



Gallagher Business Building, Suite 257
The University of Montana
Missoula, MT 59812-6798

Montana FDI Legal Resources

Business Incentives as Recorded in Montana Code Annotated (MCA), Administrative Rules of Montana (ARM), House Bills (HBs), Senate Bills (SBs), and Legislative Referenda (LR)

Tax Credits for Job Creation

1. Job Growth Incentive Tax Credit: Nonrefundable tax credit offsetting the employer Federal Insurance Contributions Act (FICA) contribution (MCA § 15-30-2361)

Tax Abatements

1. Single Sales Factor Apportionment Formula: Effective January 01, 2025 (MT SB 124 (2023))
2. Manufacturing Machinery, Fixtures, and Equipment Special Abatement: Provides a special property-tax abatement of up to 100% of taxable value (MCA § 15-6-138 et seq.)
3. Property Tax Abatement: Reduces the taxable value of property or applies a reduced tax rate in nine abatement categories including new industrial property, R&D, new and expanding industries, and building tenant improvements (MCA § 15-24-1401 et seq.)

Tax Exemptions

1. Business Equipment Exemption: Businesses receive an automatic \$1M tax exemption, reducing their property tax liabilities: Effective January 01, 2024 (MT HB 212 (2023))
2. No General State Sales Tax: May be particularly useful for capital-intensive projects; this exemption includes electricity and natural gas purchases; limited exceptions exist, such as those related to tobacco and tourism (MCA § 15-68-101 et seq.)
3. No Estate and Inheritance Tax: These taxes were repealed via referendum in November 2000; relevant for legacy planning (MT LR-116 (2000))
4. No General Gross Receipts Tax: According to the Tax Foundation, “often considered one of the most economically damaging taxes”; limited exceptions exist, such as a 1% tax applying to public contractors (MCA § 15-50-101 et seq.)
5. No State Inventory Tax: Particularly beneficial for manufacturers and retailers with larger inventories (MCA § 15-6-101 et seq.)
6. Montana Entrepreneur Magnet Act: Exempts qualifying businesses from paying state capital gains tax on the sales of employee-owned stock (MCA § 15-30-3701 et seq.)

7. Research and Development Exemption: An R&D firm that is domiciled in the State of Montana for the first time is not subject to state corporate income taxes on NET income during its first five taxable years of activity in Montana (MCA § 15-31-103)

Financing and Grants

1. Montana Growth Fund: A new loan-participation program that offers competitive interest rates and a forgivable loan benefit for eligible businesses, including both existing firms in Montana and those which are new to the state (ARM 8.99.11)
2. Big Sky Film Grant: Grant opportunities for businesses targeting the business-to-consumer market and developing eligible productions within Montana (MT SB 540 (2023))
3. Commercial Property Assessed Clean Energy (C-PACE): A tool that can finance energy efficiency and renewable energy improvements on commercial property (MCA § 90-4-1301 et seq.)
4. Community Development Block Grant: This program can assist businesses by making fixed-rate financing available at low interest rates and can offer payment deferrals, lower payments in the first year, and interest-only payments. Opportunities exist for firms targeting the business-to-consumer market and developing eligible projects in Montana (MCA § 90-1-103 et seq.)
5. Export Montana Trade Show Assistance Program: Provides up to \$3,000 to help with out-of-state and international expansion via exhibition at trade shows (MT HB 3 (2023))
6. Growth through Agriculture Program: Grant and loan program to promote agricultural diversification; can be used for equipment, construction, and promotion (MCA § 90-9-104 et seq.)

start start start

7. Indian Country Programs and the Native American Economic Development Act of 1999 (MCA § 90-1-130 et seq.)
 - a. Indian Equity Fund Small Business Grant
 - b. Tribal Business Planning Grant and other resources
8. Microbusiness Financing Program: Program for businesses with less than 10 full-time employees and less than \$1M in revenues seeking up to \$100,000 in financing (MCA §§ 90-1-101–203)
9. Industrial Development Bonds (IDBs): A type of qualified private activity bond to help private companies finance the construction, expansion or renovation of privately-owned manufacturing and processing facilities with tax-exempt advantages (MCA § 90-5-101 et seq.)
10. Montana Board of Investments: Partnering with Montana banks and EDOs (economic development organizations), the Board has designed a series of loan programs that can be tailored to meet unique needs. These programs can enable access to lower, fixed-rate financing with customized loan terms. Job creation projects can further reduce interest rates by up to 2.5%. (MCA § 2-15-1808)

11. Montana Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Matching Funds: For eligible companies working on a project for a federal agency, Montana offers up to \$60,000 in matching grant funds for Phase I and Phase II (MCA § 90-1-117 et seq.)
12. Montana State Small Business Credit Initiative (SSBCI): A dynamic loan-participation program through EDOs to assist existing and new businesses (MCA § 90-1-116 et seq.)

Job Training Subsidies

1. AccelerateMT: This is an innovative custom workforce training and upskilling program that aligns the goals of businesses in partnership with leaders in academics, business, and government.
2. Trade Education Employer Tax Credit: Creates a flexible nonrefundable employer tax credit for employer-paid trades education up to \$2,000/per employee with a \$25,000 cap per employer (MCA §§ 15-30-2901–2910)
3. Montana Apprenticeship Tax Credit: Provides a state tax credit to launch a new or expand a current training program; may provide up to \$1,500 for each new apprentice with special consideration given for veterans (MCA § 15-30-2327 et seq.)

Tax Credits and Related Benefits in General

1. Infrastructure User Fee Credit: For eligible businesses paying a local government infrastructure user fee; the total credit may not exceed the amount of the loan and the credit may be carried back three years and then carried forward seven years (MCA § 15-62-103 et seq.)
2. Qualified Endowment Credit: Credit available for people and businesses making charitable donations to a qualified endowment; credit up to \$10,000 and nonrefundable (MCA §§ 15-30-3101–3110)

Fee Waivers and Other Benefits

1. 2024 and 2025 Annual Report Filing Fee Waiver: Montana Secretary of State Christi Jacobsen exercised authority to announce that 2024 and 2025 Annual Report filing fees will be waived for all Montana businesses (ARM 44.5.1)
2. Montana LLC Operating Agreement Flexibility: Flexible profit distribution, meaning that the Operating Agreement can deviate from a straight allocation in accordance with ownership percentages, providing greater LLC flexibility (MCA § 35-8-101 et seq.)

Human Resources and Employment Law

State Employment Laws as Recorded in Montana Code Annotated (MCA)

1. Wages and Wage Protection
 - a. Montana State Minimum Wage: \$10.30/hour as of January 1, 2024 (MCA § 39-3-401)

- b. Minimum Wage and Overtime Compensation Enforcement: The Montana Department of Labor & Industry (“the Department”) enforces the payment of minimum wage and overtime compensation (MCA §§ 39-3-401–39-3-409)
- c. Payment of Wages: The Department may investigate and enforce the payment of wages through administrative actions, hearings, and court enforcement (MCA §§ 39-3-201–39-3-217)
- d. Employers cannot require direct deposit or electronic funds transfer for payment of wages (MCA 39-3-204)
- e. Final wages, upon termination, must be paid immediately unless there is a policy allowing for later payment (MCA 39-3-205)
- f. Montana’s Little Davis-Bacon Act (prevailing-wage law) includes a requirement that bidders for certain public-works contracts pay a set rate of compensation (MCA §§ 18-2-401–432)
- g. An employer must notify employees on written demand of rate of wages and date of paydays (MCA §§ 39-3-203)
- h. An employer may only deduct board, room, or other incidentals supplied by the employer whenever the deductions are part of the conditions of employment or as otherwise provided by law (MCA §§ 39-2-201 et seq.)
- i. Reciprocal Agreement for Collection of Wages Act: The Department may enforce Montana’s wage payment laws through reciprocal enforcement in agreements with other states (MCA §§ 39-3-301–39-3-306)

2. Insurance/Benefits

- a. Occupational Disease Act of Montana (MCA §§ 39-72-101–1501)
- b. Silicosis Benefits (MCA §§ 39-73-101–301)
- c. Unemployment Insurance (MCA §§ 39-51-101–1106)
- d. Workers’ Compensation (MCA §§ 39-71-101–2908)

3. Talent Acquisition and Termination of Employment

- a. Blacklisting and Protection of Discharged Employees (MCA §§ 39-2-801–804)
- b. Child Labor Standards Act (MCA §§ 41-2-101–120)
- c. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited (MCA § 39-2-303 et seq.)

4. Collective Bargaining

- a. Collective bargaining for public employers (MCA §§ 39-31-101–603)
- b. General limitations on collective bargaining rights (MCA § 39-33-101 et seq.)
- c. Montana Arbitration for Firefighters (MCA § 39-31-301 et seq.)
- d. Montana Collective Bargaining for Nurses (MCA 39-32-101 et seq.)

5. Discrimination prohibited for lawful product use during nonworking hours—exceptions (MCA § 39-2-313 et seq.)

- a. Employment of aliens not lawfully authorized to accept employment prohibited (MCA § 39-2-305 et seq.)
- b. Employment of persons under eighteen as bartenders prohibited (MCA § 39-2-306 et seq.)
- c. Lie detector tests prohibited (MCA § 39-2-304 et seq.)

6. Human Rights

- a. Antidiscrimination Protections: Prohibition of employment discrimination based on race, color, national origin, religion, sex, age, physical and mental disability, marital status, and

- (for public employers only) political beliefs or ideas; includes hiring, firing, and all terms and conditions of employment (MCA § 49-1-101 et seq.)
 - b. Equal pay for women for equivalent service (MCA § 39-3-104)
 - c. Maternity Protections: Among other requirements, Montana law prohibits an employer from refusing “to grant to the employee a reasonable leave of absence for the pregnancy” (MCA §§ 49-2-310 et seq.)
7. Safety
- a. Boilers and Steam Engines (MCA §§ 50-74-101–703)
 - b. Construction Blasting (MCA §§ 37-72-101–501)
 - c. Hoisting Engines (MCA §§ 50-76-101–601)
 - d. Occupational Safety (MCA §§ 50-71-101–605)
 - e. Safety Culture Act (MCA §§ 39-71-1501–1508)
 - f. Safety in Coal Mines (MCA §§ 50-73-101–503)
8. Construction
- a. Construction Contractor Registration (MCA §§ 39-9-101–501)
9. Other State Employment Laws
- a. Apprenticeship (MCA §§ 39-6-101–501)
 - b. Background checks—cannot request information older than seven years (MCA § 39-2-312 et seq.)
 - c. Discharge or layoff because of garnishment or attachment prohibited (MCA § 39-2-302 et seq.)
 - d. Employee and Community Hazardous Chemical Information Act (MCA §§ 50-78-101–603)
 - e. Limited access to social media of employee or job applicant (MCA § 39-2-307 et seq.)
 - f. Professional Employer Organization Licensing: Employee leasing firms and similar suppliers of labor must be licensed in order to do business (MCA §§ 39-8-101–501)
 - g. Regulation of Blood and Urine Testing (MCA §§ 39-2-2)
 - h. Rehire preference for workers’ compensation (MCA § 39-71-317)
 - i. Seats for employees (MCA §§ 39-2-201 et seq.)
 - j. Unlawful for employer to require employee to pay cost of medical examination as condition of employment (MCA § 39-2-301 et seq.)
 - k. Women in Employment; state training and childcare programs (MCA §§ 39-7-101 et seq.)
 - l. Workers’ Compensation retaliation prohibited (MCA 17-8-412)
 - m. Workforce Drug and Alcohol Testing Act (MCA § 39-2-205 et seq.)
 - n. Wrongful Discharge from Employment (MCA § 39-2-901 et seq.)

Federal Employment Laws as Recorded in United States Code (USC)

1. Age Discrimination in Employment Act of 1967 [ADEA] (29 USC § 621 et seq.)
2. Americans with Disabilities Act of 1990 [ADA] (42 USC §§ 12101–12213)
3. Civil Rights Act of 1964 [Title VII regarding employment discrimination] (42 USC § 2000 et seq.)
4. Federal Davis-Bacon Act (40 USC §§ 3141–3148)
5. Employee Retirement Income Security Act of 1974 [ERISA] (29 USC §§ 1001 et seq.)
6. Equal Pay Act of 1963 (29 USC § 206(d) et seq.)
7. Fair Labor Standards Act of 1938 (29 USC §§ 201–219)
8. Family and Medical Leave Act of 1993 (29 USC §§ 2601–2654)

9. Federal Bankruptcy Code [wages due within 90 days of filing are priority claim] (11 USC § 1001 et seq.)
10. Federal Unemployment Tax Act (26 USC §§ 3301–3311)
11. Job Training Partnership Act (29 USC §§ 1501–1792)
12. Labor Management Relations Act (29 USC §§ 141–197)
13. National Labor Relations Act (29 USC §§ 151–169)
14. Occupational Safety and Health Act of 1970 (29 USC §§ 651–678)
15. Patient Protection and Affordable Care Act [including break time for nursing mothers] (42 USC § 1557)
16. Portal-to-Portal Act of 1947 (29 USC § 251 et seq.)
17. Pregnancy Discrimination Act (42 USC § 2000e(k))
18. Rehabilitation Act of 1973 (29 USC § 701 et seq.)
19. Service Contract Act of 1965 (40 USC §§ 3701–3708)
20. Social Security Act (42 USC §§ 301 et seq.)
21. State Directory of New Hires (42 USC § 653a et seq.)
22. Immigration Reform and Control Act of 1986 (codified as amended in sections of 8 USC)
23. Uniformed Services Employment and Reemployment Rights Act (38 USC §§ 4301–4335)
24. Veterans’ Reemployment Rights Act (38 USC §§ 4301–4335)
25. Wagner-Peyser Act (29 USC §§ 49–49n)
26. Worker Adjustment and Retraining Notification Act (29 USC §§ 2101–2109)

Taxation and Liability

The US Tax System: Businesses are subject to federal, state, and sometimes municipality taxes. These taxes include income tax. Corporations are subject to federal income tax. In many states, state income taxes also apply. The Internal Revenue Service (IRS) collects Federal payroll taxes (including Social Security taxes, Federal Unemployment taxes, and Medicare taxes) and Federal Income taxes.

Business Taxation

1. Montana
 - a. Wage Withholding: Wage withholding is the money held back by an employer to pay an employee’s income tax. This is the employee’s money, held in trust by the employer until paid to the state. Employers can find more information in the Montana Withholding Tax Table and Guide.
2. Federal Payroll Taxes
 - a. Employers generally must withhold and pay to the IRS income tax from wages paid to employees. The amount withheld is determined based on information provided by the employee on IRS Form W-4. Withheld income tax is credited against the employee’s income tax liability when the employee files a tax return.
 - b. Employee wages are generally subject to Social Security and Medicare taxes in addition to federal income tax. Employers are generally responsible for paying half of such taxes directly and are required to withhold the other half from wages that are paid to the employee. The current tax rate for social security is 6.2% for the employer and 6.2% for the employee. The current rate for Medicare is 1.45% for the employer and 1.45% for the employee. Social Security tax only applies to the first \$128,000 of wages.

State Income Taxes

1. **State Corporate Income Taxes:** Any C corporation doing business in Montana has to file a Montana Corporate Income Tax Return (Form CIT) and pay a corporate income tax. You must file a Form CIT every year you do business in Montana.
 - a. **Standard Rate:** The standard corporate tax rate is 6.75%.
 - b. **Water's Edge Election:** The water's edge election tax rate is 7%.
 - i. A corporation can apply for approval to take the water's edge election by submitting the Water's Edge Election, "Form WE-ELECT" (MCA §15-31-322)
2. **Other State Taxes**
 - a. **Miscellaneous Taxes and Fees:** Montana has some taxes covering specific businesses, services, or locations. These taxes include those which are applicable to tobacco, medical marijuana, tourism, telecommunications, and healthcare facilities among others.
 - b. **Natural Resources Taxes:** Montana collects taxes on natural resources harvested in the state including metals, coal, oil, and natural gas.
 - c. **Property Taxes**
3. **Montana Tax Credits:** A tax credit is money a taxpayer can use to offset tax liabilities.
 - a. Montana has several tax credits for both individuals and businesses.
4. **Montana Taxpayer Resources:** Resources to help taxpayers file and pay taxes, get the help that they need and work with the appropriate department to stay in compliance.

Federal Income Taxes

1. Domestic corporations, US resident individuals, and citizens are generally subject to federal income taxation on their worldwide income.
2. Foreign individuals and corporations that are engaged in a trade or business within the United States are generally subject to federal income tax on income that is effectively connected with a US trade or business.
3. For individuals, federal income tax is applied to taxable income at graduated rates. The top marginal income tax rate for individuals is currently 37%.
4. For corporations, income tax generally applies to corporate income at a rate of 21%.

Federal Withholding Taxes

1. Dividends, interest, royalties, and certain other types of income paid by a US entity or otherwise treated as US-source income may be subject to US withholding tax at a rate of 30%. The withholding rate may be reduced via tax treaty.
2. Flow-through income from a US entity taxed as a partnership may be subject to withholding tax.
3. Withholding of Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) tax may apply to disposition of US real property or US real property holding company interests.

Summary of Business Entity Structures for Tax Purposes

1. **Disregarded Entity**
 - a. US single-member limited liability LLCs and certain foreign single-owner noncorporate entities are taxed as disregarded entities by default but may elect to be taxed as a corporation.
 - b. Generally disregarded for federal and state income tax purposes, so single owner is taxable on entity income directly.
 - i. The owner must file US federal and Montana state income tax returns and pay tax on business income.
 - c. Can elect to be taxed as a corporation.
2. **Partnership**

- a. US partnerships, multimember LLCs, and foreign multimember noncorporate entities are generally taxed as partnerships for US federal and state purposes but may elect to be taxed as corporations.
 - b. Generally taxable as a “flow-through” entity so taxable income and loss is reported to partners and IRS, and partners pay tax
 - i. Partners must file a US federal and Montana state income tax returns and pay tax on their allocable share of the business’s income
 - ii. Taxable income is not necessarily tied to distributed cash so partners may have “phantom income” in excess of cash distributions received
 - iii. Foreign partners/members may be subject to US federal withholding tax on their allocable share of income. Withheld amounts may generally offset net income tax due on the foreign partner’s US federal income tax return.
3. S Corporation
- a. Certain corporations (including noncorporate entities that elect corporate taxation) can elect to be taxed under a flow-through regime.
 - b. However, corporations with non-US residents or entities shareholders are generally not eligible to make this election.
4. C Corporation
- a. US corporations and foreign corporate-like entities are treated as distinct taxable entities. Income is taxable at the corporate level. The corporate tax rate is currently 21%.
 - b. Shareholders are generally only subject to tax on dividends distributed. Distributed dividends may be subject to US withholding tax at a rate of 30% (which may be reduced if the recipient is eligible for benefits under a US tax treaty).

Other Tax Considerations

- 1. Absence of General State Sales Tax in Montana
 - a. Montana does not have a general sales, use, nor transaction tax.
 - b. Montana does have a limited number of specific taxes that affect sales of products such as cigarettes.
 - c. Montana businesses selling products to buyers in a state that requires retailers to collect sales tax will need to collect and pay those sales taxes to the taxing jurisdiction.
- 2. Disposition of US Real Property: The disposition of a US real property interest by a foreign person (the transferor) is subject to the FIRPTA income tax withholding by the transferee. The rate of withholding is generally 15%.
- 3. Transfer Pricing: The sale of goods and services between affiliated entities are generally subject to transfer pricing rules that require “arms’ length” pricing on such sales. Transfer pricing rules are complex, and, as with other areas of law, seeking counsel from an attorney is advisable.
- 4. Foreign Tax Credit: An entity that pays or accrued foreign taxes on foreign source income and is subject to US tax on the same income, may be able to take either a credit or an itemized deduction for those taxes. The credit to amount of US tax imposed on the taxpayer’s foreign source income. Other limitations may apply.
- 5. Form 5472: This form represents a separate filing requirement from the US entity’s obligation to file income tax returns under the US Internal Revenue Code (26 USC). The form must be attached to the reporting corporation’s federal income tax return. It requires certain information disclosures about the corporation’s foreign shareholders and any transactions between it and such shareholders during the tax year.

Immigration Law for Employees and Investors

Employment-Based Immigration: Immigrant Visas (Green Cards)

1. EB-5 Visa: Entrepreneurs (and their spouses and unmarried children under 21) are eligible to apply for a green card (permanent residence) if they:
 - a. Make the necessary investment in a commercial enterprise in the US; and
 - b. Plan to create or preserve 10 permanent full-time jobs for qualified US workers.
2. EB-1 Visa: Individuals with an extraordinary ability, outstanding professors or researchers, and multinational executives or managers may be eligible. Each occupational category has certain requirements that must be met.
3. EB-2 Visa: Members of the professions holding an advanced degree or foreign nationals with exceptional ability may be eligible with employer sponsorship.
4. EB-3 Visa: Skilled workers, professionals, or other workers. Each category has eligibility requirements, but all EB-3 applicants must show that there is not an American worker qualified to perform the position.
5. Other Options: Family-based immigration (Immediate Relative of US Citizen/Family Member of US Citizen/Family Member of Green Card Holder); Diversity Visas; B-1, B-2, and Student Visas

Other Legal Considerations

1. Intellectual Property
 - a. Patents in the US
 - i. US Patent Considerations for Foreign Inventors
 - The patent laws of the United States make no discrimination with respect to the citizenship of the inventor. Any inventor, regardless of his or her citizenship, may apply for a patent on the same basis as a US citizen.
 - No US patent can be obtained if the invention was patented abroad before applying in the United States by the inventor or his or her legal representatives if the foreign application was filed more than 12 months before filing in the United States. Six months are allowed in the case of designs (35 USC § 172).
 - b. Patents in Foreign Countries
 - i. Since the rights granted by a US patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in other countries must apply for a patent in each of the other countries or in regional patent offices. Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for a patent in that country, in accordance with the requirements of that country. Similarly, local laws apply to trademarks, copyrights, and other forms of intellectual property in each jurisdiction.
 - ii. The Paris Convention for the Protection of Industrial Property: Provides that each country guarantees to the citizens of the other countries the same rights in patent and trademark matters that it gives to its own citizens (828 UNTS 305)
 - iii. Under US law, it is necessary, in the case of inventions made in the US to obtain a license from the Director of the United States Patent and Trademark Office (USPTO) before applying for a patent in a foreign country. Such a license is required if the foreign application is to be filed before an application is filed in the United States or before the expiration of six months from the filing of an application in the United States unless a filing receipt with a license grant issued earlier.
 - c. Trade Secrets
 - i. Trade secret protection serve as a complement to patent protection.
 - ii. Trade secrets: “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or

codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—
(A) the owner thereof has taken reasonable measures to keep such information secret; and
(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information” (18 USC § 1839)

d. Trademarks

i. Federal trademark registration has several benefits:

- Constructive notice nationwide of the trademark owner’s claim.
- Evidence of ownership of the trademark.
- Jurisdiction of federal courts may be invoked.
- Registration can be used as a basis for obtaining registration in foreign countries.
- Registration may be filed with US Customs Service to prevent importation of infringing foreign goods.

ii. USPTO trademark registration forms are available on the Trademark Electronic Application System (TEAS).

iii. There is no requirement of US citizenship to apply to register a trademark in the United States. However, your citizenship must be provided in the application. If you have dual citizenship, then you must indicate which citizenship will be printed on the certificate of registration.

iv. Only the owner of the trademark may file an application for registration. The owner controls the use of the mark and controls the nature and quality of the goods to which it is affixed, or the services for which it is used. The owner may be an individual, corporation, partnership, LLC, or other type of legal entity.

v. Federal trademark registration does extend to countries other than the United States. However, certain countries recognize a United States registration as a basis for filing an application to register a mark in those countries under international treaties. See Trademark Manual of Examining Procedure (TMEP) Chapter 1000 and TMEP Chapter 1900 for further information.

e. Help is available via the USPTO’s Patent Cooperation Treaty Helpdesk and other support centers.