

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE PERIODS OF LIMITATION APPLICABLE TO  
5 INDIVIDUALS AND EMPLOYERS FOR TAXATION AND REFUND PURPOSES; AMENDING SECTIONS  
6 15-30-145, 15-30-146, 15-30-147, 15-30-149, 15-30-251, AND 15-30-255, MCA; AND PROVIDING  
7 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 15-30-145, MCA, is amended to read:

12 **"15-30-145. Revision of return by department -- statute of limitations -- examination of records**  
13 **and persons.** (1) If, ~~in the opinion of~~ the department, determines that any return of a taxpayer is in any  
14 essential respect incorrect, it may revise the return.

15 (2) If a taxpayer does not file a return as required under this chapter, the department may, at any  
16 time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its  
17 possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and  
18 interest due the state.

19 (3) Except as provided in subsections (2) and (4), the amount of tax due under any return may  
20 be determined by the department within ~~5~~ 3 years after the return was filed, regardless of whether the  
21 return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this  
22 section, a tax return due under this chapter and filed before the last day prescribed by law or rule is  
23 considered to be filed on the last day prescribed for filing.

24 (4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent  
25 return that violates a provision of this chapter, the amount of tax due may be determined at any time after  
26 the return is filed and the tax may be collected at any time after it becomes due.

27 (5) The department, for the purpose of ascertaining the correctness of any return or for the  
28 purpose of making an estimate of taxable income of any person where information has been obtained, may  
29 also examine or cause to have examined by any agent or representative designated by it for that purpose  
30 any books, papers, or records of memoranda bearing upon the matters required to be included in the return

1 and may require the attendance of the person rendering the return or any officer or employee of the person  
 2 or the attendance of any person having knowledge in the premises and may take testimony and require  
 3 proof material for its information, with power to administer oaths to the person or persons."

4

5 **Section 2.** Section 15-30-146, MCA, is amended to read:

6 **"15-30-146. Tolling of statute of limitations.** The running of the statute of limitations provided  
 7 for under 15-30-145 ~~shall be~~ is suspended during any period that the federal statute of limitations for  
 8 collection of federal income tax has been suspended by written agreement signed by the taxpayer or when  
 9 the taxpayer has instituted an action ~~which~~ that has the effect of suspending the running of the federal  
 10 statute of limitations and for 1 additional year. If the taxpayer fails to file a record of changes in federal  
 11 taxable income or an amended return as required by 15-30-304, the statute of limitations ~~shall~~ does not  
 12 apply until ~~5~~ 3 years from the date the federal changes become final or the amended federal return was  
 13 filed. If the taxpayer omits from gross income an amount properly includable ~~therein which~~ in the return  
 14 that is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of  
 15 limitations ~~shall~~ does not apply for 2 additional years from the time specified in 15-30-145."

16

17 **Section 3.** Section 15-30-147, MCA, is amended to read:

18 **"15-30-147. Application for revision -- appeal.** An application for revision may be filed with the  
 19 department by a taxpayer within ~~5~~ 3 years from the last day prescribed for filing the return as provided  
 20 in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing.  
 21 If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return  
 22 until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken  
 23 by the department, the taxpayer may appeal to the state tax appeal board."

24

25 **Section 4.** Section 15-30-149, MCA, is amended to read:

26 **"15-30-149. Credits and refunds -- period of limitations.** (1) If the department discovers from the  
 27 examination of a return, ~~or~~ upon a claim ~~duy~~ filed by a taxpayer, ~~or~~ upon final judgment of a court that  
 28 the amount of income tax collected is in excess of the amount due or that any penalty or interest was  
 29 erroneously or illegally collected, the amount of the overpayment must be credited against any income tax,  
 30 penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the

1 taxpayer.

2 (2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the  
3 expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the  
4 department determines there has been an overpayment.

5 (b) If an overpayment of tax results from a net operating loss carryback, the overpayment may  
6 be refunded or credited within the period that expires on the 15th day of the ~~40th~~ 28th month following  
7 the close of the ~~taxable~~ tax year of the net operating loss if that period expires later than ~~5~~ 3 years from  
8 the due date of the return for the year to which the net operating loss is carried back.

9 (3) Within 6 months after a claim for refund is filed, the department shall examine the claim and  
10 either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer  
11 within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the  
12 taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

13 (4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest  
14 is payable from the due date of the return or from the date of the overpayment, whichever date is later,  
15 to the date the department approves refunding or crediting of the overpayment. With respect to tax paid  
16 by withholding or by estimate, the date of overpayment is the date on which the return for the ~~taxable~~ tax  
17 year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the  
18 taxpayer's estimated tax for the succeeding ~~taxable~~ tax year. Interest does not accrue during any period  
19 the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to  
20 furnish information requested by the department for the purpose of verifying the amount of the  
21 overpayment. Interest is not allowed if:

22 (a) the overpayment is refunded within 45 days from the date the return is due or the date the  
23 return is filed, whichever date is later;

24 (b) the overpayment results from the carryback of a net operating loss; or

25 (c) the amount of interest is less than \$1.

26 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income  
27 tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with  
28 respect to which interest is allowable."

29

30 **Section 5.** Section 15-30-251, MCA, is amended to read:

1           **"15-30-251. Statute of limitations.** (1) In the case of a nonfiled return, the department may, at  
2 any time, audit the employer or estimate the tax due from any information in its possession and issue an  
3 assessment for the amount of the tax, penalty, and interest the department determines to be due.

4           (2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that  
5 any return is incorrect, it may revise the return within ~~5~~ 3 years of the due date of the original return,  
6 within ~~5~~ 3 years of the date the return was filed, or 1 year from the date an amended return was filed,  
7 whichever is later.

8           (3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files  
9 a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may  
10 be determined at any time after the return is filed and collected at any time after it becomes due.

11           (4) For the purposes of this section, a return filed before the due date is considered to be filed on  
12 the due date.

13           (5) The statute of limitations is suspended during any time in which an employer-employee  
14 relationship determination has been appealed as provided in 15-1-211, and the time for assessment  
15 extends for an additional 1 year from the date the decision becomes final."

16

17           **Section 6.** Section 15-30-255, MCA, is amended to read:

18           **"15-30-255. Credits and refunds -- period of limitations.** (1) If the department determines by  
19 examination of an employer's account, or upon claim filed by an employer, that the employer has overpaid  
20 the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to the employer  
21 or applied to current or future obligations of any tax, penalty, or interest for any tax contained in this title  
22 at the discretion of the taxpayer.

23           (2) A credit or refund may be allowed only if the claim is filed or the determination is made within  
24 ~~5~~ 3 years of the due date prescribed for filing a report or 1 year from the date of the notification of the  
25 overpayment by the department.

26           (3) The department shall notify the employer of the overpayment and the credit or refund options  
27 available to the employer. A credit must be applied to the employer account unless directed otherwise by  
28 the employer.

29           (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the  
30 claim is subject to review as provided in 15-1-211.

- 1 (5) Interest is:
- 2 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;
- 3 (b) payable from the due date of the payment or the date overpayment was verified, whichever
- 4 is later;
- 5 (c) not payable if the overpayment is applied to current or future obligations with the department.
- 6 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the
- 7 employer directs the department to refund the overpayment.
- 8 (7) If additional information is required to verify the amount of the overpayment, the 45-day period
- 9 in subsection (6) does not begin until the information is provided."

10

11 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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13 NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the

14 meaning of 1-2-109, to tax years beginning after December 31, 2000.

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- END -