

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 42.4.301 through 42.4.303,)	PROPOSED AMENDMENT,
42.4.401 through 42.4.403, 42.4.804,)	REPEAL, AND TRANSFER
42.4.2302, 42.4.2602, 42.4.2604,)	
42.4.2701, 42.4.2703, 42.4.2704,)	
42.4.3002, and 42.4.3202, the repeal)	
of ARM 42.4.104, 42.4.110, 42.4.404,)	
42.4.501, 42.4.502, 42.4.2504,)	
42.4.2903, 42.4.4101, 42.4.4106,)	
42.4.4107, 42.4.4109, 42.4.4112 and)	
the transfer of ARM 42.4.105,)	
42.4.4105, 42.4.4108 and 42.4.4114)	
pertaining to the department's)	
implementation of Senate Bill 399)	
(2021), House Bill 191 (2021), and)	
Senate Bill 506 (2023))	

TO: All Concerned Persons

1. On July 29, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment, repeal, and transfer of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

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 July 12, 2024. 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.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to amend and repeal the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), House Bill 191 (2021) (HB 191), and Senate Bill 506 (2023) (SB 506).

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 4, to align with SB 399 changes to Montana's tax code. Examples of more global changes include references to 15-30-2131, MCA, which needs to be stricken and replaced

with a reference to the Internal Revenue Code (IRC); changing references from Montana adjusted gross income to Montana taxable income; striking references to married taxpayers filing separately because the filing status has been discontinued beginning with tax year 2024; removing obsolete tax credits; and changing "taxpayer" references in rule to "claimants," which is generally more applicable in tax credit administration.

Administrative rules in chapter 4, subchapter 3 were also affected by HB 191, in addition to SB 399. HB 191 increased the maximum credit amount of the elderly homeowner/renter credit from \$1,000 to \$1,150. The subchapter requires revision to fix outdated references and procedures including credit amounts, specific year examples, and the five-year statute of limitations which was reduced to three years by the 2015 Legislature and was not included in prior rule updates and bill implementation. The department also proposes adding language to these rules to add the same authoritative guidance that is currently provided to claimants in the calculation of household income.

The department proposes to amend chapter 4, subchapter 27, to implement SB 399 and also SB 506, which increased the maximum credit amount of the qualified endowment credit from \$10,000 to \$15,000 and made the credit permanent. As it relates to SB 506, many of the rules in this subchapter were written to be temporary in nature because the credit required renewal every six years by the Legislature. Because SB 506 made the credit permanent, many of the references to years can be stricken. The department sees a further need to provide more clarification about the types of organizations that qualify to hold a qualified endowment and strike some subsections that are explicitly found in 15-30-2327, MCA.

Further, during the department's review of chapter 4, the department identified several outdated references and procedures that require updates. Many of the rules use specific years in the examples (see ARM 42.4.303 and 42.4.403), and the department proposes a model that does not specifically reference a year. The department proposes a format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations.

There are references throughout chapter 4 that list the department's physical address and website as a means for a claimant to deliver a tax credit form to the department. Because these are both subject to change, the department proposes removing them and relying on the guidance provided on our website and form instructions.

The department proposes to update rules related to how claimants claim tax credits to match current business practice. First, the rules currently allow for a claimant to report the amount of the credit without providing a copy of the form with their tax form. The department notes this practice is outdated because tax software vendors support the ability to include a requisite form with the tax return. Additionally, auditors routinely adjust returns because tax credits were erroneously claimed. Requiring the form with the tax return prompts the claimant to provide the necessary attestations and information to obtain the credit.

The department also proposes the transfer of ARM 42.4.105, 42.4.4105, 42.4.4108, and 42.4.4114, which do not deal with tax credits, to the appropriate chapter within ARM Title 42. For example, ARM 42.4.105 relates to a corporate tax deduction. Previously, this rule was related to tax credits that were repealed under SB 399 as well as the existing corporate deduction. While the department is required to maintain the rule, per 15-32-105, MCA, the rule only applies to the corporate tax deduction under 15-32-103, MCA. As a result, the department contends the rule should be transferred to ARM Title 42, chapter 23.

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

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

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) "Amenities" ~~are~~ mean items or conditions that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the ~~pleasure and~~ enjoyment of the occupant(s), rather than to their indispensable needs. ~~For periods beginning after December 31, 2016, "Amenities" means also includes~~ services unrelated to the occupation of a dwelling and provided by personnel, including but not limited to meals, housekeeping, transportation, assisted living, or nursing care.

(2) "Gross household income" means the same as the term defined under 15-30-2337, MCA, is further defined as and includes:

(a) all capital gains income transactions less return of capital;

(b) federal refundable tax credits received; and

(c) any state refundable tax credits received, including elderly homeowner/renter credit refunds;

(d) all federal taxable and nontaxable pension, annuity, and IRA payments received during the year;

(e) qualified charitable distributions under IRC § 408(d)(8); and

(f) conversion from a traditional IRA to Roth IRA under IRC § 408A(d)(3).

(3) "Land surrounding the eligible residence for the elderly homeowner/renter credit" ~~is~~ means the one-acre farmstead or ~~primary~~ acre associated with the primary residence.

~~(a) If the one-acre farmstead or primary acre associated with the primary residence is not separately identified on the tax bill or assessment notice from the other acreage, and the ownership is less than 20 acres, the allowable credit shall be calculated as follows: total amount of property tax billed, multiplied by 80 percent or divided by the total acreage, whichever is higher, to equal the allowable amount of property tax used in the credit calculation. divide the total number of acres into one; multiply the result by the amount of property tax paid on the land; and add this amount to the property tax on the dwelling.~~

~~(b) Land ownership of 20 acres or more that does not have the one-acre farmstead or primary acre separately identified on the tax bill or assessment notice must be submitted to the department's local office for computation of the allowable amount of property tax used in the credit calculation.~~

(4) "Rent" is means the amount of money charged to a tenant to occupy a dwelling. "Rent" does not include amenities.

AUTH: 15-30-2620, MCA

IMP: 15-30-2337, 15-30-2338, 15-30-2340, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.301 to improve definitional guidance about calculating gross household income and total property taxes when the residence is on more than one acre. The proposed amendment formats also follow current department practice.

42.4.302 COMPUTATION OF ELDERLY HOMEOWNER/RENTER TAX

CREDIT (1) When ~~the taxpayer~~ a claimant owns the dwelling but rents the land or owns the land and rents the dwelling, the ~~taxpayer~~ claimant shall ~~add~~ include on the claim form the rent-equivalent tax paid on the rented property to the property tax billed on the owned property. The total shall then be reduced as provided by 15-30-2340, MCA. The ~~tax~~ credit will be the reduced amount or ~~\$1,000~~ \$1,150, whichever is less.

(2) To calculate the credit, an eligible claimant ~~is allowed to~~ may use property taxes billed:

(a) on property held in a revocable trust if the grantor(s) of the property or their spouse is the claimant and either or both are trustees of the revocable trust; or

(b) as rent if the property occupied by the claimant is in a name other than the claimant; ~~or~~

~~(c) if the claimant has a living trust or a life estate.~~

(3) When a ~~taxpayer~~ claimant lives in a health, long-term, or residential care facility (facility), as defined in 50-5-101, MCA, the rent allowed in calculation of the ~~property tax~~ credit is the actual out-of-pocket ~~rent paid~~ amount paid for rent.

(a) If one spouse lives in a facility and the other lives at a different address, they ~~are allowed to~~ may report either the rent paid for the facility or the rent/property taxes billed for the other address, but not both. Married ~~taxpayers~~ couples who are living apart are entitled to file and receive only one claim credit per year.

~~(b) Prior to January 1, 2017, if a claimant lived in a facility that did not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed is limited to:~~

~~(i) \$20 a day for periods beginning on or before December 31, 2014; or~~

~~(ii) \$30 a day for periods beginning after December 31, 2014.~~

~~(c) (b) For claims for periods beginning after December 31, 2016, if~~ If a claimant lives in a facility, the out-of-pocket rent being claimed must exclude payments for amenities. To satisfy this obligation, the claimant must either:

(i) utilize a detailed statement provided by the facility itemizing the amount paid for rent and ~~the amount paid for amenities separately;~~ or

(ii) determine the amount of allowable rent by deducting ~~the~~ amenities from the total amount paid as follows:

(A) 20 percent for services related to boarding such as meals, housekeeping, laundry, and transportation;

(B) 30 percent for services related to continuous care such as assisted living, medical care, paramedical care, memory care, medical supplies, and pharmacy; or

(C) 50 percent if the services in both (A) and (B) are provided.

~~(d)~~ (c) Examples of calculating the allowable rent in ~~(e)~~ (b) are as follows:

(i) Val rents a room in an independent living facility. Her \$1,000 monthly payment includes utilities and parking, but no services delivered by personnel. No further calculation is needed. Val is allowed to report the full \$1,000 per month as rent.

(ii) Paul rents a room in an independent living facility. In addition to utilities and cable, his \$2,500 monthly payment includes boarding such as housekeeping, meals, and transportation provided by staff and contractors. The facility's year-end statement does not ~~break-out~~ itemize his total amount paid. Paul deducts 20 percent (\$2,500 - 20%) for the boarding services ~~to calculate~~ and may report \$2,000 per month as ~~allowable rent to report~~ rent.

(iii) Ron lives in a long-term care facility and receives boarding services, assistance with daily living activities, and special memory care. The facility's year-end statement partially ~~breaks-out~~ itemizes Ron's \$40,000 total payment, showing the amount charged by a the contractor for his memory care. ~~†~~ The statement does not list the amounts charged for boarding and care provided by staff. Ron deducts 50 percent (\$40,000 - 50%) for boarding (20%) and care (30%) ~~to calculate~~ and may report \$20,000 as ~~allowable rent to report for the year~~ annual rent.

(iv) George rents an apartment in an assisted living facility. The facility's year-end statement ~~breaks-out~~ itemizes his \$30,000 total payment as \$14,400 for rent, \$5,000 for boarding, and \$10,600 for care. George may report the \$14,400 ~~stated~~ rent amount or, alternately, choose to deduct 50 percent from the total (\$30,000 - 50%) for boarding (20%) and care (30%) ~~to calculate~~ and may report \$15,000 as ~~allowable rent to report for the year~~ annual rent.

(v) Mary rents a room in an assisted living facility for six months while recovering from a medical procedure. Her \$2,000 total monthly payment includes assistance with daily living activities provided by staff, but she chose not to receive any additional services such as boarding. The facility does not itemize her payment. Mary deducts 30 percent from the monthly payment (\$2,000 - 30%) for the care ~~to calculate~~ and may report \$1,400 per month ~~in allowable~~ as rent. Further, Mary may report either the allowable rent paid to the facility, or the monthly rent she paid for her primary residence during the same six-month period, but not both.

AUTH: 15-30-2620, MCA

IMP: 15-30-2340, 15-30-2341, 50-5-101, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.302 to improve grammar and sentence structure of rule sections and remove the provision in (3)(b) which is a department practice that has been discontinued.

42.4.303 CLAIMING AN ELDERLY HOMEOWNER/RENTER TAX CREDIT

(1) The elderly homeowner credit may be claimed by an eligible individual or, if an eligible individual dies before making a claim, by the personal representative of their estate, and must be made on Form 2EC, Montana Elderly Homeowner/Renter Credit.

(2) The time ~~for~~, and manner of making, a claim for the credit depends on whether ~~or not the qualified individual (or the personal representative for them)~~ the claimant files an individual income tax a return for the year for which the credit is claimed.

(a) A claimant must also meet the eligibility requirements provided in 15-30-2338, MCA, to obtain the credit.

~~(a) (b)~~ (b) If an ~~eligible individual~~ a claimant files or is required to file an individual income tax a return for the year for which the credit is claimed, the claim must be filed with the return on or before the due date of the return, including extensions. ARM 42.15.301 ~~sets forth~~ provides the rules for determining whether an individual is required to file a return. If a return is made by or for an eligible individual without making a claim for the credit, the credit may be claimed by filing an amended return within ~~five~~ three years after the due date of the return, not including extensions.

~~(b) (c)~~ (c) If an eligible individual is not required to file an individual income tax a return, ~~no later than April 15th of the fifth year following the claim year~~ the claim must be: the claim must be submitted no later than April 15th of the fourth calendar year following the claim year.

~~(i) mailed to the department at the address set forth in ARM 42.1.101;~~

~~(ii) delivered to:~~

~~Department of Revenue~~

~~Sam W. Mitchell Building~~

~~Third floor, 125 North Roberts~~

~~Helena, Montana; or~~

~~(iii) filed electronically through the department's web site at:~~

~~www.revenue.mt.gov.~~

~~(c) (d)~~ (d) If an eligible individual is required to, but did not, file an individual income tax a return, the claim must be made by filing an individual income tax a return with completed Form 2EC as provided in ~~(2)(a)(b)~~.

~~(d) If the taxpayer claiming the credit files their tax return electronically, he or she represents that they have completed Form 2EC and have all the required documentation. The form and required documentation are tax records the taxpayer must retain and provide to the department on request.~~

(3) The following are examples showing how this rule is applied of the application of this rule:

(a) ~~Taxpayer A~~ A claimant is required to file an individual income tax a return for ~~2011~~ 20X1 and, although eligible, neglects to claim the credit by filing Form 2EC with their ~~2011~~ 20X1 individual income tax return which they file April 6, ~~2012~~ 20X2. ~~Taxpayer~~ The claimant may claim the credit by filing an amended ~~2011~~ 20X1 individual income return with completed Form 2EC on or before April 15, ~~2017~~ 20X5.

(b) ~~Taxpayer A~~ A claimant, who is not required to file an individual income tax a return for ~~2011~~ 20X1, dies in February ~~2012~~ 20X2. The ~~taxpayer's~~ claimant's personal representative, appointed June ~~2012~~ 20X2, may at any time before April

15, 2017 20X5, either file a 2014 20X1 individual income tax return for the taxpayer claimant with completed Form 2EC or file Form 2EC without filing a 2014 20X1 return.

(c) ~~Taxpayer~~ A claimant is required to, but does not file an individual income tax return for 2012 20X2. ~~Taxpayer~~ The claimant or, if the taxpayer has died, the their personal representative of the taxpayer's estate, may claim the credit by filing a 2012 20X2 individual income return with completed Form 2EC on or before April 15, 2018 20X6.

AUTH: 15-30-2609, 15-30-2620, MCA
IMP: 15-30-2338, 15-30-2339, 15-30-2609, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.303 to improve sentence structure (i.e., unnecessary language use), remove outdated information, improve example references, include a necessary reiteration in (2)(a) of claimant eligibility conditions found in 15-30-2338, MCA, and reflect the reduction in the statute of limitations to three years by the 2015 Legislature.

Based on the addition of (2)(a), it is necessary for the department to amend the implementing citations to include 15-30-2338, MCA, to comply with 2-4-305, MCA, and organize the citations as they are presented in statute.

42.4.401 DEFINITIONS The following definitions apply to this subchapter:

(1) "Another state" or "other state" means a state of the United States other than Montana, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, and a foreign country.

(2) "Foreign income tax" means the income tax paid to another state for which the credit described in ARM 42.4.402 is claimed.

(3) "Income tax" means a tax measured by and imposed on net income and, in the case of an S corporation and partnership, includes an excise tax or franchise tax that is imposed on, and measured by, the net income of the S corporation or partnership. The term does not include any other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The term does not include penalty or interest paid in connection with an income tax.

(4) "Taxable foreign income" means the income from the other state that is included in the taxpayer's claimant's Montana adjusted gross income taxable income.

(5) "Total foreign income" means the income of the other state upon which the foreign income tax was computed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.401 to implement SB 399 as outlined in the department's general statement of

reasonable necessity.

42.4.402 CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE OR COUNTRY (1) A Montana resident is allowed a nonrefundable credit against ~~the resident's~~ their Montana income tax liability for:

(a) income taxes they paid to another state or foreign country on income which is also subject to Montana income tax;

(b) ~~the resident as a~~ shareholder's, ~~their~~ pro rata share of income taxes paid by an S corporation to another state or foreign country on income that is subject to Montana income tax as provided in Title 15, chapter 30, MCA; and

(c) ~~the resident as a~~ partners', ~~their~~ distributive share of income taxes paid by a partnership to another state or foreign country on income that is subject to Montana income tax as provided in Title 15, chapter 30, MCA.

(2) The credit is allowed under the following conditions and limitations:

(a) the credit is allowed only with respect to an income tax imposed by law and actually paid. An income tax is a tax measured by and imposed on net income and, in the case of an S corporation or partnership, includes an excise tax or franchise tax that is imposed on and measured by the net income of the entity. The credit is not allowed for other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The credit is not allowed for penalty or interest paid in connection with an income tax;

(b) in the case of a taxpayer claimant who either becomes or ceases to be a Montana resident during the ~~taxable~~ year, the credit is allowed only with respect to income earned during the ~~fractional~~ part of the year the taxpayer claimant was a resident of this state;

(c) the credit is allowed only with respect to an income tax that the taxpayer claimant does not claim as a deduction in determining Montana taxable income;

(d) the credit is allowed only if the state or foreign country imposing the income tax liability does not allow the taxpayer claimant a credit for Montana income tax liability incurred with respect to the income derived within such state or foreign country; and

(e) the credit is allowed for taxes paid to a foreign country only to the extent the taxes paid exceed either:

(i) the amount claimed under IRC ~~section~~ § 904(a) plus any carryback and carryover amount allowed under IRC ~~section~~ § 904(c); or

(ii) the amount claimed under IRC ~~section~~ § 904(k).

(3) The credit against income taxes is claimed on ~~the Montana tax a~~ a return for the same year that the taxpayer claimant reports the income associated with the tax paid to the other state or country. Because the ~~Montana~~ credit is nonrefundable and any unused credit may not be used in another tax year, taxes that, for federal income tax purposes, are deemed paid or accrued in a carryback or carryover year must be removed before calculating the ~~Montana foreign tax credit~~ for income taxes paid to another state or country.

(4) The credit cannot be claimed by an individual for taxes paid to another state or country by an estate or trust.

(5) If a taxpayer claimant amends the amount of income reported to the other state or a foreign country on which the ~~Montana~~ credit was based, the ~~taxpayer claimant~~ shall file an amended ~~Montana tax~~ return to recalculate the credit allowed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2302, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.402 to improve sentence structure (i.e., unnecessary language use) and to update terminology.

42.4.403 COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY SPECIAL APPLICATIONS (1) In determining the tax credit allowed, the computations in this rule must be made separately for each state or foreign country's income tax with respect to which a credit is claimed.

(2) If the claim for a credit does not include the ~~taxpayer's~~ claimant's share of income tax paid to another state or country by an S corporation or partnership in which the ~~taxpayer~~ claimant is a shareholder or partner:

(a) determine the amount of income taxable by the other state or foreign country that is included in Montana ~~adjusted gross income (AGI)~~ taxable income, but do not include income that is exempt in Montana;

(b) determine the amount of tax paid to the other state or foreign country on income that is not exempt in Montana by multiplying the tax paid to the other state or foreign country by a fraction:

(i) the numerator of which is the amount of income taxable by the other state or foreign country that is included in Montana ~~(AGI)~~ taxable income (excluding income exempt in Montana);_i and

(ii) the denominator of which is the total amount of income taxable by the other state or foreign country (including income exempt in Montana);_i

(c) determine the proportionate amount of the Montana income tax attributable to income taxed by the other state or foreign country by multiplying the Montana income tax liability, as determined without the credit, by a fraction:

(i) the numerator of which is the ~~taxpayer's~~ claimant's income taxable by the other state or foreign country that is included in the ~~taxpayer's~~ claimant's Montana ~~(AGI)~~ taxable income; and

(ii) the denominator of which is the ~~taxpayer's~~ claimant's total Montana ~~(AGI)~~ taxable income;_i

(d) the credit allowable is the lower of:

(i) the amount of income tax reported and paid to the other state or foreign country;

(ii) the amount of the income tax reported and paid to the other state or foreign country on income that is not exempt in Montana, the result of the calculation in (2)(b);
or

(iii) the proportionate amount of the Montana income tax attributable to income taxed by the other state or foreign country, the result of the calculation in (2)(c).

(3) If the claim for credit does include the ~~taxpayer's~~ claimant's share of income tax paid to another state or country by an S corporation or partnership on income that is subject to Montana income tax:

(a) increase the ~~taxpayer's~~ claimant's Montana (AGI) taxable income for the tax year the entity deducted the income taxes by the ~~taxpayer's~~ claimant's share of the entity's deduction;

(b) calculate the Montana income tax liability taking the increase in Montana (AGI) taxable income into account;

(c) determine the ~~taxpayer's~~ claimant's share of the amount of net entity income that is included in Montana (AGI) taxable income (do not include income that is exempt in Montana);

(d) determine the ~~taxpayer's~~ claimant's share of the amount of income tax reported and paid to the other state or foreign country by the entity on income that is not exempt in Montana by multiplying the share of the amount of tax reported and paid to the other state or foreign country by the entity by a fraction:

(i) the numerator of which is the share of the amount of the entity's net income included in the Montana (AGI) taxable income (excluding income exempt in Montana); and

(ii) the denominator of which is the share of the total amount of the entity's net income (including income exempt in Montana);

(e) multiply the recalculated Montana income tax liability by a fraction, the numerator of which is the ~~taxpayer's~~ claimant's share of income of the entity included in the ~~taxpayer's~~ their Montana (AGI) taxable income, adjusted as provided in (3)(a), and the denominator of which is the ~~taxpayer's~~ their total Montana (AGI) taxable income, adjusted as provided in (3)(a);

(f) the credit allowable is the lower of:

(i) the share of the amount of income tax reported and paid by the entity to the other state or foreign country;

(ii) the share of the amount of the income tax reported and paid to the other state or foreign country by the entity on the share of income that is not exempt in Montana, the result of the calculation in (3)(d); or

(iii) the proportionate amount of the Montana income tax attributable to the share of income of the entity reported to the other state or foreign country, the result of the calculation in (3)(e).

(4) If the tax paid to the other state includes tax on income taxed under both 15-30-2103(1) and (2), MCA, separate calculations for both types of income are required. When a claimant's Montana taxable income includes net long-term capital gains taxed under 15-30-2103(2), MCA, which are also taxed in another state, the amount of credit allowed against the Montana tax on the gains shall be based only on the tax paid to the other state(s) on those gains.

~~(4) (5) The following are Eexamples of how to calculate calculating these credits paid to another state or country are outlined in (a) through (e):~~

(a) Example 1 – ~~Taxpayer~~ The claimant, a full-year Montana resident, sold real property in State X in 2017 20X1. State X does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In 2018 20X2, the ~~taxpayer~~ claimant was legally required to, and did, file a 2017 20X1 State X income tax return reporting the transaction and paying State X an income tax of \$700.

The ~~taxpayer's~~ claimant's \$5,000 gain on the sale of the State X property was included in the taxable income reported on the ~~2017~~ 20X1 Montana income tax return. The ~~taxpayer's~~ claimant's ~~2017~~ 20X1 Montana income tax liability was \$3,400. The ~~taxpayer's~~ claimant's total ~~2017~~ 20X1 Montana AGI taxable income was \$23,000, which included the \$5,000 gain on the sale of property in State X. The amount of credit the ~~taxpayer~~ claimant may claim against the ~~2017~~ 20X1 Montana income tax liability is \$700, the smaller of the amounts in (i) through (iii):

(i) The amount of income tax paid to State X is \$700;

(ii) The amount of income tax paid to State X on income that is not exempt in Montana is \$700. This amount is determined by multiplying the tax paid to State X (\$700) by a fraction, the numerator of which is the amount of income from State X that is included in Montana AGI taxable income (\$5,000), and the denominator of which is the total amount of income from State X, including any income that is exempt in Montana. The calculation is $\$700 \times (\$5,000/\$5,000) = \700 ;

(iii) The proportionate amount of the Montana income tax attributable to income taxed by State X is \$739. This amount is determined by multiplying the Montana income tax liability without the credit (\$3,400) by a fraction, the numerator of which is the income from State X included in Montana AGI taxable income (\$5,000), and the denominator of which is total Montana AGI taxable income (\$23,000). The calculation is $\$3,400 \times (\$5,000/\$23,000) = \739 .

(b) Example 2 –~~Taxpayer~~ The claimant, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in ~~2017~~ 20X1. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a ~~2017~~ 20X1 income tax return with State X in ~~2018~~ 20X2 and paid a tax measured by its net income of \$132,000, \$121,000 by estimated payments made in ~~2017~~ 20X1 and the balance of \$11,000 in ~~2018~~ 20X2 when it filed its ~~2017~~ 20X1 return;

(ii) The S corporation paid \$15,000 tax to State X for tax year ~~2016~~ 20X0 when it filed its ~~2016~~ 20X0 return in ~~2017~~ 20X1. The S corporation's non-separately stated and separately stated items for tax year ~~2017~~ 20X1 were as follows, of which the Montana resident shareholder's share was 10 percent:

(A) An ordinary income of \$2,000,000 from banking business includes a deduction of \$136,000 for State X taxes paid in ~~2017~~ 20X1, \$121,000 for estimated payments in ~~2017~~ 20X1, and \$15,000 for ~~2016~~ 20X0 taxes paid in ~~2017~~ 20X1;

Tax exempt interest income	\$1,200,000
Ordinary dividends	300,000

(B) The ~~taxpayer's~~ claimant's total ~~2017~~ 20X1 Montana AGI taxable income was \$500,000, which included 10 percent of the S corporation's ordinary dividends, or \$30,000, and 10 percent of the ordinary income from its banking business, or \$200,000;

(C) The shareholder's \$200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for \$136,000 income taxes paid to State X in ~~2017~~ 20X1, or by \$13,600

(had the shareholder paid the shareholder's 10 percent share of the State X's taxes rather than the S corporation, the shareholder's 10 percent pro rata share of the S corporation's ordinary income for ~~2017~~ 20X1 would have been \$213,600);

(D) The shareholder's 10 percent share of the S corporation's tax-exempt interest, or \$120,000, is exempt from Montana individual income tax but is subject to tax by State X; and

(E) Assume the ~~taxpayer's~~ claimant's ~~2017~~ 20X1 Montana tax liability would be \$50,000 if the credit were not claimed;

(iii) The ~~taxpayer~~ claimant calculates the Montana income tax liability and the amount of credit the ~~taxpayer~~ claimant may claim against the ~~2017~~ 20X1 income tax liability as follows:

(A) The ~~taxpayer's~~ claimant's Montana taxable income is increased by the pro rata share of the S corporation's deduction for State X taxes paid for which the ~~taxpayer~~ claimant claims the credit;

Montana AGI <u>taxable income</u> :	\$500,000
Reverse deduction:	<u>\$13,600</u>
Adjusted MT- AGI <u>Montana taxable income</u> :	\$513,600

(B) The ~~taxpayer's~~ claimant's pro rata share of the tax reported and paid to State X by the S corporation for ~~2017~~ 20X1 (\$13,200) is multiplied by the proportion of the ~~taxpayer's~~ claimant's pro rata share of the S corporation income taxed in State X that is not exempt in Montana (\$230,000) to the ~~taxpayer's~~ claimant's pro rata share of the amount of income that is taxable in State X, including income that is exempt in Montana (\$350,000):

Ordinary income from banking operations	\$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

~~Taxpayer's~~ The claimant's share of income tax reported and paid to State X on income that is not exempt in Montana:

$$\$13,200 \times \$230,000 / \$350,000 = \$8,674$$

(C) The ~~taxpayer's~~ claimant's Montana income tax liability is recalculated. Tax on adjusted Montana ~~AGI~~ taxable income of \$513,600: \$56,500 (assumed result). The recalculated Montana income tax liability (\$56,500) is multiplied by the ratio of S corporation net income included in Montana ~~AGI~~ taxable income, increased by the pro rata share of the S corporation deduction for the income taxes paid (\$200,000 + \$30,000 + \$13,600 = \$243,600) to the ~~taxpayer's~~ claimant's total Montana ~~AGI~~ taxable income, increased by the pro rata share of the S corporation deduction for income taxes paid (\$513,600).

Montana income tax attributable to income that is taxed in both states:

$$\$56,500 \times \$243,600 / \$513,600 = \$26,798$$

(D) The allowable credit is \$8,674, the lower of:

(I) pro rata share of the income tax reported and paid by the S corporation, \$13,200;

(II) pro rata share of the amount of the income tax reported and paid to the other state or foreign country by the S corporation on their pro rata share of income that is not exempt in Montana, \$8,674; and

(III) proportionate amount of the Montana income tax attributable to their pro rata share of income of the S corporation reported to the other state or foreign country, \$26,798.

(c) Example 3 – A full-year Montana resident pays \$1,000 in income taxes to a foreign country. For federal income tax purposes, the ~~taxpayer~~ claimant elects to claim the federal foreign credit for those taxes rather than a deduction. The amount of the foreign federal tax credit is \$800, \$500 of which the ~~taxpayer~~ claimant claims currently and \$300 of which is allowed to be carried back and forward under ~~IRS IRC~~ IRC § 904(c). In calculating the Montana credit for taxes paid to the foreign country, the ~~taxpayer~~ claimant must use \$200 rather than \$1,000 as the amount of taxes paid to the foreign country.

AUTH: 15-30-2620, MCA

IMP: 15-30-124, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.403 to improve sentence structure (i.e., unnecessary language use), improve example references, and provide special applications guidance in the catchphrase and in the rule for the calculation of the credit when net long-term capital gains are reported.

Also, House Bill 221 (2023) created separate tax rates for some capital gains. The department's proposed amendments implement the legislation via the calculation referenced in (4) and provide accuracy when applying the credit to the Montana tax on those gains.

42.4.804 CREDIT LIMITATIONS AND CLAIMS (1) A ~~taxpayer~~ claimant may claim a credit for contributions made in cash to a school district provided ~~for~~ in 20-9-901, MCA, and/or a student scholarship organization (SSO), provided ~~for~~ in 15-30-3110, MCA. For the purpose of this rule, cash includes:

- (a) U.S. currency;
- (b) a personal check;
- (c) cashier's check;
- (d) money order;
- (e) bank draft;
- (f) an electronic bank account transfer (e.g., wire transfer, ACH draft);
- (g) a credit card transaction (less any transaction surcharges or fees); or
- (h) traveler's check.

(2) The maximum credit that may be claimed in a tax year by an individual ~~taxpayer~~ claimant or a corporation for allowable contributions to:

- (a) a school district is \$200,000; and

(b) an SSO is \$200,000.

~~(3) In the case of a married couple that makes a joint contribution, unless specifically allocated by the taxpayers, the contribution will be split equally between each spouse. If each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount.~~

~~(4)~~ (3) An allowable contribution from:

(a) an S corporation passes to its shareholders based on their ownership percentage; and

(b) a partnership or limited liability company taxed as a partnership passes to their partners and owners based on their share of profits and losses as reported for Montana income tax purposes.

AUTH: 15-1-201, 15-30-3114, MCA

IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.804 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.2302 CLAIMING THE UNLOCKING PUBLIC LANDS TAX CREDIT

(1) To claim the unlocking public lands tax credit, a ~~taxpayer shall~~ claimant who is a landowner and has met the cooperative agreement (agreement) requirements of 87-1-294, MCA, must file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or Form CIT for C corporations), regardless of whether or not they are otherwise required to file a tax return for the year the credit is being claimed.

(2) A ~~taxpayer~~ claimant who files a tax return on a calendar year basis shall claim the credit for the tax year in which the agreement applied.

(3) A ~~taxpayer~~ claimant who files a tax return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by the Montana Department of Fish, Wildlife and Parks.

(4) ~~The taxpayer~~ A claimant shall include copies of all tax certification numbers, agreements, and supporting documents when filing their return. ~~If the return is filed electronically using software that does not support attachments, the taxpayer shall retain the information and provide it to the department upon request.~~

(5) When reviewing a claim for the credit, the department may request additional information to determine a ~~taxpayer's~~ claimant's eligibility for the allocation of the credit being claimed. This information may include, but is not limited to:

(a) documentation establishing ownership and ownership percentage of the parcel(s);

(b) a Montana Schedule K-1 issued by a partnership, S corporation, or fiduciary indicating the partner, shareholder, or beneficiary's share of the credit; or

(c) a return filed by a partnership, S corporation, or fiduciary including information showing the owners of the entity.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2302 to improve sentence structure (i.e., unnecessary language use) and improve cross referencing of the program and its requirements.

42.4.2602 ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals, and partnerships, may take an additional 10 percent deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain recycled material at a level consistent with industry standards and/or standards established by the ~~Federal~~ United States Environmental Protection Agency when such standards exist. The department may request the assistance of the Montana Department of Environmental Quality to determine if the product qualifies as a recycled product. Due to continuing technological advances in the recycling industry, the standards will be subject to constant change. The industry standards to be used will be those in effect at the time the product was purchased.

(2) For a ~~taxpayer~~ claimant paying individual income tax, the deduction is an adjustment to federal ~~adjusted gross income~~ taxable income for individual income tax.

(3) For a corporation paying the corporate income tax/alternative corporate income tax, the deduction is an adjustment to federal taxable income for the corporate income tax/alternative corporate income tax.

(4) A shareholder of an S corporation may claim a share of the allowable deduction for expenditures that the S corporation incurred for purchase of qualified recycled material based on the shareholder's pro rata share of their ownership in the S corporation. A partner of a partnership may claim a share of the allowable deduction for expenditures the partnership incurred for the purchase of qualified recycled material in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

(5) Any deductions claimed are subject to review by the department. The responsibility to maintain accurate records to substantiate deductions remains with ~~the taxpayer~~ a claimant.

AUTH: 15-32-609, 15-32-611, MCA

IMP: 15-32-603, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2602 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.2604 CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS, OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL, OR PROCESS SOILS CONTAMINATED BY HAZARDOUS WASTES (1) The credit is subject to the limitations outlined in 15-32-602, MCA, and is available only for the acquisition of machinery and/or equipment that is depreciable, as defined in IRC Section §167 ~~of the IRC~~. The machinery and/or equipment must be used in Montana primarily for the collection or

processing of reclaimable material, or ~~in the~~ to manufacture of finished products from reclaimed material.

(2) The basis for the credit is generally the cost of the ~~property~~ machinery and/or equipment before consideration of trade-in equipment. ~~An exception to this is that~~ but the basis shall be reduced by any trade-in machinery and/or equipment which ~~has~~ has had previously received this credit ~~previously taken on it. This includes~~ against the purchase price, transportation cost (if paid by the purchaser), and the installation cost before depreciation or other reductions. This credit does not increase or decrease the basis for tax purposes. Leased equipment is restricted to capital leases, and the credit is calculated on the amount capitalized for balance sheet purposes under generally accepted accounting principles.

(3) ~~Recycling~~ The machinery and/or equipment must be located and operating in Montana on the last day of the taxable year for which the credit is claimed. The machinery or equipment must be used to:

- (a) collect;
- (b) process;
- (c) separate;
- (d) modify;
- (e) convert; or
- (f) treat solid waste into a product that can be used in place of a raw material for productive use or treat soil that has been contaminated by hazardous wastes.

(4) Examples ~~may~~ of such machinery and/or equipment include, but are not limited to:

- (a) balers;
- (b) bobcats;
- (c) briquetters;
- (d) compactors;
- (e) containers;
- (f) conveyors;
- (g) conveyor systems;
- (h) cranes with grapple hooks or magnets;
- (i) crushers;
- (j) end loaders;
- (k) exhaust fans;
- (l) fork lifts;
- (m) granulators;
- (n) lift-gates;
- (o) magnetic separators;
- (p) pallet jacks;
- (q) perforators;
- (r) pumps;
- (s) scales;
- (t) screeners;
- (u) shears;
- (v) shredders;
- (w) two-wheel carts; and
- (x) vacuum systems.

(5) ~~This~~ The list in (4) does not include transportation equipment, unless it the equipment is specialized ~~to the point that it can only be used~~ solely to collect and process reclaimable material or treat soil that has been contaminated by hazardous wastes.

(6) In the instance of the specialized mobile equipment that does qualify and is used both within and outside of Montana, the credit must be prorated using the following calculation:

$$\frac{D}{T} \times C \times E = \text{Credit allowed}$$

C = credit % in 15-32-602, MCA

D = days used in Montana

E = cost of equipment

T = total days used

(7) Absent a specific agreement to the contrary, the owners of a small business corporation, partnership, or sole proprietorship must prorate the credit in the same proportion as their ownership in the business.

(8) Only a ~~taxpayer~~ claimant that owns an interest, either directly or through a pass-through entity such as a partnership or S corporation, and is operating the equipment as the primary user on the last business day of the year, may claim the credit.

(9) The credit is limited to the amount of ~~the taxpayer's~~ a claimant's income tax liability or corporation tax liability. Any excess credit is not refundable, nor can it be carried back or forward to other tax years.

(10) The department may disallow a credit resulting from a sale or lease of machinery and/or equipment when the ~~overriding~~ purpose of the transaction is does not use the machinery and/or equipment primarily to collect or process reclaimable material, or manufacture a product from reclaimed material.

AUTH: 15-32-611, MCA

IMP: 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, 15-32-610,
MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2604 to improve sentence structure (i.e., unnecessary language use), use consistent terminology, and improve example references.

42.4.2701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Allowable contribution₁" for the purposes of the qualified endowment credit₁ is means a charitable gift made to a qualified endowment. The contribution from an individual to a qualified endowment must be by means of a planned gift₁ as defined in 15-30-2327, MCA. A contribution from a corporation, small business corporation, estate, trust, partnership, or limited liability company may be made by means of a planned gift or may be made directly to a qualified endowment.

(2) "Donor" means an individual, corporation, estate, or trust that contributes to a qualified charitable endowment either directly or indirectly through a small business corporation or partnership, as required by 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, and 15-31-162, MCA.

(3) "Paid-up life insurance policies" ~~are~~ mean life insurance policies in which all the premiums have been paid prior to the policies being contributed to a qualified endowment. The donor must make the tax-exempt organization the owner and beneficiary of the policy. ~~The~~ A paid-up life insurance policy does not have to be on the life of the donor.

~~(4) "Permanent irrevocable fund" means a fund comprised of one or more assets that are invested and appropriated pursuant to the Uniform Prudent Management of Institutional Funds Act provided for in Title 72, chapter 30, MCA. Investment assets may include cash, securities, mutual funds, or other investment assets. A "building fund" or other fund that is used to accumulate contributions that will be expended is not a permanent irrevocable fund. A fund from which contributions are expended directly for constructing, renovating, or purchasing operational assets, such as buildings or equipment, is not a permanent irrevocable fund.~~

~~(5)~~ (4) "Present value of the charitable gift portion of a planned gift" is means the allowable amount of the charitable contribution, as defined in 15-30-2131, and 15-30-2152, MCA, or for corporations, as defined in 15-31-114, MCA, prior to any percentage limitations.

~~(6) "Qualified endowment" means a permanent irrevocable fund established for a specific charitable, religious, educational, or eleemosynary purpose by an organization qualified to hold it as provided in ARM 42.4.2703.~~

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-30-2131, 15-30-2152, 15-30-2327, 15-30-2328, 15-30-2329, 15-31-114, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2701 to improve sentence structure and remove definitions which are now provided for in 15-30-2327, MCA.

42.4.2703 ELIGIBILITY REQUIREMENTS TO HOLD A QUALIFIED ENDOWMENT (1) To hold a qualified endowment under 15-30-2327(1)(c), MCA, an organization must be:

(a) incorporated or otherwise formed under the laws of Montana and exempt from federal income tax under 26 USC 501(c)(3); or

(b) a Montana chartered bank or trust company, as defined in 15-30-2327, MCA, holding an endowment fund on behalf of a Montana or a Montana-based affiliate of a foreign 26 USC 501(c)(3) organization.

(2) A qualifying gift to an institution ~~meeting the definition in (1)(b) at the time of the gift remains a qualifying gift even if subsequent changes to the institution mean it no longer meets the definition of an entity eligible to hold a qualified endowment~~ affect the institution's prior qualification. For example, a qualifying gift to

a Montana chartered bank remains a qualifying gift ~~even~~ if the bank is subsequently acquired and absorbed by a nationally chartered bank.

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-30-2327, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2703 to improve sentence structure (i.e., unnecessary language use) and improve internal references for consistency.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) The credit allowed ~~the~~ a corporation, estate, trust, or individual against its tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution, as defined in ARM 42.4.2701. The credit allowed against the tax liability of the corporation, estate, or trust for a direct contribution is equal to 20 percent of the charitable contribution. The maximum credit that may be claimed in one year is ~~\$40,000~~ \$15,000 per donor. A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities

<u>Planned Gift Date</u>	<u>Percent of Present Value</u>	<u>Used to Calculate Maximum Credit</u>	<u>Maximum Credit Per Year</u>
7/1/03—12/31/19	40%	\$25,000 <u>\$37,500</u>	\$10,000 <u>\$15,000</u>

(2) The credit allowed against ~~the~~ a corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution, as defined in ARM 42.4.2701.

Unplanned Outright Gifts by Eligible Entities

<u>Qualified Charitable Gift Date</u>	<u>Percent of Allowable Contribution</u>	<u>Allowable Contribution Used to Calculate Maximum Credit</u>	<u>Maximum Credit Per Year</u>
7/1/03—12/31/19	20%	\$50,000 <u>\$75,000</u>	\$10,000 <u>\$15,000</u>

(3) ~~The balance of the allowable contributions not used in the credit~~

calculation may be used as a deduction subject to the limitations and carryover provisions found in 15-30-2131, MCA, or for corporations, the limitations and carryover provisions found in 15-31-114, MCA.

(a) Example of an allowable deduction when a planned gift is used for the Qualified Endowment Credit:

<u>Time Period</u>	<u>Present Value</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Allowable Deduction</u>
7/1/03 - 12/31/19	\$50,000		$(\$10,000 / .40) =$	\$25,000

(b) Example of an allowable deduction when an outright gift is used for the Qualified Endowment Credit:

<u>Time Period</u>	<u>Market Value</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Allowable Deduction</u>
7/1/03 - 12/31/19	\$55,000		$(\$10,000 / .20) =$	\$5,000

Any amount taken as a deduction from federal taxable income that was used to calculate the tax credit must be added back when determining Montana taxable income. The following examples are provided for illustrative purposes only:

(a) An individual makes an eligible planned gift of \$20,000. The individual takes a federal itemized deduction for \$20,000. The individual's Montana tax liability is \$5,000. The tax credit is equal to \$5,000. The individual must add back \$12,500 to federal taxable income to claim the credit. Forty percent of \$12,500 is the amount used to calculate a credit of \$5,000.

(b) A trust makes an eligible planned gift of \$100,000 and takes a federal deduction in this amount. The trust's tax liability is \$30,000. The trust is eligible to claim the maximum amount of credit, \$15,000. The trust must add back \$37,500 to federal taxable income, which is the amount used to calculate the maximum amount of the tax credit.

(c) A corporation makes an outright gift of \$30,000. The corporation's tax liability is \$50,000. The tax credit is equal to \$6,000. The corporation must add back \$30,000 to federal taxable income, which is the amount used to calculate the tax credit.

(4) A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company qualifies for the credit only if the entity carried on a trade or business or rental activity during the tax year the contribution was made.

(5) The contribution to a qualified endowment from a small business corporation, partnership, or limited liability company is passed through to the shareholders, partners, or members in the same proportion as their distributive share of the entity's income or loss for Montana income tax purposes. The proportionate share of the contribution passed through to each shareholder, partner, or member becomes an allowable contribution for that donor for that year, and the credit allowed and the excess contribution deduction allowed are calculated as set

forth in (1) and (2). The credit maximums apply at the corporation and individual levels, and not at the pass-through entity's level for partnerships, small business corporations, and limited liability companies.

(6) Deductions and credit limitations for an estate or trust are as follows:

(a) if an estate or trust claims a credit based on the computation of the full amount of the contribution, there is no credit available to beneficiaries;

(b) any portion of a contribution not used in the calculation of credit for the estate may be passed through to the beneficiaries, in the same proportion as their distributive share of the estate's or trust's income or loss for Montana income tax purposes; however, beneficiaries may deduct only that portion of allowable contributions not used toward the credit or deduction claimed by the estate or trust; or

(c) if the estate or trust has deducted the full amount of the contribution, the credit may not be claimed by either the estate, trust, or the individual beneficiaries.

(7) The rate a beneficiary will use to calculate their credit for an allowable contribution passed to them by an estate will be based on the nature of the gift made by the estate. For example, if an estate makes an outright gift to a qualified endowment on July 17, 2017, and the contribution is passed to a beneficiary, the beneficiary will calculate their credit using the 20 percent rate.

~~(8) At no time can a corporation, small business corporation, partnership, limited liability company, estate, trust, or individual be allowed to receive the benefit of both a contribution deduction and a credit from the same portion of a contribution.~~

~~(9) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).~~

~~(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, 2017. The allowable contribution made by the couple is \$30,000. That couple is eligible to take a credit of up to \$12,000, with each claiming a credit of \$6,000.~~

~~(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, 2017, which result in an allowable contribution of \$20,000 for each person. They each would be eligible to take a credit of up to \$8,000.~~

~~(10) (8) A donor may, at a later date, name or substitute the Montana qualified endowment, as defined in 15-30-2327, MCA, to receive the planned gift provided that the original trust or gift document reserves in the donor the right to do so.~~

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.2704 to improve sentence structure (i.e., unnecessary language use) and remove outdated examples given SB 506 increased the maximum amount of the

qualified endowment credit and made the credit permanent.

42.4.3002 WHO MAY CLAIM THE INFRASTRUCTURE USER FEE CREDIT

(1) A ~~taxpayer~~ claimant may claim a credit for the infrastructure user fee paid to a local government for an "infrastructure loan." The "infrastructure loan," as defined under ARM 8.97.1301, is a loan to the local government from the Montana Department of Commerce Board of Investments. The Montana Department of Commerce Board of Investments will determine if such loan qualifies for this credit.

(2) A ~~taxpayer~~ claimant claiming the credit must follow both of the following criteria:

(a) the ~~taxpayer~~ claimant must meet the provisions set forth in 17-6-309, MCA; and

(b) the ~~taxpayer~~ claimant must pay the infrastructure user fee.

AUTH: 15-1-201, MCA

IMP: 17-6-309, 17-6-316, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3002 to implement SB 399 as outlined in the department's general statement of reasonable necessity.

42.4.3202 CREDIT FOR INCREASING RESEARCH ACTIVITIES (1) A credit for increases in qualified research expenses and basic research payments that occurred prior to January 1, 2011, is allowed to a qualified corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company. Except as specifically limited by ~~Montana law, 15-31-150, MCA, (2017)~~ this credit is determined in accordance with 26 USC 41 as that section read on July 1, 1996.

(2) For tax years beginning after December 31, 2010, no current year credit may be claimed. Only unused amounts available as a carry forward under 15-31-150, MCA, may be claimed for the 15 succeeding tax years. The credit can be claimed by including a detailed schedule of the credit carryforward when the return is filed.

~~(3) A taxpayer must file Form RSCH providing information as prescribed on the form, which includes a copy of the form filed with the IRS to claim the federal credit for increasing research activities. If amounts paid or incurred do not apply to the federal credit after a termination date provided in 26 USC 41, a taxpayer whose expenses qualify for the Montana credit after the termination date must submit with Form RSCH the information required on the federal form for the tax year immediately preceding the tax year in which the termination occurred.~~

~~(4) Form RSCH may be obtained from the department upon request or is available on the department's web site under the downloadable forms at revenue.mt.gov.~~

~~(5) Form RSCH must be filed with the tax return.~~

~~(a) For individual taxpayers, including single member limited liability companies that are owned by an individual and are disregarded for income tax purposes, if the tax return is filed by paper, the return and Form RSCH must be mailed to:~~

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805

~~(b) For corporations, partnerships, and entities taxed as corporations or partnerships, if the tax return is filed by paper, the return and Form RSCH must be mailed to:~~

~~Department of Revenue
P.O. Box 8024
Helena, Montana 59604-8024~~

~~(c) If the tax return is filed electronically, Form RSCH must be kept in the taxpayer's records and a copy provided to the department upon request.~~

AUTH: 15-30-2620, 15-31-150, 15-31-501, MCA
IMP: 15-30-2358, 15-31-150, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.4.3202 to remove unnecessary language and outdated information and form references because House Bill 723 (2019) repealed the generation of any new credits but permitted the carryforward of any excess credit generated prior to 2011 through tax year 2025.

5. The department proposes to repeal the following rules:

42.4.104 ENERGY GENERATING SYSTEMS

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA
IMP: 15-6-224, 15-6-225, 15-32-102, 15-32-105, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.110 DEFINITIONS

AUTH: 15-1-201, 15-32-203, MCA
IMP: 15-32-102, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.404 DEDUCTIONS NOT ALLOWED WHEN CREDIT CLAIMED

History: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.4.501 DEFINITIONS

AUTH: 15-30-2618, MCA
IMP: 15-30-2103, 15-30-2104, 15-30-2301, MCA

42.4.502 CAPITAL GAIN CREDIT

AUTH: 15-30-2618, MCA
IMP: 15-30-2104, 15-30-2106, 15-30-2301, MCA

42.4.2504 CARRYOVER AND RECAPTURE OF BIODIESEL BLENDING
AND STORAGE TAX CREDIT

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-32-703, MCA

42.4.2903 COMPUTATION OF TAX CREDIT FOR PRESERVATION OF
HISTORIC PROPERTY FOR MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2342, 15-31-151, MCA

42.4.4101 ALTERNATIVE ENERGY PRODUCTION CREDIT DEFINITIONS

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, MCA

42.4.4106 APPEAL RIGHTS

AUTH: 15-1-201, MCA
IMP: 15-1-211, 15-2-302, 15-31-501, MCA

42.4.4107 COMMERCIAL USE AND OTHER REQUIREMENTS FOR
COMMERCIAL AND NET METERING SYSTEMS ELIGIBLE FOR THE INCOME
TAX CREDIT

AUTH: 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, 15-32-406, MCA

42.4.4109 ALTERNATIVE ENERGY INCOME TAX CREDITS FOR
GENERATION FACILITIES LOCATED WITHIN EXTERIOR BOUNDARIES OF A
MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, MCA

42.4.4112 RECORDS REQUIRED - AUDIT

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA
IMP: 15-32-402, 15-32-404, 15-32-405, 15-32-406, MCA

6. The department proposes to transfer the following rules:

42.4.105 (42.23.420) STANDARD COMPONENTS AND PASSIVE SOLAR SYSTEMS

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA

IMP: 15-6-201, 15-32-102, 15-32-105, 15-32-201, 15-32-202, MCA

42.4.4105 (42.19.1105) ALTERNATE RENEWABLE ENERGY GENERATION FACILITIES PROPERTY TAX EXEMPTION - LESS THAN ONE MEGAWATT

AUTH: 15-1-201, 15-1-217, MCA

IMP: 15-6-225, MCA

42.4.4108 (42.19.1106) PROPERTY TAX EXEMPTION – NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT

AUTH: 15-1-201, MCA

IMP: 15-6-225, 75-2-211, 75-2-215, MCA

42.4.4114 (42.22.1318) ENERGY PRODUCTION OR DEVELOPMENT - PROPERTY TAX ABATEMENT ELIGIBILITY FOR NEW INVESTMENT IN THE CONVERSION, TRANSPORT, MANUFACTURE, RESEARCH, AND DEVELOPMENT OF RENEWABLE ENERGY, CLEAN COAL ENERGY, AND CARBON DIOXIDE EQUIPMENT AND FACILITIES

AUTH: 15-24-3116, MCA

IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

7. 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 and must be received no later than 5:00 p.m. August 5, 2024.

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

9. 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 7 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.

10. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 399 and SB 506, Senator Hertz, was contacted by email on June 10 and on June 21, 2024. The primary bill sponsor for HB 191, Representative Hopkins, was notified by email on June 21, 2024.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State June 25, 2024.