

## Bill Description

This bill contains provisions intended to assure the accurate determination and collection of Montana taxes.

The following is a brief description of each section of SB513.

**Section 1.** (page 2) Tax abuse, avoidance, and evasion reporting act title

**Section 2.** (pages 2-4) Tax abuse, avoidance, and evasion reporting act definitions

**Section 3.** (pages 5-6) Will require a taxpayer to disclose each reportable transaction in which the taxpayer or a member of the taxpayer's reporting group participated. Failure to provide the information will result in stiff penalties – comparable to newly enacted federal penalties.

- Generally applies only to individuals with a net worth in excess of \$2 million dollars and companies with gross receipts in excess of \$10 million dollars.

**Section 4.** (page 7) Will require a material advisor to disclose, maintain and provide additional information about a reportable transaction, including a list of clients to which the transaction was marketed. Failure to provide the information will result in stiff penalties – comparable to newly enacted federal penalties.

**Section 5.** (page 8-9) Will require a taxpayer to disclose, maintain, and provide additional information about a reportable transaction when the taxpayer reports items inconsistently between Montana and any other state. Failure to provide the information will result in stiff penalties.

**Section 6.** (pages 9-10) Will require companies that solicit business in Montana to provide the department information to determine whether they are subject to Montana tax jurisdiction. Failure to provide the information will result in stiff penalties.

**Section 7.** (pages 10-11) Will impose stiff penalties on the profits of those who organize or sell abusive tax shelters.

**Section 8.** (page 11) Will authorize the department to enlist the power of Montana courts to compel disclosure of information.

**Section 9.** (pages 12-14) Will establish a voluntary compliance initiative that allows taxpayers a window of opportunity to avoid the stiff penalties provided in the bill by reporting the abusive transactions and paying any additional tax and

interest. Taxpayers have the option of a final settlement or of retaining their right to appeal a department decision about a reportable transaction.

**Section 10.** (page 14) Real estate backup withholding act title

**Section 11.** (pages 14-15) Real estate backup withholding act definitions

**Section 12.** (pages 15-16) Will require back-up withholding when nonresident individuals and foreign corporations sell Montana real property.

**Section 13.** (page 16) Will tax the built-in gains of S. corporations at the corporation license tax rate.

**Section 14.** (pages 17-18) Will amend 15-1-216 to establish stiffer penalties - comparable to newly enacted federal penalties - for filing false or fraudulent tax returns and information.

**Section 15.** (pages 18-23) Will amend 15-30-101 to expand the list of disregarded entities and to incorporate the federal definition of an "electing small business trust."

**Section 16.** (pages 23-28) Will amend 15-30-111 to:

- take into account the tax imposed on the built-in gains of an S. corporation under Section 13
- make a housekeeping amendment to reference taxable income from pension and profit plan distributions referred to in 15-30-135(4)
- exclude income from a REIT that is taxed at the REIT level.

**Section 17.** (pages 28-29) Will amend 15-30-135 to:

- explicitly reference the unrelated business taxable income of otherwise tax exempt trusts
- conform to federal law by imposing an excise tax when S. corporations and their employee trusts and shareholders engage in abusive tax avoidance transactions.

**Section 18.** (pages 29-31) Will amend 15-30-137 to bring Montana trust statutes into conformity with federal tax treatment of S. corporation shareholders that are tax exempt entities or electing small business trusts.

**Section 19.** (pages 31-32) Will amend 15-30-209 to conform to the amendments to penalties being made in Section 14.

**Section 20.** (page 32) Will amend 15-30-321 to conform to the amendments to penalties being made in Section 14.

**Section 21.** (page 32-35) Will amend 15-31-113 to:

- clarify the items of REIT income a shareholder must include in gross income
- simplify the taxation of RICS by adding together all categories of RIC income, correspondingly expanding the RIC dividends paid deduction, and assessing a single RIC level tax
- clarify and simplify the taxation of REITS by adding together all categories of REIT income and assessing a single REIT level tax
- disallow the federal deduction allowed REITs for dividends paid to shareholders.
- conform to the taxation of the non-insurance income of insurance companies provided in Section 24.

**Section 22.** (pages 35-38) Will amend 15-31-114 to:

- conform to the taxation of RICS provided in Section 21
- clarify the dividends received deduction is not allowed for RIC or REIT dividends
- conform to the taxation of the non-insurance income of insurance companies provided in Section 24.

**Section 23.** (pages 38-39) Will amend 15-31-119 to conform the determination of a REIT net operating loss with adjustments required by amendments in Section 21.

**Section 24.** (pages 39-40) Will amend 15-31-302 to impose corporation license tax on noninsurance income of insurance companies. The amendments in this section operate in conjunction with the amendments to 33-2-705 in Section 26, which imposes a gross premiums tax.

**Section 25.** (page 40) Will amend 15-31-543 to conform to the amendments to penalties being made in Section 14.

**Section 26.** (page 40-42) Will amend 33-2-705 to impose corporation license tax on the noninsurance income of insurance companies. The amendment in this section operates in conjunction with the amendments to 15-31-302 in Section 24.

**Section 27.** (page 42) The codification instruction places these provisions in Title 15. The department expects the tax abuse, avoidance, and evasion reporting act sections and the backup withholding act sections [section 1 through 12] will be placed in a new chapter.

**Section 28.** (page 42) Will make the bill effective July 1, 2005.

**Section 29.** (page 42) Will apply backup withholding to sales closing after June 30, 2005 and will make the amendments to existing statutes retroactively effective to tax years beginning after December 31, 2004.

