

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

BRIAN SCHWEITZER  
GOVERNOR



JOHN BOHLINGER  
LT. GOVERNOR

April 1, 2011

The Honorable Mike Milburn  
Speaker of the House  
State Capitol  
Helena, MT 59620

Dear Speaker Milburn:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill No. 219 (HB 219), **"AN ACT INCREASING THE DEDUCTION ALLOWED UNDER THE INDIVIDUAL INCOME TAX FOR FEDERAL INCOME TAXES PAID BEGINNING IN TAX YEAR 2015; PROVIDING AN INFLATION ADJUSTMENT FOR THE DEDUCTION OF FEDERAL INCOME TAXES PAID BEGINNING IN TAX YEAR 2016; AMENDING SECTION 15-30-2131, MCA; AND PROVIDING AN APPLICABILITY DATE."**

I am returning HB 219 with amendments to correct the long-term fiscal imbalance that would result to the State of Montana if HB 219 were to pass in its current form. The 2003 Legislature enacted Senate Bill No. 407, which lowered state income tax rates and partially paid for those rate reductions with a limit on the federal tax deduction of \$5,000 for individuals and \$10,000 for married couples. In 2003, the Executive and Legislature agreed not to index this deduction for inflation because it would create long term fiscal problems. HB 219 in its current form creates the very problems avoided in 2003, with its cost estimated to more than triple in five years -- from \$2.868 million in FY 2016 to \$9.432 million in FY 2021. Without amendment, HB 219 is unacceptable because it is unaffordable over the long term.

To bring HB 219 into fiscal balance, my proposed amendments do three things. First, they increase the federal tax deduction to \$5,120 for individuals and \$10,240 for married couples in the *current* tax year (as opposed to the increases of \$5,250 and \$10,500, respectively, provided for in the current version of the bill, in future tax years). Second, they eliminate the inflation adjustment for the deduction of federal income taxes in future years, because that provision will create substantial fiscal stress over time. Third, they correct an oversight in SB 407 from the 2003 session that failed to apply the limit on the federal tax deduction to trusts, resulting in an unjustified tax break to wealthy, out of state trusts. Combined, the net effect of these amendments is to bring HB 219 into fiscal balance with \$1 million of annual cost balanced with \$1 million of annual revenue.

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Increasing the limit on the federal tax deduction, as proposed in my amendment, will decrease taxes for approximately 100,000 taxpayers. Correcting the trust tax error will end an unjustified tax break provided to wealthy trusts owned primarily by non-residents. Ninety-five percent of the revenue from correcting the trust tax oversight is estimated to come from the top 10% of all trusts (901 trusts) -- of which more than three-fourths are out-of-state. These 901 trusts *each earned an average income of nearly \$2.5 million in tax year 2008*, totaling more than \$2.2 billion. More than 90% of the 9,000 trusts controlled by Montana taxpayers overall -- and especially the modest trusts -- will see no tax effect from this correction.

These amendments make HB 219 affordable and correct an error that unfortunately has benefitted wealthy, out of state trusts.

I ask you for favorable consideration of my amendments.

Sincerely,



BRIAN SCHWEITZER  
GOVERNOR

cc: Legislative Services Division

Amendments to House Bill No. 219  
Reference Copy

Requested by the Governor

For the House Committee of the Whole

Prepared by Susan Byorth Fox  
April 1, 2011 (1:49pm)

1. Title, line 5.

**Strike:** "BEGINNING IN TAX YEAR 2015"

2. Title, line 6 through line 7.

**Strike:** "PROVIDING" on line 6 through "2016;" on line 7

**Insert:** "LIMITING THE AMOUNT OF FEDERAL INCOME TAX PAID OR  
ACCRUED THAT MAY BE CLAIMED AS A DEDUCTION BY ESTATES AND  
TRUSTS IN COMPUTING NET INCOME;"

**Strike:** "SECTION"

**Insert:** "SECTIONS"

**Following:** "15-30-2131"

**Insert:** "AND 15-30-2152"

3. Title, line 7.

**Strike:** "AN"

**Insert:** "A RETROACTIVE"

4. Page 1, line 13 through line 14.

**Following:** "income" on line 13

**Strike:** "-- inflation" on line 13 through "paid" on line 14

5. Page 1, line 24.

**Strike:** "(I)"

6. Page 1, line 25.

**Strike:** "(A)"

**Insert:** "(i)"

**Strike:** "\$5,000"

**Insert:** "\$5,120"

7. Page 1, line 27.

**Strike:** "(B)"

**Insert:** "(ii)"

**Strike:** "\$10,000"

**Insert:** "\$10,420"

8. Page 1, line 28 through page 2, line 2.

~~Strike: page 1, line 28 through page 2, line 2 in their entirety~~

9. Page 4, line 16 through line 21.

~~Strike: subsection (3) in its entirety~~

10. Page 4, line 22.

**Insert: "Section 2.** Section 15-30-2152, MCA, is amended to read:

**"15-30-2152. Computation of income of estates or trusts -- exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;

(b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding Montana income tax; however, the deduction for federal income taxes paid or accrued may not exceed the amount allowed for a single taxpayer under 15-30-2131(1)(b);

(c) that fiduciary's portion of depreciation or depletion

that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code, 26 U.S.C. 642(c);

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-2114 (2) (a) and (6)."

{Internal References to 15-30-2152:

15-30-2328 }"

**Renumber:** subsequent section

11. Page 4, line 23.

**Strike:** "Applicability"

**Insert:** "Retroactive applicability"

**Following:** "applies"

**Insert:** "retroactively, within the meaning of 1-2-109,"

12. Page 4, line 24.

**Strike:** "2014"

**Insert:** "2010"

- END -