EXHIBIT 1
DATE APRIL 19 2005
HB 592 - Conf. Committee

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Taxation** recommend that **House Bill 592** (third reading copy -- blue) be **concurred in as amended.**

Signed: _____
Senator Jim Elliott, Chair

To be carried by Senator Jim Elliott

And, that such amendments read:

1. Title, page 1, line 7.
Following: "USING"
Insert: "THE GREATER OF 8 PERCENT OR"

2. Title, page 1, line 8.
Following: "TAXPAYERS;"
Insert: "IMPOSING A HIGHER INTEREST RATE ON CERTAIN TAXPAYERS UNDER CERTAIN CONDITIONS; ESTABLISHING A UNIFORM INTEREST RATE APPLIED TO THE OVERPAYMENT OF TAXES OR FEES; REVISING THE ACCRUAL OF INTEREST ON UNPAID TAXES;"

3. Title, page 1, line 10.
Following: "15-30-142,"
Insert: "15-30-149,"

4. Title, page 1, line 11.
Following: "15-31-510,"
Insert: "15-31-531,"

5. Page 2.
Following: line 7
Insert: **"Section 2.** Section 15-1-216, MCA, is amended to read:
"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions.

Committee Vote:
Yes 9, No 0.

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(1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year~~, accrued at 1% a month or fraction of a month, on the unpaid tax~~. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.""

Renumber: subsequent sections

6. Page 2, line 11.
Following: **"exceptions"**
Insert: "-- uniform provision for interest on overpayments"

7. Page 2, line 18.
Strike: "9%"
Insert: "15%"

8. Page 3, line 2.
Strike: "EXCEPT AS PROVIDED IN SUBSECTION (4)(A)(I), INTEREST"
Insert: "Interest"

9. Page 3, line 4.
Following: "RATES"
Insert: "established under subsection (4)(a)(i)"

10. Page 3, line 9.
Strike: "IF THE TAXPAYER ASSESSES AND PAYS THE INTEREST OWING ON"
Insert: "For individual income"
Following: "DUE,"
Insert: "including delinquent taxes and deficiency assessments,"

11. Page 3, lines 13 and 14.
Strike: "EXCEPT" on line 13 through "ON" on line 14
Insert: "For all taxes other than individual income"

12. Page 3, line 16 through line 18.
Strike: subsection (iii) in its entirety

13. Page 4.
Following: line 2
Insert: "(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i)."

14. Page 5.
Following: line 24
Insert: **"Section 6.** Section 15-30-149, MCA, is amended to read:
"15-30-149. Credits and refunds -- period of limitations.
(1) If the department discovers from the examination of a return or upon a claim ~~duly~~ filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

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

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the ~~taxable~~ tax year of the net operating loss if that period expires later than 5 years from the due date

of the return for the year to which the net operating loss is carried back.

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

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the ~~taxable~~ tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

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

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

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

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

Renumber: subsequent sections

15. Page 16.

Following: line 17

Insert: "Section 16. Section 15-31-531, MCA, is amended to read:

"15-31-531. Credit for overpayment -- interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as ~~hereinafter~~ provided ~~for~~ in subsection (3), interest ~~shall~~ must be allowed on overpayments at the same rate as is charged on delinquent taxes, as provided in 15-1-216, due

from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ may not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. ~~No interest shall be~~

(b) Interest is not allowed:

~~(a)~~ (i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

~~(b)~~ (ii) if the amount of interest is less than $1.

~~(3)~~ (4) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this ~~law shall~~ chapter is not ~~be~~ considered an overpayment with respect to which interest is allowable.""

Renumber: subsequent sections

16. Page 28, line 10.
Strike: "5"
Insert: "7"

17. Page 28, line 15.
Strike: "2"
Insert: "3"

18. Page 28, line 19.
Strike: "2"
Insert: "3"

19. Page 28, line 21.
Strike: "2"
Insert: "3"

- END -

HOUSE BILL NO. 592

INTRODUCED BY WAITSCHIES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE DETERMINATION OF PENALTY AND INTEREST PROVISIONS APPLIED TO TAXES, FEES, AND OTHER ASSESSMENTS ADMINISTERED BY THE DEPARTMENT OF REVENUE; REVISING UNIFORM PENALTY PROVISIONS; REVISING UNIFORM INTEREST ASSESSMENTS BY USING THE GREATER OF 8 PERCENT OR THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; IMPOSING A HIGHER INTEREST RATE ON CERTAIN TAXPAYERS UNDER CERTAIN CONDITIONS; ESTABLISHING A UNIFORM INTEREST RATE APPLIED TO THE OVERPAYMENT OF TAXES OR FEES; REVISING THE ACCRUAL OF INTEREST ON UNPAID TAXES; APPLYING THE UNIFORM PENALTY AND INTEREST PROVISIONS TO CERTAIN OTHER TAXES AND FEES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-23-214, 15-30-142, 15-30-149, 15-30-209, 15-30-241, 15-30-321, 15-30-323, 15-30-1112, 15-31-111, 15-31-141, 15-31-503, 15-31-510, 15-31-531, 15-31-543, 15-35-112, 15-36-314, 15-37-102, 15-37-105, 15-37-106, 15-37-108, 15-37-114, 15-37-210, 15-38-106, 15-38-110, 15-38-111, 15-50-308, 15-51-109, 15-53-145, 15-53-146, 15-59-112, 15-60-206, 15-65-115, 15-66-206, 15-67-206, 15-68-513, AND 15-72-114, MCA; REPEALING SECTION 15-31-545, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest.

REFERENCE BILL AS AMENDED

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

Section 1. Section 15-1-206, MCA, is amended to read:

"**15-1-206. Waiver of penalties -- interest.** (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed $100 due upon the tax.

~~(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, as provided for in 15-30-304, the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer.~~"

SECTION 2. SECTION 15-1-216, MCA, IS AMENDED TO READ:

"**15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions.** (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year~~, accrued at 1% a month or fraction of a month, on the unpaid tax~~. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

~~(b) This section does not apply to:~~

~~(i) property taxes;~~

~~(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or~~

~~(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law."~~

Section 3. Section 15-1-216, MCA, is amended to read:

"~~15-1-216.~~ Uniform penalty and interest assessments for violation of tax provisions -- applicability -- ~~exceptions~~ -- UNIFORM PROVISION FOR INTEREST ON OVERPAYMENTS. (1) ~~(a)~~ A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

~~(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.~~

~~(c)~~(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1% a month or fraction of a month on the unpaid tax. The penalty may not exceed ~~9%~~ 15% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax if the total tax liability for a tax reporting period is equal to or greater than $3,000. The penalty may not exceed ~~18%~~ 15% of the tax due. If the total tax liability for a tax reporting period is less than $3,000, the penalty provisions of subsection (2)(a) apply.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

~~(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).~~

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than $1,000 or more than $10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

~~(2)(4) (a) Interest~~ ~~EXCEPT AS PROVIDED IN SUBSECTION (4)(A)(I), INTEREST~~ INTEREST on taxes not paid when due must be assessed ~~at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax~~ by the department. The department shall determine the interest rate RATES ESTABLISHED UNDER SUBSECTION (4)(A)(I) for each calendar year by rule subject to the conditions of this subsection (4)(a). ~~The interest rate~~ INTEREST RATES ON TAXES NOT PAID WHEN DUE for a calendar year ~~is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. section 6621, for the fourth quarter of the preceding year~~ ARE AS FOLLOWS:

~~(i) IF THE TAXPAYER ASSESSES AND PAYS THE INTEREST OWING ON~~ FOR INDIVIDUAL INCOME TAXES NOT PAID WHEN DUE, INCLUDING DELINQUENT TAXES AND DEFICIENCY ASSESSMENTS, THE INTEREST RATE IS EQUAL TO THE UNDERPAYMENT RATE FOR INDIVIDUAL TAXPAYERS ESTABLISHED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY PURSUANT TO SECTION 6621 OF THE INTERNAL REVENUE CODE, 26 U.S.C. SECTION 6621, FOR THE FOURTH QUARTER OF THE PRECEDING YEAR OR 8%, WHICHEVER IS GREATER.

~~(II) EXCEPT AS PROVIDED IN SUBSECTION (4)(A)(III), WHEN THE DEPARTMENT ASSESSES THE INTEREST OWING ON~~ FOR ALL TAXES OTHER THAN INDIVIDUAL INCOME TAXES NOT PAID WHEN DUE, INCLUDING DELINQUENT TAXES AND DEFICIENCY ASSESSMENTS, THE INTEREST RATE IS 12%.

~~(III) WHEN THE DEPARTMENT ASSESSES THE INTEREST OWING ON TAXES NOT PAID WHEN DUE UNDER 15-30-103, INCLUDING DELINQUENT TAXES AND DEFICIENCY ASSESSMENTS, THE INTEREST RATE IS EQUAL TO THE INTEREST RATE PROVIDED FOR UNDER SUBSECTION (4)(A)(I).~~

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(3)~~(5) (a) Except as provided in subsection ~~(3)(b)~~ (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; ~~or~~

~~(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law~~.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate

in effect at the time the tax accrued.

(7) Penalty and interest is calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) INTEREST ALLOWED FOR THE OVERPAYMENT OF TAXES OR FEES IS THE SAME RATE AS IS CHARGED FOR UNPAID OR DELINQUENT TAXES. FOR THE PURPOSES OF THIS SUBSECTION, INTEREST CHARGED FOR UNPAID OR DELINQUENT TAXES IS THE INTEREST RATE DETERMINED IN SUBSECTION (4)(A)(I)."

Section 4. Section 15-23-214, MCA, is amended to read:

"15-23-214. Determination of tax -- payment -- penalty and interest. (1) Subject to 15-10-420 and on or before the third Monday in October, the department ~~of revenue~~ shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest ~~under that section~~ as provided in 15-1-216."

Section 5. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $3,560, as adjusted under the provisions of subsection ~~(7)~~ (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $7,120, as adjusted under the provisions of subsection ~~(7)~~ (6), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by $1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living

with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

~~(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.~~

~~(6)~~(5) If the department determines that the amount of tax ~~as verified~~ due is greater than the amount ~~paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer~~ of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

~~(7)~~(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

~~(8)~~(7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

SECTION 6. SECTION 15-30-149, MCA, IS AMENDED TO READ:

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

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

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

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

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the ~~taxable~~ tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

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

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

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

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax

liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 7. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer -- penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.~~

~~(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.~~

~~(4)~~(2) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

~~(5)~~(3) (a) A summons penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.

(b) If an employer fails to honor the summons provided in subsection ~~(5)(a)~~ (3)(a), an additional $100 penalty must be added to the liability.

~~(6)~~(4) In addition to ~~any other penalty provided by law~~ the penalties imposed by 15-1-216, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.

~~(7)~~(5) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

~~(8)~~(6) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

~~(9)~~(7) The tax lien provided for in subsection ~~(8)~~ (6) is not valid against any third party owning an interest

in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

~~(10)~~(8) A grantor who signs and delivers to the third party an affidavit as provided in subsection ~~(9)~~ (7) is subject to the ~~penalties~~ penalty imposed by ~~15-30-321(1)~~ 15-1-216(3) if any part of the affidavit is untrue. ~~The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.~~

~~(11)~~(9) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 8. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax -- payment -- exceptions -- interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest ~~equal to 12% a year~~ on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 9. Section 15-30-321, MCA, is amended to read:

"15-30-321. Penalties for violation of chapter. ~~(1) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who purposely fails to file a return or files, renders, or signs a false or fraudulent return or statement or supplies false or fraudulent information is liable to a penalty of not less than $1,000 and not more than $5,000, to be recovered in the name of the state by action in a court of competent jurisdiction.~~

~~(2)~~(1) An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or be imprisoned for not more than 1 year, or both, at the discretion of the court.

~~(3)~~(2) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."

Section 10. Section 15-30-323, MCA, is amended to read:

"15-30-323. ~~Penalty and~~ Notice of additional assessment -- penalty and interest for deficiency.

~~(1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.~~

~~(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment.~~

(1) If the department determines that the amount of tax due is greater then the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest on any deficiency assessment must be calculated from the applicable date specified in 15-30-144 for payment of the tax, with penalty and interest added as provided in 15-1-216. A certificate by the department of the mailing of the notice specified in subsection (1) is prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notice."

Section 11. Section 15-30-1112, MCA, is amended to read:

"**15-30-1112. Composite returns and tax.** (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, member, or other owner who:

(a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from

all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-241(5)(a) computed ~~separately for each participant~~ on the composite tax liability included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403.

(6) The composite tax is in lieu of the taxes imposed under:

(a) 15-30-103 and 15-30-105;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 12. Section 15-31-111, MCA, is amended to read:

"15-31-111. Return to be filed -- penalty and interest. (1) Each corporation subject to the license tax imposed under this chapter shall for each tax period file ~~a true and~~ an accurate return of its net income for the tax period in the manner and form prescribed by the department ~~of revenue~~. The return must contain all of the ~~facts, data, and~~ information that ~~are~~ is appropriate and in the opinion of the department necessary to determine

the correctness of the net income returned disclosed by the return and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, penalty, and interest must be paid when the return is filed. ~~Interest~~ Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders."

Section 13. Section 15-31-141, MCA, is amended to read:

"15-31-141. Consolidated returns -- computation and procedure -- penalty and interest. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its tax period in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the tax period for which a consolidated return of the affiliated group is filed.

(b) (i) A corporation is allowed an automatic extension of time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax, penalty, and interest must be paid when the return is filed. ~~Interest~~ Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists."

Section 14. Section 15-31-503, MCA, is amended to read:

"15-31-503. Deficiency assessment -- notice -- penalty and interest. (1) If the department ~~of revenue~~

determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest~~ Penalty and interest on any deficiency assessment ~~shall bear interest~~ is calculated from the date specified in 15-31-502 for payment of the tax. Penalty and interest is added to the deficiency as provided in 15-1-216. A certificate by the department of the mailing of the ~~notices~~ notice specified in ~~this~~ subsection (1) ~~shall be~~ is prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the ~~notices~~ notice."

Section 15. Section 15-31-510, MCA, is amended to read:

"15-31-510. Estimated payments -- tax returns -- penalty and interest. (1) ~~For corporations failing~~ A corporation that fails to make estimated payments according to the schedule provided in 15-31-502(2)~~, there~~ is ~~charged~~ assessed interest ~~in the amount of 12% a year~~ as provided in 15-1-216 calculated as follows:

(a) The amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the ~~taxable~~ tax year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the ~~taxable~~ tax year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the ~~taxable~~ tax year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the ~~taxable~~ tax year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the ~~taxable~~ tax year in the case of the installment required to be paid in the 12th month of the ~~taxable~~ tax year.

(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the ~~taxable~~ tax year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), interest with respect to an underpayment of any installment may not be charged if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount for any installment:

(i) take the taxable income for all months during the ~~taxable~~ tax year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the ~~taxable~~ tax year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the ~~taxable~~ tax year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding ~~taxable~~ tax years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the ~~taxable~~ tax year equals or exceeds 70%; and

(iv) the department may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) ~~Except as provided~~ In addition to the interest assessed in subsection (1), if any tax due under this chapter is not paid when due as provided in ~~15-31-545~~ 15-31-111, by reason of extension or otherwise, penalty and interest ~~is~~ are added to the tax due as provided in 15-1-216."

SECTION 16. SECTION 15-31-531, MCA, IS AMENDED TO READ:

"15-31-531. Credit for overpayment -- interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ must be credited against any tax, penalty, or interest then due from the taxpayer and

the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for in subsection (3), interest shall must be allowed on overpayments at the same rate as is charged on delinquent taxes, as provided in 15-1-216, due from the due date of the return or from the date of overpayment, (whichever date is later), to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall may not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be

(b) Interest is not allowed:

(a)(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b)(ii) if the amount of interest is less than $1.

(3)(4) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall chapter is not be considered an overpayment with respect to which interest is allowable."

Section 17. Section 15-31-543, MCA, is amended to read:

"15-31-543. **Penalties Forfeiture of right to engage in business -- penalties.** (1) If a corporation fails to file a return at the time specified in 15-31-502 or files a false or fraudulent return, the corporation is liable to a penalty of not more than $5,000 to be recovered by an action in a court of competent jurisdiction.

(2)(1) A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as a corporation until the license fee tax, together with all penalties, interest, and costs, is paid. The forfeiture may be enforced by proper proceedings in court.

(3)(2) Each officer or employee of any corporation or other person who, without fraudulent intent, fails to file, sign, or verify any return or to supply any information within the time required by the provisions of this chapter is liable for the penalty imposed by 15-1-216. The department shall assess and collect any penalty in the same manner as is provided in this chapter with regard to delinquent taxes."

Section 18. Section 15-35-112, MCA, is amended to read:

"15-35-112. Deficiency assessment -- review -- penalty and interest. (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ Penalty and interest must be added to any deficiency assessment ~~must bear interest~~ as provided in 15-1-216."

Section 19. Section 15-36-314, MCA, is amended to read:

"15-36-314. Deficiency assessment -- local government severance tax deficiency assessment -- review -- penalty and interest. (1) If the department determines that the amount of the tax due~~, including the amount due for the local government severance tax,~~ is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

~~(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.~~

~~(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-332.~~

~~(3)~~(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216."

Section 20. Section 15-37-102, MCA, is amended to read:

"15-37-102. Gross value of metal mine yield -- computation -- definitions. As used in this part, the following definitions apply:

(1) "Gross value of product" means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals or precious and semiprecious gems and stones extracted or produced each reporting period from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from the mine or mining property or from tailings resulting from the smelting, reduction, or treatment of the ores; and

~~(2) "reporting period" means:~~

~~(a) for periods beginning prior to January 1, 2003, the calendar year; and~~

~~(b) for periods beginning on or after January 1, 2003,~~ the 6-month period ending June 30 or December 31, as applicable."

Section 21. Section 15-37-105, MCA, is amended to read:

"15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103. ~~For the reporting period defined in 15-37-102(2)(a), the tax is due and payable on or before March 31 of each year.~~ For the reporting periods defined in 15-37-102(2)~~(b)~~, the tax is due at the end of the reporting period, and for the reporting period ending June 30, the tax is payable by August 15, and for the reporting period ending December 31, the tax is payable by March 31. The tax is imposed on the products produced in the reporting period.

~~(2) The tax due under this part becomes delinquent as of:~~

~~(a) midnight on March 31 for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b); and~~

~~(b) midnight on August 15 for each reporting period ending June 30 under 15-37-102(2)(b).~~

~~(3)~~(2) If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest as provided in 15-1-216.

~~(4)~~(3) If ~~any~~ a person has sold or otherwise disposed of any of the mine's products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine's product that was sold or disposed of substantially below the market price. The gross value must be based upon the quotations of the price of the mine's product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by ~~some~~ an established authority or market report, such as the Engineering and Mining Journal of New York, or ~~some~~ other standard publication, giving the market reports for the reporting period covered by the statement. If there is no quotation covering ~~any~~ a particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable."

Section 22. Section 15-37-106, MCA, is amended to read:

"**15-37-106. Procedure in case of failure to file statements.** If a person fails~~, refuses, or neglects~~ to ~~make and~~ file the required statement of gross yield for a reporting period on or before the date the tax becomes delinquent under ~~15-37-105~~ 15-37-108, the department shall, immediately after the time has expired, ~~ascertain and~~ determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross value of product of the person from the business during the reporting period for which the license tax is to be paid. The department shall ~~make and~~ file a statement showing the amount of the gross value of product and shall ~~ascertain,~~ determine~~, compute,~~ and assess the amount of the license taxes due from ~~and to be paid by~~ the person. The department shall, as soon as possible, give notice to the person in the same manner as though the statement had been filed within time. The department shall ~~proceed to~~ collect the license tax, along with ~~the same~~ penalty and interest as provided ~~for other delinquencies~~ in 15-1-216."

Section 23. Section 15-37-108, MCA, is amended to read:

"**15-37-108. Delinquent taxes -- penalty and interest.** All license taxes assessed under the provisions of this part become delinquent if not paid on or before midnight of the date that the tax is payable as established for the applicable reporting period in 15-37-105~~(2)~~(1). The department shall add to the amount of delinquent metalliferous mines tax penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206."

Section 24. Section 15-37-114, MCA, is amended to read:

"**15-37-114. Deficiency assessment -- review -- penalty and interest.** (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ Penalty and interest must be added to any deficiency assessment ~~must bear interest~~ as provided in 15-1-216."

Section 25. Section 15-37-210, MCA, is amended to read:

"**15-37-210. Deficiency assessment -- review -- penalty and interest.** (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the

taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ Penalty and interest must be added to any deficiency assessment ~~must bear interest~~ as provided in 15-1-216."

Section 26. Section 15-38-106, MCA, is amended to read:

"15-38-106. ~~(Temporary)~~ Payment of tax -- records -- collection of taxes -- refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before ~~March 31~~ the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calender year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

(d) $150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached $100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

(e) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found

to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007--sec. 10, Ch. 586, L. 2001.)

15-38-106. (Effective July 1, 2007) Payment of tax -- records -- collection of taxes -- refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before ~~March 31~~ the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

(d) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 27. Section 15-38-110, MCA, is amended to read:

"~~15-38-110.~~ **~~Deficiency assessment -- review --~~ penalty and interest.** (1) ~~When~~ If the department ~~of revenue determines that the~~ amount of tax due is greater than the amount disclosed by a return, it shall mail to the ~~taxpayer a notice, pursuant to~~ 15-1-211, of the additional tax proposed to be assessed. The taxpayer may ~~seek review of the determination~~ pursuant to 15-1-211.

(2) ~~Interest on~~ Penalty and interest must be added to any deficiency assessment ~~shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ as provided in 15-1-216."

Section 28. Section 15-38-111, MCA, is amended to read:

"~~15-38-111.~~ **Credit for overpayment -- interest on overpayment.** (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ must be allowed on overpayments at the same rate as is charged on deficiency assessments provided in ~~15-38-110~~ 15-1-216 due from the due date of the return or from the date of overpayment, ~~(~~whichever date is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ may not accrue during any period that the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment ~~not made~~ incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this ~~law shall~~ chapter is not be considered an overpayment with respect to which interest is allowable."

Section 29. Section 15-50-308, MCA, is amended to read:

"15-50-308. ~~Estimation of tax upon failure to file statement or pay tax~~ -- penalty and interest -- notice. (1) If a person ~~fails, neglects, or refuses~~ to file the statement required by 15-50-206 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department shall ~~proceed to inform itself~~ determine as best it may ~~regarding~~ the total gross income of the person from its contracting business within this state during the quarter.

(2) The department shall compute the amount of license taxes due, including penalty and interest as provided in 15-1-216, from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed."

Section 30. Section 15-51-109, MCA, is amended to read:

"15-51-109. Deficiency assessment -- review -- penalty and interest. (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest on~~ Penalty and interest must be added to any deficiency assessment ~~must be computed~~ as provided in 15-1-216."

Section 31. Section 15-53-145, MCA, is amended to read:

"15-53-145. Deficiency assessment -- review -- interest -- penalty. (1) If the department determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek a review of the determination pursuant to 15-1-211.

(2) ~~(a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.~~

~~(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10%~~ Penalty and interest must be added to ~~the amount of the~~ any deficiency assessment as provided in 15-1-216."

Section 32. Section 15-53-146, MCA, is amended to read:

"15-53-146. Credit for overpayment -- interest on overpayment. (1) If the department determines

that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of overpayment must be credited against any tax, penalty, or interest then due from the taxpayer, with the balance being refunded to the taxpayer or its successor through reorganization, merger, consolidation, or its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments under ~~15-53-145~~ 15-1-216 due from the date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves crediting or refunding the payment.

(3) (a) Interest may not accrue during any period of processing a claim for a refund delayed more than 30 days by reason of failure of the taxpayer to provide information requested by the department for the purposes of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is credited or refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever date is later; or

(ii) if the amount of interest is less than $1."

Section 33. Section 15-59-112, MCA, is amended to read:

"15-59-112. Deficiency assessment -- review -- penalty and interest. (1) ~~When~~ If the department determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, as provided in 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) ~~Interest~~ Penalty and interest must be added to ~~the~~ any deficiency assessment as provided in 15-1-216."

Section 34. Section 15-60-206, MCA, is amended to read:

"15-60-206. (Temporary) Deficiency assessment -- penalty and interest -- hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an

opportunity to present additional evidence relating to its fees liability. If ~~no~~ a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If ~~such~~ a protest is filed, the department shall reconsider the proposed assessment and, if the facility has ~~so~~ requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented ~~in the event of~~ at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment~~, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on~~ Penalty and interest must be added to any deficiency assessment ~~bears interest from the date specified in 15-60-203 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices~~ as provided in 15-1-216. (Void on occurrence of contingency--sec. 18, Ch. 746, L. 1991--see chapter compiler's comment.)"

Section 35. Section 15-65-115, MCA, is amended to read:

"15-65-115. Failure to pay or file -- penalty and interest -- review -- interest. (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. ~~The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on~~ Penalty and interest must be added to any deficiency assessment ~~must be computed~~ as provided in 15-1-216."

Section 36. Section 15-66-206, MCA, is amended to read:

"**15-66-206. (Temporary) Deficiency assessment -- penalty and interest -- hearing.** (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the hospital a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the hospital may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the hospital has requested, shall grant the hospital an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the hospital.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand for payment to the hospital~~, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand~~. ~~Any~~ Penalty and interest must be added to any deficiency assessment ~~bears interest~~ as provided in 15-1-216 from the date specified in 15-66-201 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notice. (Void on occurrence of contingency--sec. 18, Ch. 390, L. 2003. Terminates June 30, 2005--sec. 20, Ch. 390, L. 2003.)"

Section 37. Section 15-67-206, MCA, is amended to read:

"**15-67-206. (Temporary) Deficiency assessment -- penalty and interest -- hearing.** (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the intermediate care facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the intermediate care facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fee liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the intermediate care facility has requested it, shall grant the intermediate care facility an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the

protest is final when it mails notice of its action to the intermediate care facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the intermediate care facility ~~and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on~~ Penalty and interest must be added to any deficiency assessment and accrues from the date specified in 15-67-201 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices. (Void on occurrence of contingency--sec. 17, Ch. 531, L. 2003--see chapter compiler's comment.)"

Section 38. Section 15-68-513, MCA, is amended to read:

"15-68-513. Examination of return -- adjustments -- penalty and interest -- delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to 15-68-502 constitutes the tax to be paid.

(2) (a) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department ~~within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return~~ unless the taxpayer files a timely objection as provided in 15-1-211.

(b) Penalty and interest must be added to any deficiency assessment as provided in 15-1-216.

(3) If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

~~(3)~~(4) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address.

~~(4)~~(5) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211."

Section 39. Section 15-72-114, MCA, is amended to read:

"15-72-114. ~~Interest~~ Penalty and interest on deficiency -- ~~penalty.~~ ~~(1) Interest accrues on unpaid or delinquent taxes~~ Penalty and interest must be added to any deficiency assessment as provided in 15-1-216.

~~The interest must be computed from the date on which the return and tax were originally due.~~

~~(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency."~~

NEW SECTION. **Section 40. Repealer.** Section 15-31-545, MCA, is repealed.

COORDINATION SECTION. **Section 41. Coordination instruction.** If House Bill No. 158 is passed and approved and if it includes a section that amends 15-30-209, then [section 5 7 of this act] that amends 15-30-209 is void.

NEW SECTION. SECTION 42. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE JULY 1, 2005.

(2) [SECTION ~~2~~ 3] IS EFFECTIVE JANUARY 1, 2007.

NEW SECTION. **Section 43. Applicability.** (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] APPLIES ON AND AFTER JULY 1, 2005. ~~(1) [This act]~~

(2) [SECTION ~~2~~ 3] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, ~~2005~~ 2006.

~~(2)~~(3) ~~[This act]~~ [SECTION ~~2~~ 3] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, ~~2005~~ 2006, regardless of the tax reporting period for which the taxes or fees are owed.

- END -