

# Montana Tax Rules

## Income Tax Sub-Chapter 8 Family Education Savings Act

42.15.801 FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT OWNERS AND DESIGNATED BENEFICIARIES (Is Hereby Repealed.)  
(History: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, 15-62-202, and 15-62-206, MCA; NEW, 1998 MAR p. 680, Eff. 3/13/98; AMD, 2000 MAR p. 1344, Eff. 5/26/00; REP, 2004 MAR p. 1031, Eff. 4/23/04.)

### 42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS

(1) A taxpayer is allowed to deduct the lesser of the total contributions actually made to one or more Montana family education savings accounts during the tax year, or \$3,000. A deduction is allowed only for contributions to accounts owned by the taxpayer, the taxpayer's spouse, or, if the taxpayer's child or stepchild is a Montana resident, the taxpayer's child or stepchild.

(2) 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.

(3) For Montana tax purposes, deductible contributions to a family education savings account do not include the earnings on the account. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, 15-62-201, and 15-62-207, MCA; NEW, 1998 MAR p. 680, Eff. 3/13/98; AMD, 2000 MAR p. 1344, Eff. 5/26/00; AMD, 2004 MAR p. 1031, Eff. 4/23/04.)

### 42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS

(1) Earnings withdrawn from family education savings accounts, other than

in a qualified withdrawal, must be included in the distributee's Montana adjusted gross income in the year withdrawn.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) Penalties assessed for nonqualified withdrawals are not deductible in arriving at Montana taxable income.

(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.

(5) A recapture tax at a rate equal to the highest rate of tax provided in 15-30-103, MCA, is imposed on the recoverable withdrawal of contributions to a family education savings account deducted by the contributor. 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) An account owner who is subject to the recapture tax must report the tax on the tax return for the taxable year of the withdrawal and must pay the tax at the time the income tax for such year is due.

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

- (a) first, out of nondeductible contributions not previously withdrawn; and
- (b) second, out of deductible contributions not previously withdrawn.

(8) The portion of any other withdrawal that is not treated as the withdrawal of earnings shall be treated as:

- (a) first, out of deductible contributions not previously withdrawn; and
- (b) second, out of nondeductible contributions not previously withdrawn.

(9) 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 withdrawal is a withdrawal of deductible contributions. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, 15-62-201, and 15-62-208, MCA; NEW, 1998 MAR p. 680, Eff. 3/13/98; AMD, 2000 MAR p. 1344, Eff. 5/26/00; AMD, 2004 MAR p. 1031, Eff. 4/23/04.)

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS

(1) Each program manager shall provide to the department for each tax year a report identifying all contributions made during such year to family education savings accounts for which the account owner is, or was at the time the account was opened, a Montana resident. Such report shall be 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 for each contributor and designated beneficiary the following:

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

(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) amount of the withdrawals (and to the extent that internal revenue service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings);
- (d) social security number; and
- (e) in the case of the account owner, a notation as to whether the distribution is an early withdrawal.

(3) At the request of the department, each program manager shall provide to the department 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) For purposes of this section, 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) A program manager shall withhold the potential recapture tax from any potentially recoverable 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) 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) A taxpayer who desires to make a potentially recoverable withdrawal for which withholding would be required may petition the department 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 not attributable to deductible 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. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, 15-62-201, and 15-62-208, MCA; NEW, 1998 MAR p. 680, Eff. 3/13/98; AMD, 2000 MAR p. 1344, Eff. 5/26/00; AMD, 2004 MAR p. 1031, Eff. 4/23/04.)

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

(1) "Act" means the Family Education Savings Act, as referenced in 15-62-101, MCA.

(2) "Child" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the taxpayer.

(3) "Distributee" means the account owner or designated beneficiary who withdraws the funds.

(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) "Program" means the family education savings program established pursuant to the Act.

(7) "Program manager" means a financial institution selected pursuant to 15-62-203, MCA.

(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. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, 15-30-111, 15-62-103, and 15-62-201, MCA; NEW, 2000 MAR p. 1344, Eff. 5/26/00; AMD, 2004 MAR p. 1031, Eff. 4/23/04.)

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

(1) Earnings on family education savings program accounts are not included in Montana adjusted gross income when earned. The earnings will be included in Montana adjusted gross income when distributed to the extent they are not used to pay for qualified higher education expenses. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, 15-30-111, MCA; NEW, 2004 MAR p. 1031, Eff. 4/23/04.)

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

(1) For purposes of determining whether a contribution should be considered for one tax year or another, the date of mailing will be determinative. A certificate of mailing issued by the post office will be

evidence of the date of mailing. (History: Sec. 15-30-305 and 15-62-201, MCA; IMP, 15-30-111, MCA; NEW, 2004 MAR p. 1031, Eff. 4/23/04.)

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