 21. The custodian has control over the account and makes decisions related to withdrawals and contributions. The department feels that it is necessary to include the custodian in this definition, because the custodian is responsible for any distributions and withdrawals until the minor is aged 21.

The department also proposes to expand the definition of "program" in proposed (4) to more concisely address both the Montana family education savings program along with other states' qualified tuition programs, which are both eligible for the deduction and recapture tax under 15-30-2110(11), MCA.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than December 21, 2020.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at [www.mtrevenue.gov](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by email on November 6, 2020.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Shauna Helfert  
Shauna Helfert  
Deputy Director of Revenue

Certified to the Secretary of State November 10, 2020.