MONTANA SENATE
2007 LEGISLATURE

ROLL CALL

TAXATION

DATE 4-16-07

NAMES	PRESENT	ABSENT	EXCUSED
SEN. JERRY BLACK (R)	✓		
SEN. JEFF ESSMANN (R)	✓		
SEN. KELLY GEBHARDT(R)	✓		
SEN. KIM GILLAN (D)	✓		
SEN. DAN HARRINGTON (D)	✓		
SEN. CHRISTINE KAUFMANN (D)	✓		
SEN. SAM KITZENBERG (D)	✓		
SEN. JIM PETERSON (R)	✓		
SEN. TRUDI SCHMIDT (D)			✓
SEN. ROBERT STORY (R)	✓		
SEN. JIM ELLIOTT (D) CHAIRMAN	✓		
LEE HEIMAN, LSD	✓		
LOIS O'CONNOR, COMMITTEE SECRETARY	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Taxation** recommend that **House Bill 833** (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, line 4 through line 10.
Strike: "ALLOWING" on line 4 through "CREDIT;" on line 10
Insert: "CONFORMING STATE WITHHOLDING PROVISIONS TO FEDERAL WITHHOLDING PROVISIONS FOR PENSIONS, ANNUITIES, AND CERTAIN OTHER DEFERRED INCOME; REQUIRING WITHHOLDING AT 30 PERCENT OF THE AMOUNT WITHHELD FOR FEDERAL TAX PURPOSES; PROHIBITING THE PRACTICE COMMONLY KNOWN AS INSURANCE STUFFING BY SPECIFYING WHEN CORPORATIONS MAY PROPERLY TAKE A DIVIDENDS-RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM INSURANCE COMPANIES; SPECIFYING HOW TO CALCULATE THE APPROPRIATE DIVIDENDS-RECEIVED DEDUCTION IN THOSE CIRCUMSTANCES; DISREGARDING THE PERMANENT DEFERRAL OF GAIN RECOGNITION FOR CERTAIN TRANSACTIONS; AUTHORIZING THE DEPARTMENT OF REVENUE TO INCLUDE IN THE GROSS INCOME THE TAXPAYER'S PRO RATA SHARE OF ANY OF THOSE INSURERS' CURRENT EARNINGS AND PROFITS IN THAT TAXABLE YEAR; PROVIDING A REFUND OF UP TO A TOTAL OF $400 OF 2006 MONTANA PROPERTY TAXES PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THAT THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006 AND OF CERTAIN 2005 AND 2004 MONTANA PROPERTY TAXES PAID ON THE PRINCIPAL RESIDENCE; PROVIDING THE PROCEDURE FOR ESTABLISHING ENTITLEMENT TO THE REFUND AND THE PERIOD WITHIN WHICH THE ENTITLEMENT MUST BE ESTABLISHED; PROVIDING A ONE-TIME REFUNDABLE RENTER'S INCOME TAX CREDIT; LIMITING THE CREDIT TO INDIVIDUALS BELOW A CERTAIN INCOME LEVEL; CREATING THE MINERAL ROYALTY BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING REMITTORS

Committee Vote:
Yes 6, No 5
Fiscal Note Required __

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Committee Vote:
Yes 6, No 5
Fiscal Note Required __

TO WITHHOLD TAXES ON ROYALTY PAYMENTS MADE TO ROYALTY OWNERS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING REMITTORS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; PROVIDING FOR PENALTIES AND INTEREST FOR FAILURE TO REMIT TAX; REQUIRING REMITTORS TO PROVIDE ANNUAL STATEMENTS TO ROYALTY OWNERS AND THE DEPARTMENT OF REVENUE; ADOPTING PROVISIONS OF THE MULTISTATE TAX COMMISSION MODEL ACT ON REPORTABLE TRANSACTIONS, THE MODEL ACT ON COMPILATION OF STATE TAX RETURN DATA, AND THE MODEL ACT FOR A TAX EVASION TRANSACTION VOLUNTARY COMPLIANCE PROGRAM; REQUIRING TAXPAYERS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING MATERIAL ADVISERS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING TAX SHELTER PROMOTERS TO DISCLOSE CERTAIN TRANSACTIONS AND MAINTAIN CERTAIN RECORDS; REQUIRING CERTAIN MULTISTATE TAXPAYERS TO COMPILE AND FILE CERTAIN FILINGS OR FILE COPIES OF STATE INCOME TAX RETURNS; PROVIDING FOR A VOLUNTARY COMPLIANCE INITIATIVE; CREATING THE MONTANA REAL ESTATE BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING WITHHOLDING FOR INCOME TAX PURPOSES ON THE GAIN FROM THE SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE; ESTABLISHING A WITHHOLDING TAX RATE; PROVIDING EXCEPTIONS TO WITHHOLDING; ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS; REQUIRING THAT CERTAIN INFORMATION BE SUBMITTED WITH THE REALTY TRANSFER CERTIFICATE; PROHIBITING THE RECORDING OF A TRANSFER OF MONTANA REAL ESTATE OR A CHANGE IN OWNERSHIP RECORDS OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES IF THE REQUIRED INFORMATION IS NOT PROVIDED; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; CLARIFYING THE LIABILITY OF CLERKS AND RECORDERS; PROHIBITING RESORT COMMUNITIES, RESORT AREAS, AND RESORT AREA DISTRICTS FROM REQUIRING AN INTERMEDIARY TO COLLECT THE RESORT TAX; DEFINING "PERSON" TO INCLUDE DISREGARDED ENTITIES;"

2. Title, line 12.
Following: "MATTERS;"
Insert: "CLARIFYING PAYMENT OF INTEREST ON LATE-FILED RETURNS; PROVIDING PENALTIES FOR FRAUDULENT TAX REPORTING AND SUBSTANTIAL UNDERREPORTING OF TAX LIABILITY; CLARIFYING THAT A SHERIFF'S FEES ARE ADDED TO THE BALANCE OF A WARRANT FOR DISTRAINT; CONFORMING THE TIME TO MAKE A RETURN OF A WARRANT FOR DISTRAINT TO THE TIME THE NOTICE OF LEVY IS EFFECTIVE; ALLOWING A NOTICE OF LEVY OF A WARRANT FOR DISTRAINT TO BE SERVED ELECTRONICALLY; INCREASING THE SCOPE OF RURAL TELECOMMUNICATIONS PROPERTY CLASSIFIED AS CLASS 5 PROPERTY BY INCREASING THE POPULATION LIMIT FOR CITIES AND TOWNS SERVED TO 5,000, PROVIDING A 10-YEAR EXEMPTION OF 50 PERCENT OF MARKET VALUE FOR NEW RURAL TELECOMMUNICATIONS PROPERTY; DEFINING "NEW RURAL TELECOMMUNICATIONS PROPERTY"; INCREASING THE BUSINESS EQUIPMENT TAX EXEMPTION TO THE FIRST $80,000 OF

MARKET VALUE OF PROPERTY; REQUIRING THAT THE CLASS 8 PROPERTY OF RELATED PERSONS BE AGGREGATED IN DETERMINING WHETHER THE $80,000 EXEMPTION THRESHOLD IS EXCEEDED; EXEMPTING FROM TAXATION ITEMS OF PERSONAL PROPERTY WITH A MARKET VALUE OF LESS THAN $100; CLARIFYING THAT PROPERTY OWNED BY COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IS CENTRALLY ASSESSED FOR PROPERTY TAX PURPOSES; INCLUDING A GRANTOR TRUST AS A DISREGARDED ENTITY; CONFORMING MONTANA'S TAXATION LAWS WITH THE INTERNAL REVENUE CODE REGARDING THE TREATMENT OF QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARIES AS DISREGARDED ENTITIES; DEFINING "GRANTOR TRUST"; DEFINING "REAL ESTATE INVESTMENT TRUST"; DIRECTING THE DEPARTMENT OF REVENUE TO WAIVE REPORTING REQUIREMENTS FOR GRANTOR TRUSTS THAT ESTABLISH THAT THEIR MONTANA SOURCE INCOME WILL BE FULLY ACCOUNTED FOR IN INDIVIDUAL INCOME TAX RETURNS, CORPORATION LICENSE TAX RETURNS, OR CORPORATION INCOME TAX RETURNS FILED WITH THE STATE; TREATING GRANTOR TRUSTS AS PASS-THROUGH ENTITIES FOR WITHHOLDING AND REPORTING PURPOSES; LIMITING THE FEDERAL DEDUCTION FOR COMPUTATION OF TAXABLE INCOME OF ESTATES AND TRUSTS; EXTENDING THE TIME PERIOD TO REQUEST REFUNDS FOR OVERPAYMENT OF INDIVIDUAL INCOME TAXES; CLARIFYING THE ALLOWED EXTENSION OF TIME FOR FILING AN INDIVIDUAL INCOME TAX RETURN; REVISING THE ELDERLY RESIDENTIAL PROPERTY TAX CREDIT TO PROVIDE A RESIDENTIAL PROPERTY TAX CREDIT FOR INDIVIDUALS UNDER 62 YEARS OF AGE WHOSE GROSS HOUSEHOLD INCOME DOES NOT EXCEED $45,000; INCREASING THE CREDIT ALLOWED WHEN GROSS HOUSEHOLD INCOME IS AT LEAST $35,000 BUT LOWER THAN $45,000; REQUIRING INFORMATION AGENTS TO REPORT PROCEEDS FROM CERTAIN REAL ESTATE TRANSACTIONS; REVISING INFORMATION SHARING AMONG STATE AGENCIES; REQUIRING THE DISCLOSURE OF THE FEDERAL TAX IDENTIFICATION NUMBER OF A BUSINESS ENTITY ON THE ANNUAL REPORT FILED WITH THE OFFICE OF THE SECRETARY OF STATE; LIMITING DISCLOSURE OF THE FEDERAL TAX IDENTIFICATION NUMBER; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION FROM TAX RETURNS AND REPORTS TO THE SECRETARY OF STATE; GENERALLY REVISING AND CLARIFYING THE TAXATION OF REAL ESTATE INVESTMENT TRUSTS; PROVIDING A TAX CREDIT FOR THE MARKET VALUE OF REAL PROPERTY CONTRIBUTED TO THE STATE OF MONTANA BY A REAL ESTATE INVESTMENT TRUST; PROVIDING AN EXCLUSION, UNDER CERTAIN CONDITIONS, FROM THE ADJUSTED GROSS INCOME OR FROM THE CORPORATE GROSS INCOME OF SHAREHOLDERS AND HOLDERS OF BENEFICIAL INTERESTS OF REAL ESTATE INVESTMENT TRUSTS FOR DIVIDENDS RECEIVED FROM A REAL ESTATE INVESTMENT TRUST; PROVIDING FOR THE DETERMINATION OF THE NET INCOME OF REAL ESTATE INVESTMENT TRUSTS; DISALLOWING THE DIVIDENDS PAID DEDUCTION ALLOWED UNDER THE INTERNAL REVENUE CODE IN DETERMINING THE TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST; CLARIFYING, IN ACCORDANCE WITH THE INTERNAL REVENUE CODE, THAT A DEDUCTION FOR DIVIDENDS RECEIVED FROM A REGULATED INVESTMENT COMPANY OR A REAL

ESTATE INVESTMENT TRUST IS NOT ALLOWED; CLARIFYING THAT ALL TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST IS TAXED AT THE CORPORATE LICENSE TAX RATE; CLARIFYING THE CALCULATION OF THE NET OPERATING LOSS OF A REAL ESTATE INVESTMENT TRUST; ALLOWING THE BOARD OF LAND COMMISSIONERS TO ACCEPT UNRESTRICTED DONATIONS OF REAL PROPERTY FROM REAL ESTATE INVESTMENT TRUSTS; PROVIDING FOR THE INCLUSION OF ALL DOMESTICALLY INCORPORATED SUBSIDIARIES IN THE WATER'S-EDGE GROUP; PROVIDING FOR THE INCLUSION IN THE WATER'S-EDGE GROUP INCOME THAT HAS A FEDERALLY REPORTABLE U.S. SOURCE; PREVENTING INCOME-SHIFTING TO FOREIGN INTANGIBLE HOLDING COMPANIES; UPDATING THOSE COUNTRIES CONSIDERED TAX HAVENS; PROVIDING IMPACTED TAXPAYERS THE ABILITY TO RESCIND A WATER'S-EDGE ELECTION; PROVIDING A 5-YEAR PERIOD OF LIMITATIONS FOR ASSESSMENT, COLLECTION, OR REFUND OF CORPORATION LICENSE TAX; INCREASING THE INDIVIDUAL INCOME TAX CREDIT FOR ENERGY-CONSERVING EXPENDITURES; PROVIDING A TAX CREDIT FOR TAXPAYERS WITH CERTAIN INCOME LEVELS AND FOR CERTAIN OWNERS OF PASS-THROUGH ENTITIES; PROVIDING A REFUND FOR UNUSED ENERGY-CONSERVING EXPENDITURE TAX CREDITS; REMOVING THE REQUIREMENT FOR COAL MINE OPERATORS TO REPORT TONS OF COAL SOLD; CLARIFYING THE REQUIREMENT FOR FILING OF DUPLICATE UNITED STATES ESTATE TAX RETURNS WITH THE DEPARTMENT OF REVENUE; DIRECTING CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE; REVISING AND CLARIFYING CERTAIN PROVISIONS OF THE RESORT TAX, THE LODGING FACILITY USE TAX, AND THE SALES AND USE TAX; REVISING THE DEFINITION OF "FACILITY" FOR THE LODGING FACILITY USE TAX AND THE DEFINITION OF "ACCOMMODATIONS" FOR THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF ACCOMMODATION CHARGES THAT ARE SUBJECT TO THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF THE BASE RENTAL CHARGES THAT ARE SUBJECT TO THE SALES AND USE TAX; PROVIDING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX ON ACCOMMODATION CHARGES AND BASE RENTAL CHARGES APPLY TO CERTAIN CHARGES IMPOSED BY INTERMEDIARIES; REQUIRING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX BE INTERPRETED AND ADMINISTERED TOGETHER; EXEMPTING FOR 2 YEARS VEHICLE REGISTRATION FEES ON NEW LIGHT VEHICLES BASED ON A MILES-PER-GALLON RATING; CLARIFYING QUALIFICATIONS FOR DEPENDENTS WITH REGARD TO INDIVIDUAL INCOME TAX EXEMPTIONS;"

3. Title, lines 12 and 13.
Following: "SECTIONS" on line 12
Insert: "7-4-2623, 7-6-1502, 7-6-1505, 15-1-102,"
Following: "15-1-201,"
Insert: "15-1-216, 15-1-706, 15-6-135, 15-6-138, 15-6-219, 15-23-101, 15-30-101, 15-30-111,"
Strike: "AND 15-30-142" on line 12
Insert: "15-30-136, 15-30-144, 15-30-149, 15-30-171, 15-30-172,

15-30-173, 15-30-174, 15-30-175, 15-30-176, 15-30-177, 15-30-178, 15-30-179, 15-30-301, 15-30-303, 15-30-1102, 15-31-113, 15-31-114, 15-31-119, 15-31-322, 15-31-323, 15-31-324, 15-31-326, 15-31-509, 15-31-511, 15-31-603, 15-32-109, 15-35-104, 15-36-313, 15-39-105, 15-39-107, 15-62-207, 15-62-208, 15-65-101, 15-65-102, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-110, 15-68-210, 15-68-402, 15-68-501, 15-68-502, 15-68-510, 15-68-512, 15-68-516, 16-11-149, 35-1-1104, 35-8-208, 61-3-321, 72-3-1006, AND 77-1-213"

Strike: "AN" on line 12 through "IMMEDIATE" on line 13
Strike: the first "DATE" on line 13
Insert: "DATES"
Strike: "A RETROACTIVE" on line 13
Following: "APPLICABILITY" on line 13
Strike: "DATE"
Insert: "DATES"

4. Page 1, line 17 through page 2, line 4.
Strike: section 1 in its entirety
Insert: "NEW SECTION. **Section 1. Withholding from pensions, annuities, and certain other deferred income.** (1) In conformity with section 3405 of the Internal Revenue Code, 26 U.S.C. 3405, the payor of any periodic payment, nonperiodic distribution, or designated distribution, as defined in that section, shall:

(a) withhold from the payment 30% of the amount, if any, withheld for federal tax purposes; and

(b) withhold the amount in subsection (1)(a) and is liable for payment of the tax when required to withhold the amount for federal purposes.

(2) If a periodic payment, nonperiodic distribution, or designated distribution is not subject to federal withholding because a federal election of no withholding was made under section 3405 of the Internal Revenue Code, 26 U.S.C. 3405, then state withholding is not required and the amount withheld is considered zero.

(3) Amounts withheld under this section must be treated as if the amounts were withheld from wages paid by an employer to an employee subject to withholding under 15-30-202."

Insert: "NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 2 through 8], unless otherwise required by the context, the following definitions apply:

(1) "Capitalization percentage" means the appropriate percentage established in [section 3].

(2) "Combined reporting group" means those corporations whose income is required to be included in the same combined report pursuant to 15-31-301 or 15-31-322.

(3) "Commonly controlled group" means a parent corporation and any one or more corporations or chains of corporations connected through stock ownership or constructive ownership with

the parent if:

(a) the parent owns stock with more than 50% of the voting power of at least one corporation; and

(b) stock cumulatively representing more than 50% of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subsection (3)(a), or one or more other corporations that satisfy the conditions of this subsection (3)(b), if applicable.

(4) "Direct written premiums" means amounts written by an insurance company in consideration for insurance and annuity contracts issued to policyholders.

(5) "Dividend" means, for purposes of calculating the dividends-received deduction for any tax year described in [section 3], the total amount of qualified dividends allowed as a deduction for federal income tax purposes received by the corporation from the insurer corporation.

(6) "5-year average" means the aggregate net written premiums or total income, as the case may be, over the 5 immediately preceding calendar or fiscal years, divided by five. If an insurance company in the commonly controlled group has been in existence for fewer than 5 years, its aggregate net written premiums and total income must each be multiplied by five and divided by the number of years of its existence. If an insurance company does not have a regulatory filing requirement, the period covered is the fiscal year used for the insurance company's financial statements. The use of either the calendar year or fiscal year that is used for the determination of the first tax year 5-year average is considered an accounting method under [sections 2 through 8] and may be changed in subsequent tax years only with the written consent of the department.

(7) (a) "Investment income" means an insurance company's earnings from its investment portfolio, including interest, dividends, realized gains or losses, and rent, that, unless otherwise provided in subsections (7)(b) through (7)(d), is required to be reported in an insurer's statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners.

(b) Except for reinsurance transactions, realized gains or losses do not include losses incurred in transactions with a person that is a member of the taxpayer's or the insurance company's commonly controlled group.

(c) Investment income does not include dividends from a person that is a member of the commonly controlled group. Intercompany dividends that have been eliminated from investment income as would be required to be reported in the statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners may not again be eliminated for this purpose.

(d) Investment income does not include income included in

the taxpayer's combined report filed in accordance with this chapter.

(8) "Insurer" has the meaning provided in 33-1-201.

(9) (a) "Net income attributable to investment income" means net income of the insurer multiplied by a ratio, the numerator of which is the insurer's gross investment income from interest, dividends (other than dividends from members of the taxpayer's commonly controlled group), rent, and realized gains or losses, and the denominator of which is the insurer's gross income (other than dividends from members of the taxpayer's commonly controlled group) from all sources.

(b) For the purposes of this definition, if an insurer is required to file a statutory annual statement pursuant to the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners, "net income" means net income required to be reported in the insurer's statutory annual statement.

(10) (a) "Net written premiums" means direct written premiums plus premiums from reinsurance assumed, less premiums ceded to a reinsurance company, as would be required to be reported in an insurer's statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners.

(b) Net written premiums from life insurance contracts are determined by multiplying the net written premiums received, assumed, or ceded by 1.3.

(c) Net written premiums from financial guaranty insurance contracts are determined by multiplying the net written premiums received, assumed, or ceded by the lesser of 2.3 or an amount that would cause the ratio of the 5-year average net written premiums for all financial guaranty insurance companies in the commonly controlled group to the 5-year average total income for all financial guaranty insurance companies in the commonly controlled group to be equal to the applicable capitalization percentage.

(11) "Premiums from reinsurance assumed" means amounts received or accrued by an insurance company in consideration for liabilities it assumes from another insurance company.

(12) "Qualified dividend" means a dividend received by a corporation during the tax year from a corporation that is an insurer, whether or not the insurer is engaged in business in Montana, if at the time of each dividend payment at least 80% of each class of stock of the insurer was owned, directly or indirectly, by the corporation receiving the dividend.

(13) "Total income" means net written premiums plus investment income."

Insert: "NEW SECTION. **Section 3. Reduction of dividends received by corporations -- capitalization percentage.** (1) For the purposes of calculating the dividends-received deduction allowed for Montana purposes, the amount of dividends must be

multiplied by the appropriate capitalization percentage determined under subsections (2) through (4).

(2) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is greater than or equal to 60%, then the capitalization percentage is 100%.

(3) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is less than 60% but greater than 10%, then the capitalization percentage is equal to the following fraction, expressed as a percentage:

(a) the numerator is the 5-year average net written premiums for the tax year; and

(b) the denominator is 60% of the 5-year average total income for that tax year.

(4) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is 10% or less, then the capitalization percentage is 0%."

Insert: "NEW SECTION. **Section 4. Deductions not allowed for certain expenses**. (1) A deduction is not allowed for any expense under subsection (2) that is paid or incurred to an insurer if the insurer is a member of the taxpayer's commonly controlled group and the amount paid or incurred would constitute income to the insurer if the insurer were subject to the Montana income or franchise tax.

(2) (a) The following interest amounts payable to an insurer in the same commonly controlled group are disallowed:

(i) interest paid or incurred to an insurer in the taxpayer's commonly controlled group with respect to indebtedness, other than qualified marketable debt instruments, the principal amount of which is attributable to a contribution of money by a noninsurer member of the taxpayer's commonly controlled group to the capital of an insurer member of that group, including the principal amount of a loan arising from a direct or indirect transfer of money from that contribution to capital from one insurer to another insurer of the same commonly controlled group;

(ii) interest paid or incurred to an insurer with respect to a note or other debt instrument, other than qualified marketable debt instruments, contributed to the capital of an insurer with respect to its stock by a noninsurer member of the commonly controlled group;

(iii) interest paid or incurred within 5 years after the direct or indirect acquisition of the insurer by a member of the commonly controlled group, other than interest on qualified marketable debt instruments;

(iv) interest paid or incurred during the tax year to any

insurer in the commonly controlled group multiplied by the disqualifying percentage. The disqualifying percentage is an amount equal to 100% less the capitalization percentage provided for in [section 3(2), (4), or (5)] for that tax year whether or not a dividend is paid or accrued.

(b) The following noninterest expenses are disallowed:

(i) expenses attributable to property formerly held by the taxpayer or a member of the taxpayer's commonly controlled group that was acquired by the insurer in a transaction in which gain was realized but not recognized, including any income deferred under [section 5], by the taxpayer or a member of its commonly controlled group;

(ii) expenses attributable to property purchased with the proceeds attributable to a contribution by a noninsurer member of the taxpayers' commonly controlled group to the capital of an insurer member of that group, including amounts attributable to a direct or indirect transfer of money from that contribution from one insurer to another insurer in the same group.

(3) Expenses that may be disallowed by more than one expense exclusion in subsection (2) may be included only in the exclusion that will result in the highest disallowance amount.

(4) For purposes of this section, the following definitions apply:

(a) "Qualified marketable debt instruments" means publicly available debt instruments of all noninsurer members of the commonly controlled group issued, but only to the extent that the aggregate principal amount of publicly available debt instruments held by all insurer members of the commonly controlled group constitutes less than 10% of the total outstanding principal amount of publicly available debt instruments issued by all noninsurer members.

(b) "Publicly available debt instruments" means debt instruments available to the general public, including bonds, debentures, and negotiable instruments that are rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, in one of its generic rating categories that signifies investment grade."

Insert: "NEW SECTION. **Section 5. Transfer of property to insurer.** (1) (a) Except as provided in subsection (1)(b), in connection with any exchange described in section 332, 351, 354, 356, or 361 of the Internal Revenue Code, 26 U.S.C. 332, 351, 354, 356, or 361, when a taxpayer transfers property to an insurer, the insurer, for purposes of determining the extent to which gain is recognized on that transfer, is not, for the purposes of this section, considered a corporation.

(b) The provisions of subsection (1)(a) do not apply to any of the following types of transactions unless that transaction has the effect, either directly or indirectly, of transferring appreciated property from a taxpayer subject to tax under this chapter or a member of the taxpayer's combined reporting group,

to an insurer:

(i) an exchange or transfer pursuant to section 368(a)(2)(D) or (a)(2)(E) of the Internal Revenue Code, 26 U.S.C. 368(a)(2)(D) or (a)(2)(E);

(ii) a transfer of stock in an 80%-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting; or

(iii) a transfer or exchange of publicly owned stock of the parent corporation.

(c) (i) If a transaction described in subsection (1)(b) would qualify under that subsection except that the transaction has the effect, directly or indirectly, of transferring appreciated property from a taxpayer or a member of the taxpayer's combined reporting group, subject to tax under this chapter, to an insurer, then, if the property is used in the active trade or business of the insurer, subsection (2) applies to that transfer.

(ii) For purposes of this subsection (1)(c), "appreciated property" means property whose fair market value, as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

(2) (a) If property subject to subsection (1)(a) or (6) is transferred to an insurer for use in the active conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under subsection (1)(a) or (6) is deferred until the date that:

(i) the property is no longer owned by an insurer in the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group;

(ii) the property is no longer used in the active conduct of the insurer's trade or business or the trade or business of another member in the taxpayer's combined reporting group; or

(iii) the holder of the property is no longer held by an insurer in the commonly controlled group of the transferor or a member of the taxpayer's combined reporting group.

(b) Any of the events described in subsection (2)(a) must be treated as a disposition of the property under this subsection (2), irrespective of whether any other provision of this chapter or in the Internal Revenue Code would otherwise permit nonrecognition treatment of the transaction described in this subsection (2).

(c) An insurer that becomes a member of the taxpayer's commonly controlled group or a corporation that becomes a member of the taxpayer's combined reporting group as a result of a transaction referred to in this subsection (2) must be treated as a member of the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group at the time of the transfer for purposes of this subsection (2).

(d) For purposes of this subsection (2), stock of an insurance subsidiary constitutes property used in the active trade or business of the insurer.

(e) This subsection (2) does not apply to any property described by section 367(a)(3)(B) of the Internal Revenue Code, 26 U.S.C. 367(a)(3)(B).

(f) If the deferred gain required to be taken into account under this subsection (2) is business income as defined in 15-31-302, the gain must be apportioned using the apportionment percentage for the tax year that the gain is required to be taken into account under this subsection (2). Except as provided in 15-31-312 and rules adopted to implement that section, for purposes of the sales factor for that tax year, the transaction giving rise to that gain must be treated as a sale occurring in the tax year the gain is taken into account. The amount of any gain required to be recognized under this subsection (2) upon any disposition described in this subsection (2) may not exceed the lesser of the deferred gain or the gain realized in the transaction in which gain is required to be recognized under this subsection (2).

(g) For purposes of computing the amount of gain required to be recognized under this subsection (2), appropriate adjustments may be made, pursuant to rules adopted by the department, to the basis of stock to reflect the disallowance of any expenses under [section 4(2)].

(3) The department may adopt rules providing for an annual reporting requirement in the form of a statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were previously deferred pursuant to subsection (2). If the transferor taxpayer fails to provide information required by the department, the department may, in lieu of the year in subsection (2)(f), require that the transferor taxpayer take those gains into account in the first tax year in which the current ownership of the property is not reported unless the property is still owned by the transferee and the failure to provide the information was due to reasonable cause and not willful neglect. If a taxpayer fails to satisfy the reporting requirements of this subsection, then a notice of proposed deficiency assessment resulting from adjustments attributable to gains previously deferred pursuant to subsection (2), with respect to which the reporting requirements were not satisfied, may be mailed to the taxpayer within 4 years from the date on which the reporting requirements are satisfied by the taxpayer.

(4) Unless otherwise provided by rules adopted by the department, a transfer by a taxpayer of an interest in a partnership to an insurer in a transaction described in subsection (1)(a) must be treated as a transfer to that insurer of the taxpayer's pro rata share of the assets of the partnership.

(5) (a) A distribution described by section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, must be treated as an exchange

under this section, whether or not the distribution is an exchange. This subsection (5)(a) does not apply to a distribution in which:

(i) the distributing corporation is an insurer; or

(ii) the distributee is a person other than an insurer.

(b) For a distribution described in section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, by a taxpayer to an insurer, the department shall adopt rules regarding the recognition of gain to prevent the removal of gain inherent in property at the time of a transfer from taxation.

(6) For purposes of this section, a transfer of property to an insurer as a contribution to capital of that insurer by one or more persons who, immediately after the transfer, own, within the meaning of section 318 of the Internal Revenue Code, 26 U.S.C. 318, stock possessing at least 80% of the total combined voting power of all classes of stock of that insurer that are entitled to vote must be treated as an exchange of that property for stock of the insurer equal in value to the fair market value of the property transferred.

(7) (a) In the case of any liquidation to which section 332 of the Internal Revenue Code, 26 U.S.C. 332, applies, unless otherwise provided in rules adopted by the department:

(i) sections 337(a) and (b)(1) of the Internal Revenue Code, 26 U.S.C. 337(a) and (b)(1), do not apply if the 80% distributee is an insurer; and

(ii) if the distributor is an insurer, the distributee shall treat the distribution as a distribution from the insurer's earnings and profits.

(b) For purposes of subsection (7)(a)(ii), the distribution from earnings and profits must be treated as a dividend eligible for a deduction, to the extent otherwise provided in [section 3], as if it was actually distributed as a dividend.

(8) (a) Upon an adequate showing by a taxpayer that a transaction referred to in subsection (1) or (7) would not violate the purposes of this section to prevent the removal of gain inherent in property at the time of a transfer from taxation under this section, the department may grant relief from the application of this section.

(b) In a proceeding contesting the department's actions under this section, relief may be granted a taxpayer only upon a specific finding by the state tax appeal board or district court that the contested transfer did not remove gain inherent in property at the time of transfer from taxation under this section."

Insert: "NEW SECTION. **Section 6. Includable in gross income.** (1) (a) The department may include in the gross income of the taxpayer or a member of the taxpayer's combined reporting group in that tax year the taxpayer's pro rata share or the pro rata share of a member of the taxpayer's combined reporting group of

any of those insurers' current earnings and profits in that tax year, but not to exceed an amount equal to the specific insurer's net income attributable to investment income for that year minus that insurer's net written premiums received in that same tax year, if:

(i) for any tax year, an insurer is a member of a taxpayer's commonly controlled group;

(ii) the ratio of the 5-year average net written premiums to the 5-year average total income of all insurers in the commonly controlled group is equal to or less than 0.10; and

(iii) the accumulation of earnings and profits of the insurers in the commonly controlled group had a substantial purpose of avoidance of taxes on, according to, or measured by income of this state or any other state.

(b) The amount included in gross income pursuant to subsection (1)(a) must be treated as a dividend received from an insurance company during the tax year, and to the extent applicable, [section 3] applies to that amount.

(2) To the extent that the amounts are included pursuant to subsection (1) in the gross income of a taxpayer or a member of the taxpayer's combined reporting group, those amounts may not again be considered as investment income in the application of the ratio in subsection (1)(a)(ii).

(3) (a) The amounts included in gross income under subsection (1) may not again be included in gross income when subsequent distributions are made to:

(i) the taxpayer or a member of the taxpayer's combined reporting group;

(ii) another taxpayer that acquires an interest in the stock of the taxpayer or a member of the taxpayer's combined reporting group with respect to which subsection (1) was applied; or

(iii) any successor or assign of the respective taxpayers or a member of the taxpayer's combined reporting group described in this subsection (3).

(b) For purposes of applying this subsection (3), distributions from an insurer are considered first made from amounts included under subsection (1).

(4) For purposes of this section, the terms "net written premiums", "5-year average net written premiums", and "5-year average total income" have the same meaning as applicable for [section 3], whether or not a dividend is actually received from any insurer member of the taxpayer's commonly controlled group in that tax year.

(5) For the purposes of this section, the taxpayer's pro rata share of the current earnings and profits of an insurer member of a commonly controlled group is the amount that would have been received as a dividend by the taxpayer or a member of the taxpayer's combined reporting group if:

(a) the insurer had directly distributed its current earnings and profits with respect to its stock held by the taxpayer or a member of the taxpayer's combined reporting group;

and

(b) the insurer holds the stock of another insurer and all other insurer members of the taxpayer's commonly controlled group had distributed the same current earnings and profits with respect to their stock, in the same tax year, until amounts were received as a dividend by the taxpayer or a member of the taxpayer's combined reporting group from an insurer member of the commonly controlled group.

(6) In the application of this section, amounts treated as a dividend received by a partnership are considered a dividend received by each partner that is a member of the commonly controlled group, either directly or through a series of tiered partnerships.

(7) The provisions of this section do not apply to an insurer involved in a proceeding under the Insurers Supervision, Rehabilitation, and Liquidation Act, Title 33, chapter 2, part 13, or any similar proceeding brought by any other state insurance commissioner."

Insert: "NEW SECTION. **Section 7. Legitimate business purpose.** (1) If a taxpayer's ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is greater than or equal to 60%, as determined under [section 3], then the provisions of [sections 2 through 8] do not apply.

(2) If a taxpayer's ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is less than 60%, as determined under [section 3], and upon an adequate showing by a taxpayer that a transaction referred to in [sections 3 through 6] was entered into with a legitimate business purpose, the department may grant relief from the application of [sections 2 through 8]."

Insert: "NEW SECTION. **Section 8. Rulemaking authority.** The department may adopt rules that it considers necessary to implement and administer the provisions of [sections 2 through 7]."

Insert: "NEW SECTION. **Section 9. Definitions.** As used in [sections 10 through 12], the following definitions apply:

(1) "Montana property taxes" means the ad valorem property taxes imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed in the specified calendar year.

(2) "Owned" includes purchasing under a contract for deed and being the grantor or grantors under a trust indenture."

Insert: "NEW SECTION. **Section 10. Property tax refund -- manner of claiming -- limitations.** (1) (a) A refund of up to $400

of 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3).

(b) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence they owned and occupied as their principal residence for at least 7 months during 2006 were more than $25 and less than $400, a refund of the 2005 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2005, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsection (1)(a) does not exceed $400.

(c) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence they owned and occupied as their principal residence for at least 7 months during 2006, together with the 2005 Montana property taxes allowed as a refund under subsection (1)(b), were more than $50 and less than $400, a refund of the 2004 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2004, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsections (1)(a) and (1)(b) does not exceed $400.

(2) (a) Subject to subsection (2)(b), the claim for refund, in the form that the department prescribes, must be executed by each taxpayer under penalty of false swearing and must include the information that the department requires.

(b) The personal representative of the estate of a deceased taxpayer may execute and file the claim for refund on behalf of a deceased taxpayer who qualifies for the refund.

(3) The claim for a refund is subject to the following limitations:

(a) The claim must be filed with the department of revenue on or before December 31, 2007, unless the department, for good cause shown, grants a reasonable extension of time for filing.

(b) Only one claim may be made with respect to any property.

(c) The claims by a taxpayer or taxpayers for 2006, 2005, and 2004 must be for the same property."

Insert: "NEW SECTION. **Section 11. Property tax refund -- penalty for false or fraudulent claim.** A person who files a false or fraudulent claim for a property tax refund [section 10] or a renter's credit under [section 12] is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other tax owed the state, together with a penalty of 25%

and interest on the amount of the refund at the rate of 12% a year, until paid."

Insert: "NEW SECTION. **Section 12. Renter's tax credit -- eligibility -- requirements -- limitations -- refund.** (1) Except as provided in subsections (6) and (7) and subject to the provisions of this section, an individual required to file a return under chapter 30 is allowed a renter's credit in an amount equal to 3% of the gross rent paid by the taxpayer in tax year 2006 for a dwelling or dwellings the taxpayer rented as the taxpayer's principal residence for at least 7 months during 2006. The maximum credit allowed under this section is $120.

(2) In order to be eligible to make a claim for a credit under this section, the taxpayer must have:

(a) resided in Montana for at least 9 months of 2006; and

(b) occupied one or more dwellings in the state as a renter or lessee for at least 7 months of 2006.

(3) A taxpayer is not disqualified from claiming the credit under this section because of a change of residence during 2006 if the taxpayer occupied one or more dwellings in Montana as a renter or lessee for at least 7 months during 2006.

(4) (a) A receipt or other evidence of gross rent paid must be filed with the claim for a credit. In addition, each taxpayer shall, at the request of the department, supply all additional information to support the claim.

(b) If two or more individuals are sharing a dwelling, each individual may claim the credit based on the proportional share that the individual pays of the gross rent.

(5) If the amount of credit exceeds the taxpayers's tax liability under this chapter, the amount of the excess must be refunded to the taxpayer.

(6) A claim for a credit is not allowed under this section if the individual's adjusted gross income is greater than $45,000. For married taxpayer's filing jointly or separately on the same form the credit is not allowed under this section if the combined adjusted gross income is greater than $45,000.

(7) A taxpayer who receives a residential property tax credit for the elderly for tax year 2006 under 15-30-171 through 15-30-179 may not claim the credit under this section.

(8) The claim for the renter's credit under this section shall be made in the same manner and time and subject to the same conditions as prescribed for the property tax refund under [section 10(2), (3)(a), and (3)(b)].

(9) For the purposes of this section, the following definitions apply:

(a) "Dwelling" means:

(i) a single-family dwelling or unit of a multiple-unit dwelling and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling;

(ii) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15; or

(iii) a single-family dwelling or unit of a multiple-unit dwelling in which any portion of the individual's rent payment is derived from rent equivalent payments or from a public rent or tax subsidy program.

(b) "Gross rent" has the meaning provided in 15-30-171.

(c) "Rent equivalent" means a rental payment paid by a governmental agency to a lessor or landlord."

Insert: "NEW SECTION. **Section 13. Short title.** [Sections 13 through 24] may be cited as the "Mineral Royalty Backup Withholding Act"."

Insert: "NEW SECTION. **Section 14. Definitions.** As used in [sections 13 through 24], the following definitions apply:

(1) "Mineral" has the same meaning as provided in 15-38-103.

(2) "Publicly traded partnership" means a publicly traded partnership as defined in section 7704 of the Internal Revenue Code, 26 U.S.C. 7704, that is not treated as a corporation.

(3) "Remittor" means an individual, entity, or trust that makes royalty payments to royalty owners.

(4) "Royalty owner" means a person or entity entitled to receive periodic payments for a nonworking interest in the production of oil or gas or in the severance of other minerals from the mineral estate."

Insert: "NEW SECTION. **Section 15. Withholding required on mineral royalty payments.** Except as provided in [section 16], each remittor shall withhold from each royalty payment made to a royalty owner an amount equal to 6% of the net amount payable to the royalty owner."

Insert: "NEW SECTION. **Section 16. Withholding -- no application under certain conditions.** (1) The provisions of [sections 13 through 24] do not apply to royalty payments made to a royalty owner if the royalty owner is:

(a) the United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;

(b) a federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;

(c) the United States as trustee for individual Indians;

(d) a publicly traded partnership;

(e) an organization that is exempt from taxation under 15-31-102; or

(f) the same person or entity as the remittor.

(2) (a) The provisions of [sections 13 through 24] do not apply to a remittor that produces less than 100,000 barrels of oil and less than 500 million cubic feet of gas annually. The department shall determine a remittor's annual production of oil and gas based upon a 3-year rolling average of the remittor's annual production as reported by the remittor to the Montana

board of oil and gas conservation.

(b) Each producer that is exempted from withholding under subsection (2)(a) shall make an annual return to report royalty payments that exceed the dollar amounts in subsection (3). The return must be made under rules adopted by the department and be as nearly identical as possible to federal rules for internal revenue service form 1099 under section 6041, et seq., of the Internal Revenue Code, 26 U.S.C. 6041, et seq.

(c) Each year, a publicly traded partnership that is exempt from withholding under subsection (1)(d) shall transmit to the department, in an electronic format approved by the department, each partner's U.S. department of the treasury Schedule K-1, Form 1065 or 1065-B, as applicable, filed electronically for the year with the internal revenue service.

(d) A royalty owner that is an organization that is exempt from taxation under 15-31-102 shall report to the remittor and department under oath, on a form prescribed by the department, all information necessary to establish that the remittor is not required to withhold under [section 15].

(3) If the royalty payment made to a royalty owner subject to withholding under the provisions of [sections 13 through 24] is less than $166 for the current withholding period or is less than $2,000 if the payment is annualized, then the department may grant a remittor's request to forego withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if applicable, the royalty payments for the annual period.

(4) The department may, by rule, establish minimum royalty amounts subject to withholding under the provisions of [sections 13 through 24], other than for oil and gas production, if the department determines that the withholding against the minimal amount of royalties is inefficient."

Insert: "NEW SECTION. **Section 17. Remittor liable for withholding taxes and statements -- liability mitigation -- sufficiency of mailing address.** (1) Each remittor is liable for the payment required by [section 18], the amount required to be deducted and withheld under [sections 13 through 24], and the annual statements required by [sections 20 and 21]. The payments required by [section 18] and the amounts required to be deducted and withheld, plus penalty and interest due, are a tax. With respect to the tax, the remittor is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from mineral royalty payments and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Subject to subsections (3)(b) and (6), each officer of the corporation is individually liable, along with the corporation, for filing statements, to the extent that the officer has access to the requisite records, and for unpaid taxes, penalties, and interest upon a determination that the

officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by [sections 13 through 24] or to pay taxes due as required by [sections 13 through 24].

(b) If a corporate remittor violates the provisions of [sections 13 through 24], the department shall first apply the provisions of [section 23] against the corporation. If the corporation fails to remedy the violation, then the department shall apply the provisions of [section 23] against each responsible corporate officer as determined in subsections (3)(a) and (3)(c) of this section.

(c) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) Subject to subsection (6), for the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under [sections 13 through 24]:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) The liability of an individual described in subsection (3) or (5) for taxes, penalties, and interest is released if and to the extent that the amount required to be deducted and withheld under [sections 13 through 24] is deposited in a separate account that is:

(a) established in a bank, as defined in 32-1-102, located in Montana;

(b) designated as a special fund in trust for the state; and

(c) payable to the department.

(7) If the remittor fails to deduct and withhold the amounts specified in [section 15] and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the remittor."

Insert: "NEW SECTION. **Section 18. Royalty withholding tax remittance schedule -- alternative schedules and methods -- records.** (1) Except as provided in subsection (2), each remittor is required to file a quarterly return, on a form prescribed by the department, and remit to the department the amount of tax withheld on royalty payments according to the following schedule:

(a) for royalty payments made during January, February, and March of each calendar year, the amount withheld is due on or before April 30 of the year;

(b) for royalty payments made during April, May, and June of each calendar year, the amount withheld is due on or before July 31 of the year;

(c) for royalty payments made during July, August, and September of each calendar year, the amount withheld is due on or before October 31 of the year; and

(d) for royalty payments made during October, November, and December of each calendar year, the amount withheld is due on or before January 31 of the following year.

(2) A remittor may request an alternative remittance schedule than is required by subsection (1). The department may consider situations, such as administrative and taxpayer convenience and frequency of royalty payments, in determining whether to approve an alternative remittance schedule.

(3) A remittor may elect to remit and file mineral backup withholding electronically in any format established and approved by the department if the remittor obtains prior approval from the department before remitting the tax by electronic fund transfer.

(4) If a remittor remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment.

(5) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided under 15-1-703.

(6) Each remittor shall keep accurate royalty payment and withholding records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. A remittor that maintains its records outside of Montana shall furnish copies of those records to the department at the remittor's expense."

Insert: "NEW SECTION. **Section 19. Amount of royalty payment withheld considered taxes collected.** The amounts deducted and withheld from royalty payments are considered taxes collected under the provisions of [sections 13 through 24]. A royalty owner does not have a right of action against the remittor for any amount deducted and withheld from the royalty owner's royalty and paid to the state in compliance or intended compliance with [sections 13 through 24]. The amounts deducted and withheld and paid to the state in compliance or intended compliance with [sections 13 through 24] are not subject to the provisions of 82-10-103."

Insert: "NEW SECTION. **Section 20. Annual withholding statement to royalty owner.** Before January 31 of each year, each remittor shall furnish to each royalty owner a statement, on a form prescribed by the department, showing the total royalties paid by the remittor to the royalty owner during the preceding calendar year and showing the amount of the tax deducted and withheld from the royalty payments. The royalty owner shall file a duplicate of the statement with the royalty owner's state income tax return."

Insert: "NEW SECTION. **Section 21. Remittor to furnish annual statement to department.** (1) On or before February 28 of each year, each remittor shall file with the department a royalty and tax statement, on a form provided by the department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld from the royalty payments under the provisions of [sections 13 through 24] for the same period.

(2) The annual statement filed by a remittor under this section complies with the requirements of 15-30-301 relating to the duties of information agents. An additional information return is not required with respect to the royalty payments.

(3) The department shall make the forms described in [section 18] and this section available no later than November 15, 2007."

Insert: "NEW SECTION. **Section 22. Withheld taxes held in trust for state.** Each remittor that deducts and withholds the amounts under the provisions of [sections 13 through 24] shall hold the amounts in trust for the state."

Insert: "NEW SECTION. **Section 23. Violations by remittor -- penalties -- interest -- remedies.** (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) A remittor that purposely fails to furnish the royalty and tax statement required by [section 21] is subject to a penalty of $50 for each failure, with a minimum of $1,000. The penalties imposed by this subsection are in addition to the penalties imposed by 15-1-216.

(3) All 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 [sections 13 through 24] unless otherwise specifically provided for in this part."

Insert: "NEW SECTION. **Section 24. Rulemaking authority.** The department shall adopt rules that may be necessary to administer and enforce the provisions of [sections 13 through 23]."

Insert: "NEW SECTION. **Section 25. Short title -- purpose.** (1) [Sections 25 through 31] may be cited as "The Reportable Transaction Act".

(2) The purpose of enacting [sections 25 through 31] is to address reportable transactions and tax evasion. [Sections 25 through 31] are not intended to prevent taxpayers from minimizing their taxes in compliance with the law."

Insert: "NEW SECTION. **Section 26. Definitions.** As used in [sections 25 through 31], the following definitions apply:

(1) "Disqualified opinion" has the meaning provided in section 6664(d)(3)(B)(iii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(iii).

(2) "Disqualified tax adviser" has the meaning provided in section 6664(d)(3)(B)(ii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(ii).

(3) "Gross valuation overstatement" has the meaning provided in section 6700(b) of the Internal Revenue Code, 26 U.S.C. 6700(b), and also means any statement as to the value of any property or services if:

(a) the stated value exceeds 200% of the amount determined to be the correct valuation; and

(b) the value of the property or services is directly related to the amount of any deduction or credit allowable under Title 15, chapter 30 or 31, to any participant.

(4) "Internal Revenue Code" has the meaning provided in 15-30-101.

(5) "Listed transaction" has the meaning provided in section 6707A(c)(2) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(2), and also means a reportable transaction that is the same as or substantially similar to a transaction or arrangement specifically identified by the department pursuant to [section 31] as a tax evasion transaction.

(6) "Material adviser" has the meaning provided in section 6111(b)(1) of the Internal Revenue Code, 26 U.S.C. 6111(b)(1).

(7) "Noneconomic substance transaction" means any transaction or arrangement that lacks economic substance, as defined by Montana or federal law, including a transaction or arrangement in which the separate legal existence of an entity is not respected because the creation or use of the entity lacks a valid nontax Montana business purpose.

(8) "Reportable transaction" has the meaning provided in section 6707A(c)(1) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(1). A reportable transaction includes, but is not limited to:

(a) any transaction or arrangement described in U.S. treasury regulations 1.6011-4(b)(1) through 1.6011-4(b)(7), 26 CFR 1.6011-4(b)(1) through (b)(7);

(b) a listed transaction; and

(c) a noneconomic substance transaction.

(9) "Tax shelter" has the meaning provided in section 6662(d)(2)(C)(ii) of the Internal Revenue Code, 26 U.S.C. 6662(d)(2)(C)(ii), and also means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of the partnership, entity, plan, or arrangement is the evasion of a tax imposed by Title 15, chapter 30 or 31. As used in this subsection, "significant purpose" has the same meaning given the term under federal tax law."

Insert: "NEW SECTION. **Section 27. Taxpayer responsibility for disclosure of reportable transactions -- penalties -- waiver -- extension of statute of limitations.** (1) For each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member has participated in a reportable transaction, including a listed transaction, the taxpayer, pass-through entity, federal consolidated group, or unitary group is required to disclose the transaction as provided in subsection (2). In addition, for each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member is required to make a disclosure statement under U.S. treasury regulation 1.6011-4, 26 CFR 1.6011-4, with respect to a reportable transaction, including a listed transaction, in which the taxpayer, pass-through entity, federal consolidated group, or unitary group participated, the taxpayer, pass-through entity, federal consolidated group, or unitary group shall file a copy of the disclosure with the department as provided in subsection (2).

(2) (a) Reportable transactions, including listed transactions, must be disclosed in the manner prescribed in U.S. treasury regulations 1.6011-4, 26 CFR 1.6011-4, and department rules. A taxpayer who is an individual is required to disclose only transactions that are required to be disclosed as listed transactions or reportable transactions for federal income tax purposes.

(b) (i) With respect to a listed transaction entered into after February 28, 2000, but on or before December 31, 2006, disclosure must be made on or before the due date of and attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for tax year 2006 and to the original and any amended Montana income or corporation license tax or pass-through entity information return for any subsequent tax year that reflects a reduction in Montana tax resulting from the listed transaction, including a loss, deduction, or credit resulting

from a reportable transaction that is being carried forward or back.

(ii) With respect to a reportable transaction, including a listed transaction, entered into after December 31, 2006, disclosure must be attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for the tax year during which the transaction was entered into and to the original and any amended Montana individual income or corporation license tax or pass-through entity information return for any later tax year that reflects a reduction in tax resulting from the reportable or listed transaction, including a loss, deduction, or credit that is being carried forward or back and that is a result of the transaction.

(iii) Disclosure of a reportable transaction entered into after February 28, 2000, must also be attached to any amended Montana individual income or corporation license tax or pass-through entity information return filed after December 31, 2006, if the filing reflects a determination by the internal revenue service of the federal tax treatment of a reportable transaction.

(3) The provisions of subsections (1) and (2) apply to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of sections 25 through 31].

(4) (a) A person who does not include on a return or statement information with respect to a reportable transaction that is required under subsection (2) or (3) to be included with the return or statement shall pay a penalty, in addition to any other penalty imposed, in the amount determined under subsections (4)(b) and (4)(c).

(b) Except as provided in subsection (4)(c), the amount of the penalty imposed under subsection (4)(a) is $10,000 in the case of an individual and $50,000 in any other case.

(c) With respect to a listed transaction, the amount of the penalty under subsection (4)(a) is $100,000 in the case of an individual and $200,000 in any other case.

(5) A penalty imposed under subsection (4) is considered assessed on the due date of the tax return upon or attached to which the disclosure of the reportable transaction was required pursuant to this section and department rules.

(6) The department may waive all or any portion of any penalty imposed by this section with respect to any violation if:

(a) the violation is with respect to a reportable transaction other than a listed transaction; and

(b) rescinding the penalty would promote compliance with the requirements of Title 15, chapter 30 or 31, and effective tax administration.

(7) The penalty imposed under subsection (4) applies to any failure to disclose any listed transaction entered into after February 28, 2000, or any other reportable transaction entered into after [the effective date of sections 25 through 31] for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of sections 25 through 31].

(8) (a) If a taxpayer has a reportable transaction understatement for any tax year as determined under subsection (8)(b), there must be added to the tax a penalty in an amount equal to 20% of the amount of the understatement. If the requirements of subsection (1) are not met, the percentage to be used for the penalty determination is 30% with respect to the portion of any reportable transaction understatement.

(b) (i) Except as provided by department rule, a tax treatment included with an amendment or supplement to a return of tax may not be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the department regarding the examination of the return or any other date that is adopted by rule pursuant to [section 31].

(ii) A reportable transaction understatement is the sum of:

(A) the product of:

(I) the highest rate of tax imposed by 15-30-103 if the taxpayer is an individual and 15-31-121 if the taxpayer is a C. corporation; and

(II) the amount of the increase, if any, in Montana taxable income, as determined under subsection (8)(c), that results from a difference between the proper tax treatment of an item to which subsection (3) applies and the taxpayer's treatment of that item as shown on the taxpayer's return of tax, including an amended return if the amended return is filed prior to the date that the taxpayer is first contacted by the department regarding the examination of the tax year for which the amended return is filed; and

(B) the amount of the decrease, if any, in the aggregate amount of credits that results from a difference between the taxpayer's treatment of an item to which subsection (3) applies as shown on the taxpayer's return of tax and the proper tax treatment of that item.

(c) The amount of the increase in Montana taxable income for a particular tax year includes the restatement for another tax year to which a loss or deduction is carried forward or carried back that is attributable to the reportable transaction for that year in which the carryforward or carryback of the loss or deduction applies. Any reduction of the excess of deductions allowed for the tax year over gross income for the year and any reduction in the amount of capital losses that would be allowed

for the year are treated as an increase in taxable income.

(d) This subsection (8) applies to any item that is attributable to:

(i) any listed transaction; and

(ii) any reportable transaction, other than a listed transaction, if section 6662A of the Internal Revenue Code, 26 U.S.C. 6662A, applies to the transaction or if a significant purpose of the transaction is the evasion of Montana income or corporation license tax.

(e) A penalty imposed under this subsection (8) is considered assessed on the due date of the Montana tax return that shows the understatement of tax resulting from a reportable transaction to which the penalty relates.

(9) (a) For an amended return filed after December 31, 2007, and before the taxpayer is contacted by the U.S. internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to all other applicable penalties, equal to 50% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date of payment.

(b) If the taxpayer has been contacted by the internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to any other applicable penalties, equal to 100% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date the notice of proposed assessment is mailed.

(10) (a) Except as provided in subsection (10)(b), the department may waive all or any portion of any penalty imposed by subsections (8) and (9) with respect to any portion of a reportable transaction understatement if it is shown that the taxpayer had a reasonable basis for the tax treatment applicable to that portion and acted in good faith with respect to that treatment.

(b) Subsection (10)(a) does not apply to any reportable transaction understatement unless:

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with all requirements of subsection (1) and department rules or the penalty for the taxpayer's failure to fully disclose was waived pursuant to subsection (6);

(ii) there is or was substantial authority for the tax treatment; and

(iii) the taxpayer reasonably believed that the tax treatment was more likely than not the proper tax treatment, but only if the belief:

(A) is based on the facts and law that exist at the time the return that includes the tax treatment is filed;

(B) relates solely to the taxpayer's chances of success on the merits of the tax treatment and does not take into account the possibility that a return will not be audited, the tax treatment will not be raised on audit, or the tax treatment will be resolved through settlement if it is raised; and

(C) does not rely upon the opinion of a disqualified tax adviser or on a disqualified opinion.

(11) A penalty imposed under subsections (8) and (9) applies to any understatement of tax resulting from a listed transaction entered into after February 28, 2000, or from any other reportable transaction entered into after [the effective date of sections 25 through 31] in any tax year or years for which the statute of limitations on assessment, taking into account the extension provided in subsection (12), has not expired as of [the effective date of sections 25 through 31].

(12) If a taxpayer does not include on a return or statement for any tax year information about a listed transaction required under subsection (1), the time for assessment of a tax imposed by Title 15, chapter 30 or 31, with respect to that transaction does not expire before the date that is 1 year after the earlier of the date:

(a) on which the department is furnished the information required; or

(b) that a material adviser meets the requirements of [section 28] with respect to a request by the department under [section 28(3)] relating to the transaction with respect to the taxpayer."

Insert: "NEW SECTION. **Section 28. Material adviser responsibility for disclosure of reportable transactions and maintenance of advisee lists -- penalties -- waiver.** (1) (a) With respect to any reportable transaction, a material adviser shall make a return in the form that the department prescribes setting forth:

(i) information identifying and describing the transaction;

(ii) information describing any potential tax benefits expected to result from the transaction; and

(iii) any other information that the department may prescribe.

(b) A material adviser who is required to disclose a reportable transaction pursuant to section 6111 of the Internal Revenue Code, 26 U.S.C. 6111, shall file a copy of the disclosure with the department.

(c) The return required by subsection (1)(a) and disclosure required by subsection (1)(b) must be filed not later than the date specified by the department.

(d) The department may adopt rules that provide:

(i) that only one person is required to meet the requirements of this subsection (1) in cases in which two or more persons would otherwise be required to meet the requirements; and

(ii) exemptions from the requirements of this subsection (1).

(2) (a) Each material adviser with respect to any reportable transaction shall, whether or not required to file a return under subsection (1)(a), maintain a list identifying each Montana taxpayer, pass-through entity, member of a federal consolidated group, or member of a unitary group for whom the adviser has acted as a material adviser with respect to the transaction.

(b) The list required under subsection (2)(a) must include the same information and must be maintained in the same form and manner as required under section 6112 of the Internal Revenue Code, 26 U.S.C. 6112, U.S. treasury regulation 301.6112-1, 26 CFR 301.6112-1, and any additional information or maintenance requirements as the department may by rule require.

(3) A person required to maintain a list under subsection (2)(a):

(a) shall make the list available to the department upon written request; and

(b) except as otherwise provided by the department by rule, shall retain any information that is required to be included on the list for 7 years.

(4) The department may, by rule, provide that in cases in which two or more persons are required to maintain the same list or a portion of the list under subsection (2), only one person is required to maintain the list or portion of the list.

(5) (a) If a person who is required to file a return or disclosure under subsection (1) with respect to any reportable transaction does not file the return or disclosure on or before the due date or files false or incomplete information with the department with respect to the transaction, the person shall pay a penalty with respect to the return or disclosure in the amount determined under subsections (5)(b) and (5)(c).

(b) Except as provided in subsection (5)(c), the penalty imposed under (5)(a) with respect to any failure is $50,000.

(c) The penalty imposed under subsection (5)(a) with respect to any listed transaction is an amount equal to the greater of:

(i) $200,000; or

(ii) except as provided in subsection (5)(d), 50% of the gross income derived by the person with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return and, if applicable, disclosure is filed under subsection (1).

(d) For an intentional failure or act described in subsection (5)(a), the percentage amount for the penalty computation in subsection (5)(c)(ii) is 75%.

(e) If a person is required to maintain a list under subsection (2) but does not make the list available upon written request to the department in accordance with subsection (3) within 20 business days after the date of the request, the person

shall pay a penalty of $10,000 for each day the list is not made available after the 20-day period has expired.

(6) Each of the penalties imposed by subsection (5) is in addition to any other applicable penalties.

(7) The department may waive all or any portion of penalty imposed under subsection (5):

(a) with respect to any violation of subsection (1) if:

(i) the violation relates to a reportable transaction other than a listed transaction; and

(ii) a waiver of the penalty would promote compliance with the requirements of Title 15, chapters 30 and 31, and effective tax administration; and

(b) with respect to any violation of subsection (2), if on any day the violation was due to a reasonable cause.

(8) The provisions of this section apply to transactions with respect to which material aid, assistance, or advice is provided by a material adviser after [the effective date of sections 25 through 31]."

Insert: "NEW SECTION. **Section 29. Tax shelters -- penalty for promotion.** (1) The penalty provided in subsection (3) must be paid by a person who:

(a) (i) organizes or assists in the organization of:

(A) a partnership or other entity;

(B) any investment plan or arrangement; or

(C) any other plan or arrangement; or

(ii) participates, directly or indirectly, in the sale of any interest in an entity, plan, or arrangement referred to in subsection (1)(a); and

(b) makes or furnishes or causes another person to make or furnish in connection with the organization or sale:

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in a plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter; or

(ii) a gross valuation overstatement as to any material matter.

(2) Activities described in subsection (1)(a) with respect to each entity or arrangement must be treated as a separate activity and participation in each sale described in subsection (1)(b) must be treated as a separate activity.

(3) A person described in subsection (1) shall pay, with respect to each activity described in subsection (1)(a) and in addition to any other penalty provided by law, a penalty equal to:

(a) the lesser of:

(i) $1,000; or

(ii) 100% of the gross income derived or to be derived by the person from the activity; or

(b) if an activity with respect to which a penalty imposed under this subsection (3) involves a disclosure described in subsection (1)(b), a penalty of 50% of the gross income derived or to be derived from the activity by the person on which the penalty is imposed.

(4) The department may waive all or any part of the penalty provided for in subsection (3) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that the valuation was made in good faith.

(5) A privilege of confidentiality does not apply to any written communication that is:

(a) between a tax practitioner and:

(i) any person;

(ii) the department or any officer, employee, agent, or representative of the person; or

(iii) any other person holding a capital or profits interest in the person; and

(b) in connection with the promotion of the direct or indirect participation of the person in any tax shelter.

(6) The provisions of this section apply to activities after [the effective date of sections 25 through 31]."

Insert: "NEW SECTION. **Section 30. Injunction of certain conduct related to reportable transactions and tax shelters.** (1) A civil action in the name of the state to enjoin any person from further engaging in conduct specified in subsection (3) may be commenced at the request of the department. If the person is an individual who resides in Montana, an action under this section must be brought in the county in which the individual resides. If the person is not an individual who resides in Montana, an action under this section must be brought in the first judicial district court of Lewis and Clark County. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state against the person.

(2) In any action under this section, if the court finds that the person has engaged in the conduct specified in subsection (3) and that injunctive relief is appropriate to prevent recurrence of that conduct, the court may enjoin the person from engaging in that conduct or in any other activity subject to penalty under [sections 25 through 31].

(3) Conduct subject to injunction under this section is any action or failure to take action that is:

(a) subject to penalty under [sections 25 through 31]; or

(b) in violation of any requirement under rules issued pursuant to [sections 25 through 31]."

Insert: "NEW SECTION. **Section 31. Tax evasion transactions -- department rules.** (1) The department may not specifically identify a transaction or arrangement as a tax evasion transaction unless the department:

(a) consults with the multistate tax commission to promote uniformity;

(b) considers whether the transaction or arrangement involves some combination of the following:

(i) lacks meaningful economic risk of loss or potential for gain;

(ii) results in purposely inconsistent financial and accounting treatment;

(iii) involves complexity, unnecessary steps, or novel investments;

(iv) utilizes tax indifferent parties; or

(v) was marketed to multiple investors;

(c) considers whether disclosure of the transaction is limited in any manner by express or implied understanding or agreement, whether or not the understanding or agreement is legally binding;

(d) considers whether the taxpayer has the right to a full or partial refund of fees paid to any person who makes or provides an oral or written statement about the potential tax consequences of a transaction if it is not sustained or if fees are contingent on the taxpayer's realization of tax benefits from the transaction; and

(e) determines and considers the costs of taxpayer compliance.

(2) The department shall by rule identify each transaction or arrangement specifically identified by the department pursuant to subsection (1) as a tax evasion transaction.

(3) The department shall file a report with each rule proposal notice when it proposes to adopt a rule to identify a listed transaction, setting forth how it applied the criteria listed in subsection (1) in proposing to identify a transaction or arrangement as a listed transaction.

(4) In adopting rules pursuant to [sections 25 through 31], the department shall determine and consider the costs of taxpayer compliance."

Insert: "NEW SECTION. **Section 32. Short title.** [Sections 32 through 37] may be cited as "The Compilation of State Tax Return Data Act"."

Insert: "NEW SECTION. **Section 33. Definitions.** As used in [sections 32 through 37], the following definitions apply:

(1) "Allocation" means assignment of income to one or more income tax states by means other than apportionment.

(2) "Apportionment factor" means any component ratio used in the apportionment percentage to apportion business income, such as a property factor, a payroll factor, or a sales factor.

(3) "Apportionment percentage" means the percentage formula used to assign a portion of the business income of the taxpayer or the combined reporting group of which the taxpayer is a member to an income tax state.

(4) "Business activity" means any activity conducted in a state that gives rise to:

(a) gross income;

(b) an expense reflected in the taxpayer's federal income

tax return or income tax return of any state; or

(c) the use or availability for use of property in the state.

(5) "Business income" means the total income or loss subject to apportionment.

(6) "Combined reporting" means a method of determining business income and apportionment that takes into account the business income and apportionment factors of more than a single corporation and for purposes of this section includes a consolidated return.

(7) "Income tax state" means any state that imposes a tax on, according to, or measured by income.

(8) "Nonbusiness income" means income or loss subject to allocation to a specific state or states."

Insert: "NEW SECTION. **Section 34. Taxpayer responsibility for filing compilation of state tax return data.** (1) Subject to subsection (2), a taxpayer that conducts business activity in this state and one or more other states or is a member of a combined reporting group that conducts business activity in this state and one or more other states shall compile the information described by [section 35] and file, in the form and manner required by [section 35], state tax return data as reported on its tax returns filed in this and all other income tax states with respect to business income, nonbusiness income, apportionment, and combined reporting whether or not a filing is required.

(2) A taxpayer is subject to the provisions of [section 34, 35, 36, or 37] for any tax year:

(a) for which the taxpayer or a combined reporting group of which the taxpayer is a member:

(i) is required to file internal revenue service schedule M-3 with its federal tax return; and

(ii) is subject to allocation and apportionment under 15-31-301; and

(b) in which the Montana apportionment percentage, as shown on the taxpayer's Montana tax return, is less than 20%."

Insert: "NEW SECTION. **Section 35. Information required to be compiled and filed -- time and manner of filing.** (1) For each income tax state in which a taxpayer or a member of a combined reporting group of which a taxpayer is a member has business activity, the following information must be compiled and filed:

(a) whether the taxpayer filed in that state;

(b) the business income of the taxpayer or of the taxpayer's combined reporting group reported to that state;

(c) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group;

(d) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group that is allocable to that state;

(e) for each of the apportionment factors used to determine

the apportionment percentage, the dollar amount of the numerator and the denominator of the ratio used in that factor;

(f) the apportionment percentage used to apportion income subject to taxation in that state;

(g) the dollar amount of business income apportioned to that state;

(h) for those states that use combined reporting to apportion income for each combined reporting group of which the taxpayer is a member, a list of all corporations whose business income was included in business income of the combined reporting group; and

(i) any other information relating to the determination of business income, nonbusiness income, or the apportionment or allocation of that income that the department by rule requires.

(2) The compilation of state tax return data required by subsection (1) must be filed within 180 days of the filing of the original federal income tax return and any amended Montana corporation license tax return exclusive of federal changes.

(3) (a) Except as provided in subsection (3)(b), the compilation of state tax return data required by subsection (1) must be filed in the form and manner required by the department and must be consistent with the format developed and maintained for those filings by the multistate tax commission.

(b) In lieu of the requirements of subsection (3)(a), a taxpayer may elect to file a copy of each income tax return filed in each income tax state in which the taxpayer or a member of a combined reporting group of which the taxpayer is a member has business activity."

Insert: "NEW SECTION. **Section 36. Retention and provision of records required.** (1) A taxpayer shall retain a copy of its filings of the Montana corporate license tax schedule for apportionment factors for multistate taxpayers and the equivalent schedule filed by the taxpayer or a member of the taxpayer's combined reporting group in the other state or states in which the taxpayer or the taxpayer's combined reporting group conducted business activity. The taxpayer shall, within 60 days of a written request or within any additional time that the department grants upon written request for extension, provide a copy of the schedules to the department. Information required to be retained under this section must be retained for that period of time during which the taxpayer's corporation license tax liability to this state for that tax year may be subject to adjustment, including all periods in which additional income taxes or penalties may be assessed, or during which a protest, appeal, or lawsuit is pending with respect to Montana corporation license.

(2) (a) Except as provided in subsection (2)(b), the provisions of this section apply to information associated with any return due on or after [the date 2 years prior to the effective date of sections 32 through 37].

(b) During the course of an audit investigation, the department may, following [the effective date of sections 32

through 37], require production of information in possession of the taxpayer or, if applicable, a member of the taxpayer's combined reporting group for any tax year for which the statute of limitations on assessment has not expired."

Insert: "NEW SECTION. **Section 37. Penalties for failure to file, retain, or provide information -- assessment date -- waiver.** (1) (a) A taxpayer who does not file, retain, or provide information with respect to state tax return data as required by [sections 34 through 36] and department rules is subject to penalty in an amount determined under subsections (1)(b) and (1)(c) in addition to any other applicable penalties.

(b) For failure to file a compilation of state tax return data as required pursuant to [section 35], the amount of the penalty is the greater of $10,000 or 0.25% of the amount of net income properly apportioned and allocated to this state;

(c) For failure to provide information required to be retained under [section 36] within 60 days of a request by the department or within any additional time the department allows by extension, the amount of the penalty is $1,000 and an additional penalty of $5,000 must be assessed for each additional 30 days that the information is not provided. If a taxpayer states that the information required under [section 36] does not exist and submits an affidavit to that effect, the taxpayer is subject to a penalty in the amount of $30,000 in lieu of additional 30-day penalties.

(2) (a) The penalty imposed under subsection (1)(b) is considered assessed on the due date of the filing required pursuant to [section 35] and department rules.

(b) The penalty imposed under subsection (1)(c) is considered assessed on the 30th day following a request by the department and, if applicable, is assessed for each additional 30-day period during which the taxpayer fails to provide the information required to be retained pursuant to [section 36].

(3) The department may waive or abate all or any portion of any penalty imposed by this section with respect to any violation if rescinding the penalty would promote compliance with the requirements of [sections 32 through 37] and effective tax administration."

Insert: "NEW SECTION. **Section 38. Short title.** [Sections 38 through 40] may be cited as "The Act for Tax Evasion Transaction Voluntary Compliance Program"."

Insert: "NEW SECTION. **Section 39. Definitions.** As used in [sections 38 through 40], the following definitions apply:

(1) "Eligible taxpayer" means any taxpayer who, during the period from September 1, 2007, through December 31, 2007, does both of the following:

(a) files an amended Montana tax return for each tax year for which the taxpayer has previously filed a Montana tax return using a tax evasion transaction to underreport the taxpayer's income or corporation license tax liability reporting the total Montana net income and tax for the tax year computed without

regard to any tax evasion transactions and without regard to any other adjustments that are unrelated to tax evasion transactions; and

(b) makes full payment or enters into an installment payment agreement as provided in [section 40(6)] for payment of the entire amount of Montana income or corporation license tax and interest due for each tax year that is attributable to the use of the tax evasion transaction.

(2) "Program" means the voluntary compliance program established in [sections 38 through 40].

(3) "Tax evasion transaction" means a transaction, plan, or arrangement devised for the principal purpose of evading federal income tax or Montana income or corporation license tax. A tax evasion transaction includes but is not limited to a reportable transaction as defined in [section 26], including a listed transaction as defined in [section 26]."

Insert: "NEW SECTION. **Section 40. Tax evasion transaction voluntary compliance program.** (1) There is a tax evasion transaction voluntary compliance program for eligible taxpayers subject to tax under Title 15, chapter 30 or 31, as provided in [sections 38 through 40]. The department shall develop and administer the program. The program must be conducted from September 1, 2007, through December 31, 2007, and applies to tax liabilities attributable to the use of tax evasion transactions for tax years beginning before January 1, 2007. The department shall adopt rules, issue forms and instructions, and take any other action that it considers necessary to implement the program.

(2) An eligible taxpayer may elect to participate in the program with respect to any tax year to which the program applies under either subsection (3) or (4). The election must be made for all tax years for which the taxpayer will participate, and a separate election for different tax years or for different transactions in different tax years is not allowed. The election must be made in the form and manner prescribed by the department and, once made, is irrevocable.

(3) If an eligible taxpayer elects to participate under this subsection (3):

(a) the department shall waive all penalties applicable to the underreporting or underpayment of Montana income or corporation license tax attributable to the use of tax evasion transactions for the tax years for which the taxpayer voluntarily complies, including penalties imposed under [sections 25 through 37];

(b) except as otherwise provided in this section, the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under this section if the penalty imposed relates to an amount of Montana income or

corporation license tax assessed or paid prior to September 1, 2007; and

(d) the taxpayer may not file a claim for credit or refund with respect to the tax evasion transactions for that tax year or for any amounts paid under the program.

(4) If an eligible taxpayer elects to participate under this subsection (4):

(a) the department shall waive any penalty imposed under [sections 25 through 37] with respect to disclosure of tax evasion transactions and underpayment of Montana income and corporation license tax resulting from the use of tax evasion transactions for any tax years for which the taxpayer voluntarily complies, but may not waive penalties imposed prior to [the effective date of sections 25 through 37];

(b) except as otherwise provided in subsection (5) or (6), the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under this section if the penalty imposed relates to an amount of Montana income or corporation license tax assessed or paid prior to September 1, 2007;

(d) the fact a taxpayer participated in the program may not be considered evidence the taxpayer engaged in a tax evasion transaction;

(e) any penalties that are not waived are considered assessed upon the due date of the return, determined without regard to extensions, upon which the amount should have been paid;

(f) the taxpayer may file a claim for credit or refund as provided in Title 15, chapter 30 or 31, with respect to the tax year; and

(g) notwithstanding 15-1-211, the taxpayer may not file an appeal until after either of the following:

(i) the department issues a final determination with respect to the transactions at issue; or

(ii) the earlier of:

(A) the date that is 180 days after the date of a final determination by the internal revenue service with respect to the transactions at issue; or

(B) the date that is 4 years after the date that the claim for refund was filed or 1 year after the full payment of all Montana income or corporation license tax, including penalty and interest.

(5) The provisions of 15-1-211(2)(c) and (4)(c) and 15-2-302(2) do not apply to claims filed under this section.

(6) The department may enter into an installment payment agreement in lieu of full payment of the entire amount of Montana income or corporation license tax and interest due for the tax year that is attributable to the use of the tax evasion

transaction. Any installment payment agreement authorized by this subsection must include interest on the unpaid amount at the rate prescribed by 15-1-216. Failure by the taxpayer to fully comply with the terms of the installment payment agreement renders the waiver of penalties void, and the total amount of tax, interest, and all penalties is immediately due and payable.

(7) After December 31, 2007, the department may issue a deficiency assessment upon an amended return filed by an eligible taxpayer, impose penalties, or initiate criminal action with respect to the difference between the amount shown on that return and the correct amount of tax. The penalty relief provided in subsection (3) or (4) does not apply to any portion of the underpayment attributable to a tax evasion transaction not paid to the state.

(8) Any correspondence mailed by the department to a taxpayer at the taxpayer's last-known address outlining the program constitutes a contact for purposes of [section 27(9)].

(9) (a) In addition to any other authority to examine returns for the purpose of improving state tax administration, the department may inquire into the facts and circumstances related to the use of tax evasion transactions to underreport the tax liabilities for which a taxpayer has participated in the program under [sections 38 through 40].

(b) A taxpayer shall cooperate fully with inquiries described in subsection (9)(a).

(c) Failure by a taxpayer to fully cooperate in an inquiry described in subsection (9)(a) renders the waiver of penalties under [sections 38 through 40] void, and the taxpayer may be assessed any penalties that may apply."

Insert: "NEW SECTION. **Section 41. Short title.** [Sections 41 through 46] may be cited as the "Montana Real Estate Backup Withholding Act"."

Insert: "NEW SECTION. **Section 42. Definitions.** As used in [sections 41 through 46], the following definitions apply:

(1) "Certified calculated gain" means the gain the transferor certifies in writing to the department, under penalty of false swearing as provided in 45-7-202, that the transferor will realize on a disposition of Montana real estate.

(2) "Improvements" has the meaning provided in 15-1-101.

(3) "Montana real estate" means real estate or improvements located in Montana.

(4) "Principal residence" means a principal residence within the meaning of section 121 of the Internal Revenue Code, 26 U.S.C. 121.

(5) "Real estate" has the meaning provided in 15-1-101.

(6) "Sales price" means the total consideration for the transfer of Montana real estate, including the market value of any property transferred to the transferor, and any liability assumed or taken subject to the sales price.

(7) "Transferor" means any person or entity disposing of Montana real estate."

Insert: "NEW SECTION. **Section 43. Withholding required on sale or exchange of Montana real estate -- rate.** Except as provided in [section 44], there must be withheld from the proceeds from a sale or exchange of Montana real estate an amount equal to the lesser of:

(1) 2.5% of the sales price of the Montana real estate conveyed; or

(2) the amount of the transferor's certified calculated gain multiplied by the highest rate of tax provided for in 15-30-103."

Insert: "NEW SECTION. **Section 44. Withholding -- application not required.** Withholding is not required on the transfer of Montana real estate under the provisions of [section 43] if:

(1) the sales price of the Montana real estate conveyed is less than $100,000;

(2) the transfer occurs:

(a) pursuant to a power of sale under a mortgage or deed of trust;

(b) as the result of a decree of foreclosure; or

(c) by deed in lieu of foreclosure; or

(3) the transferor establishes that:

(a) the transferor is an individual who is a Montana resident;

(b) the Montana real estate being transferred is the principal residence of the transferor or was the principal residence of a decedent;

(c) the last use of the property being transferred was by the transferor as the transferor's principal residence;

(d) the Montana real estate has been compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033, and the transferor intends to acquire property similar or related in service or use so that the gain is not recognized under the provisions of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033;

(e) the Montana real estate is being relinquished in an exchange in which gain and loss is not recognized pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. 1031; or

(f) the transferor is a corporation, a pass-through entity, or a disregarded entity incorporated or organized under the laws of the state of Montana."

Insert: "NEW SECTION. **Section 45. Reporting and remittance.** (1) The transferor shall report to the department under oath, on a form prescribed by the department, all information necessary to compute the amount withheld pursuant to [section 43] or to establish that the transferor is not required to withhold pursuant to [section 44].

(2) Within 5 business days of closing on the sale or exchange of Montana real estate, the transferor shall file the report and remit the amount withheld, if any, to the department.

(3) A copy of the report and a copy of the payment, if any, for withholding must be attached to the realty transfer

certificate required by 15-7-305. The county clerk and recorder may not record any deed or other instrument transferring title to Montana real estate if the copies required by this section are not provided.

(4) The department may not change any ownership records used for the assessment or taxation of Montana real estate unless the copies required by subsection (3) are attached to the realty transfer certificate.

(5) Any amount required to be paid pursuant to [section 43] and remitted to the department pursuant to this section is considered a payment on the account of the transferor for the purposes of individual income tax under Title 15, chapter 30, or for the purposes of the corporation license tax or corporation income tax under Title 15, chapter 31. If the transferor is a pass-through entity, the payment is considered a payment on the account of the pass-through entity's shareholders, partners, or members, as applicable."

Insert: "NEW SECTION. **Section 46. Rulemaking authority.** The department shall adopt rules to implement and administer [sections 41 through 46]."

Insert: "Section 47. Section 7-4-2623, MCA, is amended to read:

"7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages that may result and is punishable as provided in this code if the county clerk to whom an instrument is delivered for record:

(1) neglects or refuses to record the instrument within reasonable time after receipt except when the information required by law to record the instrument is not provided;

(2) falsely records an instrument or records an instrument in any other manner than as directed in this part;

(3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the proper entries in the indexes; or

(4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter in the records.""

Insert: "Section 48. Section 7-6-1502, MCA, is amended to read:

"7-6-1502. Resort community taxing authority -- specific delegation -- limitation. As required by 7-1-112 and subject to subsection (2) of this section, 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507.

(2) The power delegated in subsection (1) does not include the power to require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort tax.""

Insert: "Section 49. Section 7-6-1505, MCA, is amended to read:

"7-6-1505. Resort tax administration -- intermediary not required to collect tax. (1) In this section, "governing body"

means:

(a) the governing body of a resort community;

(b) if the resort tax has been approved by the electors of a resort area, the board of county commissioners; or

(c) if the electors of the resort area establish a resort area district, the district board of directors.

(2) Not less than 30 days prior to the date that the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax.

(5) The governing body of a resort area or the board of

county commissioners on behalf of a resort district may not require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort area tax.""

Insert: "Section 50. Section 15-1-102, MCA, is amended to read:

"15-1-102. Person defined. As used in this title, ~~(~~except chapters 30 and 31~~)~~, unless the context indicates otherwise, the term "person" means an individual, corporation, ~~(~~domestic or foreign~~)~~, partnership, disregarded entity as defined in 15-30-101, association, joint-stock company, or syndicate.""

Renumber: subsequent sections

5. Page 2, line 26.
Strike: "shall"
Insert: "may"

6. Page 2, line 30.
Strike: "shall"
Insert: "may"

7. Page 3.
Following: line 1
Insert: "(4) (a) Unless otherwise provided by law and except as provided in subsection (4)(b), upon written request of the department, state agencies shall provide to the department relevant taxpayer information in their possession.

(b) Unless otherwise provided by law, confidential criminal justice information, as defined in 44-5-103, in the possession of a state agency that may be evidence of fraud pursuant to 15-1-216 must be provided to the appropriate department personnel.

(5) Unless otherwise provided by law, the department may exchange updated taxpayer name and address information with other state agencies."

Insert: "Section 52. 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 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.

(2) (a) (i) Except as provided in ~~subsection~~ subsections (2)(a)(ii) and (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of ~~1.2%~~ 1% a month ~~or fraction of a month~~ on the unpaid tax. The penalty may not exceed 12% of the tax due.

(ii) A penalty under this subsection (2)(a) may not be imposed on a taxpayer subject to taxation under 15-30-103 if, subject to the conditions of 15-30-241(1)(a)(i), the taxpayer pays, when due, at least 90% of the tax for the current year.

(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. The penalty may not exceed 15% of the tax due.

(c) The penalties provided in subsections (2)(a) and (2)(b) on delinquent taxes and on deficiency assessments are computed from the original due date of the return until the tax is paid. The penalty 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.

(d) (i) There is a penalty for substantial understatement of income tax liability under chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the greater of 10% of the tax required to be shown on the return for the tax year or $2,500.

(ii) There is a penalty for substantial understatement of tax liability under those taxes and matters subject to 15-1-211(1)(a), except chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the lesser of 10% of the tax required to be shown on the return for the tax year or $500,000.

(iii) Except as provided in subsection (2)(d)(iv), the penalty for substantial underpayment of tax liability must be assessed at 20% of the portion of the underpayment to which this section applies.

(iv) The penalty for substantial underpayment of tax liability due to fraud, as defined in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, must be assessed at 75% of the portion of the underpayment to which this section applies.

~~(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.~~

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, or fraudulently, as described in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, 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 greater of $1,000 or 15% of the tax liability a month. The penalty may not exceed 75% of the tax liability. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) An individual who purposely or knowingly files, renders, or signs a false or fraudulent return or purposely or knowingly supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than $20,000, imprisoned for not more than 5 years, or both.

(b) A corporation, partnership, or other entity, an officer

or employee of a corporation, or a member or employee of a partnership or other entity that purposely or knowingly files, renders, or signs a false or fraudulent return or purposely or knowingly supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned for not more than 5 years, or both.

~~(4)~~(5) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection ~~(4)(a)(i)~~ (5)(a)(i) for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ (5)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) 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. 6621, for the fourth quarter of the preceding year ~~or 8%, whichever is greater~~.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% a year.

(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.

~~(5)~~(6) (a) Except as provided in subsection ~~(5)(b)~~ (6)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and 85-2-276].

(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.

~~(6)~~(7) 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)~~(8) Penalty and interest must be calculated and assessed commencing with the due date of the return.

~~(8)~~(9) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)~~(10) 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)~~ (5)(a)(i) or (5)(a)(ii), as applicable. (Bracketed language in subsection ~~(5)(a)~~ (6)(a) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)""

Insert: "Section 53. Section 15-1-706, MCA, is amended to read:

"15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment. The sheriff is entitled to fees or compensation as provided by law incurred in executing upon the judgment. The amount of the fees or compensation must be added to the amount of the warrant.

(2) A notice of levy may be made by electronic means ~~of a~~ or by certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to ~~all pay periods beginning during the 120-day period~~ earnings due on or after the date of service of the notice of levy through the expiration of the levy.

(4) A sheriff or agent shall return a warrant, along with any funds collected, within ~~90~~ 120 days of the date of the warrant.

(5) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.""

Insert: "Section 54. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of ~~1,200~~ 5,000 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction,

or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) Fifty percent of the market value of new rural telecommunication property is exempt from tax for the tax year the property is placed in service and for the nine succeeding tax years. As used in this subsection, "new rural telecommunication property" means property included in subsection (1)(g) that is

placed in service after January 1,2007.

~~(4)~~(5) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

~~(5)~~(6) Class five property is taxed at 3% of its market value.""

Insert: "Section 55. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property -- description -- taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) The first $80,000 of market value of class eight property ~~of a person~~ owned by an individual or business entity ~~that owns an aggregate of $20,000 or less in market value of class eight property~~ is exempt from taxation.

(b) (i) The department shall, by rule, establish reporting requirements that would not allow multiple business identities to be formed to obtain multiple exemption thresholds for what are functionally single businesses. The rules may require individual and taxpayer identification numbers for pass-through entities, as defined in 15-30-101, and their owners, partners, and officers to allow the department to track exemptions through the entities.

(ii) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(iii) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation.""

Insert: "Section 56. Section 15-6-219, MCA, is amended to read:

"15-6-219. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) items of personal property with a market value of less than $100;

~~(1)~~ (2) harness, saddlery, and other tack equipment;

~~(2)~~ (3) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are

used to:

(a) construct, repair, and maintain improvements to real property; or

(b) repair and maintain machinery, equipment, appliances, or other personal property;

~~(3)~~ (4) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

~~(4)~~ (5) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;

~~(5)~~ (6) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than $15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(6)~~ (7) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and

~~(7)~~ (8) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.""

Insert: "Section 57. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone (including commercial mobile radio service as defined in 47 CFR 20.3), microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating

facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.""

Insert: "Section 58. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, ~~(~~26 U.S.C. 1362~~)~~ is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means ~~a business entity~~:

(a) a business entity that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; ~~or~~

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~(~~26 U.S.C. 1361(b)(3)~~)~~;

(c) a grantor trust; or

(d) a qualified real estate investment trust subsidiary that is not treated as a separate corporation as provided in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a

dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Grantor trust" means a trust any portion for which the grantor or another person is treated as owner as provided in Chapter 1, Subchapter J, Part I, Subpart E, of the Internal Revenue Code, 26 U.S.C. 671, et seq.

~~(10)~~(11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~(~~26 U.S.C. 61~~)~~ or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, ~~(~~26 U.S.C. 85~~)~~ as amended.

~~(11)~~(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

~~(12)~~(13) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(13)~~(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(14)~~(15) "Knowingly" is as defined in 45-2-101.

~~(15)~~(16) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(16)~~(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(17)~~(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(18)~~(19) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in

the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(19)~~ (20) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(20)~~ (21) "Nonresident" means a natural person who is not a resident.

~~(21)~~ (22) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(22)~~ (23) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(23)~~ (24) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal

income tax purposes.

~~(24)~~ (25) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(25)~~ (26) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, ~~(26 U.S.C. 401)~~, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, ~~(26 U.S.C. 401 through 408)~~, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(26)~~ (27) "Purposely" is as defined in 45-2-101.

(28) "Real estate investment trust" means a real estate investment trust as defined in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

~~(27)~~ (29) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(28)~~ (30) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(29)~~ (31) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362)~~, is in effect.

~~(30)~~ (32) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(31)~~ (33) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(32)~~ (34) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in

this chapter.

~~(33)~~ (35) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation.""

"Section 59. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection

(2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113~~(1)(a)(ii)~~ (1)(a)(ii)(B);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in

15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-113 and 15-31-114.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or

federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

~~(8)~~ (7) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)~~ (8) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated

geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Renumber: subsequent sections

8. Page 3, line 6.
Strike: "$2,560"
Insert: "$1,900"

9. Page 3, line 7.
Strike: "$2,560"
Insert: "$1,900"

10. Page 3, line 10.
Strike: "$2,560"
Insert: "$1,900"

11. Page 3, line 12.
Strike: "$2,560"
Insert: "$1,900"

12. Page 3, line 16.
Strike: "$2,560"
Insert: "$1,900"

13. Page 3, line 18.
Strike: "$2,560"
Insert: "$1,900"

14. Page 3, line 28.
Strike: "$2,560"
Insert: "$1,900"

15. Page 3, line 30.
Strike: "$800"
Insert: "the exemption amount provided in subsection (2)(a)"

16. Page 4, lines 1 through 4.
Following: "a" on line 1
Insert: "qualifying"
Following: "child" on line 1
Strike: "of" on line 1 through "is" on line 4
Insert: "as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152, including"
Following: "student" on line 4
Insert: "as defined in that section"

17. Page 4, line 8 through line 17.
Strike: subsections (c) and (d) in their entirety

18. Page 4, line 22 through page 5, line 25.
Strike: section 4 in its entirety
Insert: **"Section 61.** Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts -- exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;

(b) taxes paid or accrued within the tax year, including

but not limited to up to $5,000 of federal income tax paid, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code, 26 U.S.C. 642(c);

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6).""

Insert: "Section 62. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing -- extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be annexed to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

(2) ~~An automatic 4-month extension of time for filing a return is allowed, provided that:~~

~~(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time~~

~~for filing a return is not an extension of time for the payment of taxes.~~

~~(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~ A taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216. The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. An automatic extension for filing a return or an additional extension of time for filing a return for good cause is not an extension of time for the payment of taxes.

~~(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b). The extension of time for filing a return is not an extension of time for the payment of taxes.~~""

Insert: "Section 63. 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 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~~,~~:

(i) 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; or

(ii) the claim for a credit or refund is made within 1 year of the determination of the 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 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 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~~ tax 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.""

Insert: "Section 64. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax credit ~~for elderly~~ -- definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting $6,300 from gross household income.

(9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code ~~of the United States~~, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent.""

Insert: "Section 65. Section 15-30-172, MCA, is amended to read:

"15-30-172. Residential property tax credit ~~for elderly~~ -- eligibility. (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

~~(a) must have reached age 62 or older during the claim period for which relief is sought;~~

~~(b)~~ (a) must have resided in Montana for at least 9 months of that period;

~~(c)~~ (b) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period; and

~~(d)~~ (c) must have less than $45,000 of gross household income.

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that the person occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim

period.""

Insert: "Section 66. Section 15-30-173, MCA, is amended to read:

"15-30-173. Residential property tax credit ~~for elderly~~ -- disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to ~~his~~ the claimant's homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount.""

Insert: "Section 67. Section 15-30-174, MCA, is amended to read:

"15-30-174. Residential property tax credit ~~for elderly~~ -- filing date. (1) Except as provided in ~~subsection~~ subsections (2) and (4), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(4) The department or an individual may revise a return and make a claim under 15-30-171 through 15-30-179 within 5 years from the last day prescribed for filing a claim for relief.""

Insert: "Section 68. Section 15-30-175, MCA, is amended to read:

"15-30-175. Residential property tax credit ~~for elderly~~ -- form of relief. Relief under 15-30-171 through 15-30-179 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the department shall refund the amount of the excess ~~shall be refunded~~ to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter.""

Insert: "Section 69. Section 15-30-176, MCA, is amended to read:

"15-30-176. Residential property tax credit ~~for elderly~~ -- computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) ~~In the case of~~ When a claimant ~~who~~ owns the homestead for which a claim is made, the credit is the amount of property tax billed less the deduction specified in subsection (4).

(2) ~~In the case of~~ When a claimant ~~who~~ rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) ~~In the case of~~ When a claimant ~~who~~ both owns and rents

the homestead for which a claim is made, the credit is:

(a) the amount of property tax billed on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$0 - $999	$0
$1,000 - $1,999	$0
$2,000 - $2,999	the product of .006 times the household income
$3,000 - $3,999	the product of .016 times the household income
$4,000 - $4,999	the product of .024 times the household income
$5,000 - $5,999	the product of .028 times the household income
$6,000 - $46,999	the product of .032 times the household income
$7,000 - $7,999	the product of .035 times the household income
$8,000 - $8,999	the product of .039 times the household income
$9,000 - $9,999	the product of .042 times the household income
$10,000 - $10,999	the product of .045 times the household income
$11,000 - $11,999	the product of .048 times the household income
$12,000 & over	the product of .050 times the household income

(5) For a claimant whose household income is $35,000 or more but less than $45,000, the amount of the credit is equal to the credit calculated under this section multiplied by the decimal equivalent of a percentage figure according to the following table:

Gross household income	Percentage of credit allowed
$35,000 - $37,500	~~40%~~ 80%
$37,501 - $40,000	~~30%~~ 60%
$40,001 - $42,500	~~20%~~ 40%
$42,501 - $44,999	~~10%~~ 20%
$45,000 or more	0%

(6) The credit granted may not exceed:

(a) $1,000 if the claimant is 62 years of age or older; or

(b) $400 if the claimant is younger than 62 years of age.""

Insert: "Section 70. Section 15-30-177, MCA, is amended to read:

"15-30-177. Residential property tax credit ~~for elderly~~ --

limitations. (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to a claim for relief.

(2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.""

Insert: "Section 71. Section 15-30-178, MCA, is amended to read:

"15-30-178. Residential property tax credit ~~for elderly~~ -- proof of claim. A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim for relief. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim for relief.""

Insert: "Section 72. Section 15-30-179, MCA, is amended to read:

"15-30-179. Residential property tax credit ~~for elderly~~ -- denial of claim. A person filing a false or fraudulent claim for relief under the provisions of 15-30-171 through 15-30-179 shall be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt ~~shall bear~~ bears interest from the date of the original payment of claim until paid, at the rate of 1% per month.""

Insert: "Section 73. Section 15-30-301, MCA, is amended to read:

"15-30-301. Information agents' duties. (1) ~~Every~~ Each information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the ~~taxable~~ tax year upon which ~~no~~ withholding tax has not been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, 26 U.S.C. 6049, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, 26 U.S.C. 401(c)(3);

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that are required to be reported under rules or regulations of the United States

department of the treasury.

(2) The return must be made under ~~the regulations~~ rules adopted by the department and in the form and manner prescribed by the department. For ease of reporting, the form must be as nearly identical to the comparable federal form as possible.""

Insert: "Section 74. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; ~~or~~

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311; or

(d) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability partnership that filed a tax return or report required by this chapter.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice:

(i) all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(ii) all information necessary for the investigation and prevention of medicaid fraud, for the purposes of enabling the department of justice to administer 53-2-501; and

(iii) all information necessary for investigation and prevention of crimes and fraud, for the purposes of enabling the department of justice to administer 44-2-115;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is

the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;

(i) to the commissioner of insurance's office information necessary for the administration of Title 33;

(j) to the office of securities commissioner information necessary for the administration of Title 30, chapter 10.""

Insert: "Section 75. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities -- information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source

income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal

identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due.

(5) The department shall waive the reporting requirements provided in this section for a grantor trust that establishes that the trust's Montana source income will be fully accounted for in individual income tax returns, corporation license tax returns, or corporation income tax returns filed with the department."

Insert: "Section 76. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income, ~~and~~ net income, and real estate investment trust income defined -- computation of gross income of corporations not exempt from taxation. (1) For the purposes of this chapter, the following definitions apply:

~~(1)~~ (a) (i) ~~The term "gross income"~~ "Gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes ~~and.~~ increased as provided in subsection (1)(a)(ii) and decreased as provided in subsection (1)(a)(iii).

~~(a)~~(ii) ~~including.~~ The following items are included in determining a corporation's gross income:

~~(i)~~(A) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5) ~~as that section may be amended or renumbered~~; and

~~(ii)~~(B) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337 ~~as those sections may be amended or renumbered~~, attributable to stockholders, either individual or corporate, not subject to Montana income or license

tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law~~; and~~.

~~(b)~~(iii) ~~excluding~~ The following items are excluded in determining a corporation's gross income:

(A) the gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337 ~~as those sections may be amended or renumbered~~, when the gain is required to be recognized by the liquidating corporation pursuant to subsection ~~(1)(a)(ii)~~ (1)(a)(ii)(B) of this section; and

(B) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-114 and this section.

(b) "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(2)~~(c) (i) ~~The term "net income"~~ "Net income", except as provided in subsection (1)(c)(ii), means the gross income of the corporation less the deductions set forth in 15-31-114.

(ii) If a corporation is taxed as a real estate investment trust as provided in sections 856 through 859 of the Internal Revenue Code, 26 U.S.C. 856 through 859, the term means real estate investment trust income.

(d) "Real estate investment trust income" means real estate investment trust taxable income, as defined in section 857(b)(2) of the Internal Revenue Code, 26 U.S.C. 857(b)(2), modified as follows:

(i) the exclusion for an amount equal to the net income from foreclosure property provided for in section 857(b)(2)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(D), is not allowed;

(ii) the deduction for an amount equal to the tax imposed for failure to meet certain requirements for the tax year provided for in section 857(b)(2)(E) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(E), is not allowed;

(iii) the exclusion for an amount equal to any net income derived from prohibited transactions provided for in section 857(b)(2)(F) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(F), is not allowed; and

(iv) the deduction for dividends paid provided for in section 561, 858, or 860 of the Internal Revenue Code, 26 U.S.C. 561, 858, or 860, or in any other section of the Internal Revenue Code is not allowed.

~~(3)~~(2) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax

according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."
"

Insert: "Section 77. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the ~~taxable~~ tax year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this ~~section~~ subsection (1)(a), and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the ~~taxable~~ tax year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the ~~taxable~~ tax period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction

if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part ~~must be construed to~~ include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170~~, as amended~~.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), ~~as that section may be amended or renumbered,~~ there is allowed a deduction for dividends paid, as defined in section 561

of the Internal Revenue Code of 1986, 26 U.S.C. 561~~, as that section may be amended or renumbered~~, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245~~, as those sections may be amended or renumbered~~.

(4) A deduction is not allowed for any dividend received from:

(a) a regulated investment company, including without limitation:

(i) a capital gains dividend as defined in section 852(b)(3) of the Internal Revenue Code, 26 U.S.C. 852(b)(3); and

(ii) any amount treated as a dividend under section 854(b) of the Internal Revenue Code, 26 U.S.C. 854(b); and

(b) a real estate investment trust including, without limitation:

(i) a capital gain dividend as defined in section 857(b)(3)(C) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(C);

(ii) a capital gain dividend treated by the shareholder or holder of a beneficial interest in a real estate investment trust as a gain from the sale or exchange of a capital asset held for more than 1 year as described in section 857(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(B); and

(iii) the amount designated by a real estate investment trust and includable in computing the long-term capital gains of a shareholder or holder of a beneficial interest as described in section 857(b)(3)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(D)."

Insert: "Section 78. Section 15-31-119, MCA, is amended to read:

"15-31-119. Net operating losses -- carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the ~~taxable~~ tax period plus the net operating loss carrybacks to the ~~taxable~~ tax period.

(2) (a) ~~The~~ Except as provided in subsection (2)(b), the term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection ~~(6)~~(5).

(b) The net operating loss of a real estate investment trust must be computed with the adjustments provided in 15-31-113(1)(d).

~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods~~

~~preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)~~(3) A net operating loss for any ~~taxable~~ tax period ~~ending after December 31, 1975~~, in addition to being a net operating loss carryback to each of the three preceding ~~taxable~~ tax periods, must be a net operating loss carryover to each of the seven ~~taxable~~ tax periods following the ~~taxable~~ tax period of the loss.

~~(5)~~(4) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other ~~taxable~~ tax years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior ~~taxable~~ tax periods to which the loss was carried. For purposes of this subsection, the net income for the prior ~~taxable~~ tax period must be computed with the modification specified in subsection ~~(6)(b)~~ (5)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any ~~taxable~~ tax period after the loss period, and the net income ~~so~~ that is computed may not be considered to be less than zero.

~~(6)~~(5) The modifications referred to in subsection ~~(2)~~ (2)(a) are as follows:

(a) The net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Except to the extent provided in section 1382(b) of the Internal Revenue Code, 26 U.S.C. 1382(b), a deduction for dividends paid or considered paid is not allowed.

(d) Any net operating loss carried over to any ~~taxable~~ tax year must be calculated under the provisions of this section effective for the ~~taxable~~ tax year for which the return claiming the net operating loss carryover is filed.

~~(7)~~(6) A net operating loss deduction may be allowed only with regard to losses attributable to the business carried on within the state of Montana.

~~(8)~~(7) In the case of a merger of corporations, the surviving corporation ~~may~~ is not ~~be~~ allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity ~~may~~ is not ~~be~~ allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

~~(9)~~(8) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

~~(10)~~(9) The net operating loss deduction must be allowed with respect to ~~taxable~~ tax periods.

~~(11)~~(10) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only.

The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

~~(12)~~ (11) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code ~~of 1986, as that section may be amended or renumbered~~ 26 U.S.C. 851(a) or 851(b).""

Insert: "Section 79. Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election -- inclusion of tax havens. (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 ~~that has more than 20% of its payroll and property assignable to locations inside the United States~~. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation that is in a unitary relationship with the taxpayer incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; ~~or~~

(f) a corporation that is in a unitary relationship with the taxpayer and that earns more than 20% of its income, directly or indirectly, from intangible property or service-related activities that are deductible against the business income of other members of the water's-edge group, to the extent of that income and the apportionment factors related to that income; or

~~(f)~~ (g) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas,

Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection ~~(1)(f)~~ (1)(g).

(3) A corporation that is in a unitary relationship with the taxpayer and is not described in subsections (1)(a) through (1)(e) shall include the portion of its income derived from or attributable to sources within the United states, as determined under the Internal Revenue Code without regard to federal treaties, and its apportionment related to the income.""

Insert: "Section 80. Section 15-31-323, MCA, is amended to read:

"15-31-323. Apportionment factors -- inclusion of tax havens. (1) For purposes of 15-31-322(1)(a) through ~~(1)(e)~~ (1)(f), the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

(2) For the purposes of 15-31-322~~(1)(f)~~(1)(g), income shifted to a tax haven, to the extent taxable, is considered income subject to apportionment.""

Insert: "Section 81. Section 15-31-324, MCA, is amended to read:

"15-31-324. Water's-edge election period -- consent -- change of election. (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter after the water's-edge election is considered to have consented to the election. The election must disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation incorporated in a tax haven as set forth in 15-31-322~~(1)(f)~~(1)(g), in which the taxpayer or common foreign parent owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.

(2) Except as provided in subsections (3) ~~and (4)~~ through (5), each water's-edge election must be for 3-year renewable periods.

(3) A water's-edge election may be changed by a taxpayer before the end of each 3-year period only with the permission of

the department. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

(4) A taxpayer subject to the provisions of 15-31-322~~(1)(f)~~(1)(g) who has a water's-edge election that is in effect for tax periods beginning both before and after October 1, 2003, may rescind ~~the~~ that specific election for any tax period beginning after October 1, 2003.

(5) A taxpayer subject to the provisions of 15-31-322(1)(a), (1)(f), or (3) who has a water's-edge election that is in effect for tax periods beginning both before and after December 31, 2006, may rescind that specific election for any tax period beginning after December 31, 2006."

Insert: "Section 82. Section 15-31-326, MCA, is amended to read:

"15-31-326. Domestic disclosure spreadsheet -- inclusion of tax havens. (1) The department may require a taxpayer making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

(2) The department may require a taxpayer subject to the provisions of 15-31-322~~(1)(f)~~(1)(g) to disclose the same information for tax havens as is required for states in subsection (1)."

"Section 83. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~3~~ 5 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until ~~3~~ 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, ~~in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback~~ the overpayment may be refunded or credited within the period that expires on the 15th day of the 41st month following the close of the 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.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

Insert: "Section 84. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to knowingly divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20; or

(g) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability partnership that filed a tax return or report required by this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but

the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1);

(c) provide to the commissioner of insurance's office information necessary for the administration of Title 33; and

(d) provide to the office of securities commissioner information necessary for the administration of Title 30, chapter 10.

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction.""

Insert: "Section 85. Section 15-31-603, MCA, is amended to read:

"15-31-603. List of entities furnished by and to secretary of state. (1) On or before the 15th day of each month, the secretary of state shall provide a list of all new corporations, business trusts, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, chapters 1, 4, 5, 8 through 10, and 12, to the department ~~of revenue~~. The list must include the following information:

~~(1)~~ (a) the name of the entity;

~~(2)~~ (b) the principal office of the entity;

~~(3)~~ (c) the name and address of the registered agent of the entity in Montana, if applicable; ~~and~~

(d) the federal tax identification number of the entity, if applicable; and

~~(4)~~ (e) other information that the director of the department ~~of revenue~~ may require.

(2) On or before December 15 of each year, the department shall furnish to the secretary of state a list of all corporations, business trusts, limited partnerships, limited liability companies, and limited liability partnerships that have filed a tax return or report required by chapter 30 or 31. The list must include the following information:

(a) the name of the entity;

(b) the address of the entity; and

(c) the business activity code of the entity, if available.""

Insert: "Section 86. Section 15-32-109, MCA, is amended to read:

"15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of ~~subsection (2)~~ subsections (4) and (5), a resident individual taxpayer may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, lighting, heating, or cooling system in the building~~, so~~ as long

as ~~either type of investment is~~ the investments are for an energy conservation purpose, in an amount not to exceed ~~$500~~ $800.

(2) (a) Subject to the restrictions of subsections (4) and (5), a resident individual taxpayer with a family income of less than or equal to the amount established in subsection (2)(b) may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, lighting, heating, or cooling system in the building as long as the investments are for an energy conservation purpose, in an amount not to exceed $800.

(b) To be eligible for the credit allowed by this subsection (2), a single taxpayer may not have a Montana adjusted gross income in excess of $11,280 and married couples filing jointly or separately on the same form may not have a Montana adjusted gross income in excess of $14,590. The department, by November 1 of each year, shall multiply the income amounts in this subsection (2)(b) by the inflation factor for that year and round the product to the nearest $10. The resulting adjusted income is effective for that tax year and must be used in determining the eligibility for the credit allowed by this subsection (2).

(3) Subject to the restrictions of subsections (4) through (7), a credit of 25% of expenditures for capital investments by a limited liability company, an S. corporation, a partnership, or a disregarded entity that is not a limited liability company, in the physical attributes of a residential rental building or in the installation of a water, lighting, refrigeration, heating, or cooling system in the building, as long as the investments are for an energy conservation purpose, in an amount not to exceed $800, may be claimed as provided in subsection (7) by owners of the entity against their tax liability under chapter 30.

(4) An expenditure by a taxpayer or pass-through entity may be claimed for credit under subsection (1), (2), or (3) but may be claimed under only one of those subsections.

~~(2)~~(5) The ~~credit~~ credits under ~~subsection~~ subsections (1)~~:~~
~~(a) may not exceed the taxpayer's tax liability; and~~
~~(b) is~~ through (3) are subject to the provisions of 15-32-104.

(6) The credits under subsections (1) and (3) may not exceed the taxpayer's tax liability. If the amount of the tax credit under subsection (2) exceeds the taxpayer's income tax liability for the tax year, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the claimant has no taxable income.

(7) If the expenditure was made by an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the expenditure was made by a limited liability company that is treated as an S. corporation for income tax purposes, the members may claim a pro rata share of the tax credit. If the expenditure was made by a partnership or by a limited liability company that

is treated as a partnership for income tax purposes, the credit may be claimed by the partners or members who are individuals, trusts, or estates and who are subject to tax under chapter 30 in the same proportion used to report the partnership's income or loss for Montana income tax purposes. If the expenditure was made by a limited liability company that is a disregarded entity or by another disregarded entity and if the disregarded entity's items of income, deduction, and credit are reported in the Montana income tax returns of an individual, the credit may be claimed by the individual.""

Insert: "Section 87. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement ~~shall~~ must indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such~~ any other information ~~as~~ that the department may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ must be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ the operator's mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~.""

Insert: "Section 88. Section 15-36-313, MCA, is amended to read:

"15-36-313. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file penalty and interest. (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall~~, immediately after the time has expired,~~ ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to 15-1-206.""

Insert: "Section 89. Section 15-39-105, MCA, is amended to read:

"15-39-105. Penalties and interest for violation. (1) ~~(a)~~ A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

~~(b)~~ (2) A person who fails to file the statement required by 15-39-102 ~~and~~ or to pay the tax before the due date must be assessed ~~a penalty~~ penalties and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

~~(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216(1)(d).~~""

Insert: "Section 90. Section 15-39-107, MCA, is amended to read:

"15-39-107. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the statement 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)~~ 15-1-216(2) must be added to the amount of the deficiency.""

Insert: "Section 91. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(7), by the total amount of the contributions, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident.""

Insert: "Section 92. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)~~(7).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross

income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.""

Insert: "Section 93. Section 15-65-101, MCA, is amended to read:

"15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) (a) "Accommodation charge" means the fee charged ~~by the owner or operator of a facility~~ to the user for use of ~~the~~ a facility located in the state for lodging~~,~~.

(b) Accommodation charge includes amounts charged to the user for reserving use of the facility, processing the reservation, or providing any other service, including bath house facilities, in connection with a user's use of the facility for lodging.

(c) ~~but excluding~~ The term does not include separately stated charges for meals, transportation, entertainment, or any other similar charges unrelated to a user's use of the facility

for lodging or charges for rooms used for purposes other than lodging.

(2) (a) "Campground" means a place~~, publicly or privately owned,~~ used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) (a) "Facility" means a building or structure containing one or more individual sleeping rooms or suites~~, providing~~ that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) The term includes a facility or accommodations represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) For the purposes of administering the tax on accommodation charges imposed under Title 15, chapter 68, and the tax imposed on accommodation charges under this part, facility has the same meaning as accommodations, as defined in 15-68-101.

~~(b)~~ (d) The term does not include:

(i) any health care facility, as defined in 50-5-101~~;~~;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes~~;~~;

(iii) any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~;~~; or

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Intermediary" means a person, other than the owner or operator of the facility, who collects an accommodation charge from a user.

~~(5)~~ (6) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

~~(6)~~ (7) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

~~(7)~~ (8) "Resort area" means an area established pursuant to 7-6-1508.

~~(8)~~ (9) "Resort area district" has the meaning provided in

7-6-1531.

(10) "User" has the meaning provided in 15-68-101.""

"Section 94. Section 15-65-102, MCA, is amended to read:

"15-65-102. Rulemaking authority. The department ~~of revenue~~ shall adopt ~~such~~ rules ~~as~~ that may be necessary to implement and administer this part. Unless otherwise specifically provided by law, the provisions of Title 15, chapter 68, and this part must be interpreted and administered together. The department shall adopt rules and provide a single form for reporting taxes imposed under Title 15, chapter 68, and this part."

Insert: "Section 95. Section 15-65-111, MCA, is amended to read:

"15-65-111. Tax rate -- no advertising to absorb or refund tax. (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected from the user by the owner or operator of the facility or by an intermediary.

(2) ~~Accommodation charges do not include charges for rooms used for purposes other than lodging.~~ A person may not advertise, hold out, or state to the public or to any user that the tax imposed under this section will be absorbed or refunded.""

Insert: "Section 96. Section 15-65-112, MCA, is amended to read:

"15-65-112. Collection and reporting. (1) ~~The owner or operator of a facility~~ Except as provided in subsection (2), a person who collects an accommodation charge from a user shall:

(a) collect the ~~tax~~ taxes imposed by 15-65-111 and 15-68-102 ~~.~~; and

(b) on or before the end of the calendar month following the end of each calendar quarter:

~~(2) The owner or operator shall~~

(i) report to the department ~~of revenue, at the end of each calendar quarter,~~ the gross receipts collected during ~~that~~ the quarter attributable to accommodation charges ~~for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1)~~ and any additional information that the department requires; and

(ii) remit to the department with the report described in subsection (1)(b)(i) the taxes collected on accommodation charges during the calendar quarter.

(2) (a) Except as provided in subsection (2)(b), a report is not required for a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility described in 15-65-101(4)(d)(iii).

(b) The owner or operator of a facility described under subsection (2)(a) shall annually report, at a time prescribed by the department, the information that the department requests to verify the average daily accommodation charge.""

Insert: "Section 97. Section 15-65-113, MCA, is amended to read:

"15-65-113. Audits -- records -- revision of return. (1) The department ~~of revenue~~ may audit the books and records of ~~any~~

an owner or operator of a facility or an intermediary to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner, ~~or~~ operator, ~~of a facility~~ or intermediary or at any other convenient location.

(2) The department may request the owner or operator of a facility or an intermediary to provide the department with books, ~~ledgers, registers~~ papers, records, memoranda, or other documents ~~necessary to verify the correct amount of tax~~ as provided in 15-68-502(4).

(3) ~~The~~ Each owner or operator of a facility or intermediary shall maintain and have available for inspection by the department books, ~~ledgers, registers~~ papers, records, memoranda, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made~~,~~. ~~and the department thereafter is barred from revising any such~~ After the 5-year period, the department may not revise the return or ~~recomputing~~ recompute the tax due ~~thereon,~~ on the return. ~~and no~~ A proceeding in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within ~~such~~ the 5-year period.

(5) An owner or operator of a facility or an intermediary may file an application for revision ~~may be filed~~ of a return with the department ~~by an owner or operator of a facility~~ within 5 years from the original due date of the return.""

Insert: "Section 98. Section 15-65-114, MCA, is amended to read:

"15-65-114. Registration number -- application to department. (1) ~~The owner or operator of a facility~~ Each person that collects an accommodation charge from a user shall ~~apply to the department of revenue for a registration number~~ obtain a permit as provided in 15-68-402.

~~(2) The application must be made on a form provided by the department.~~

~~(3)~~(2) Upon completion ~~of the application~~ and delivery of the permit application to the department, the department ~~must~~ shall assign a registration number to the owner, operator, ~~or~~ facility, or intermediary, as appropriate.""

Insert: "Section 99. Section 15-65-115, MCA, is amended to read:

"15-65-115. Failure to pay or file -- ~~penalty and interest -- review -- interest~~ application of sales and use tax provisions. (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 or an intermediary 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 or the intermediary. The provisions of ~~15-1-211~~ 15-68-513, 15-68-514, and 15-68-516 apply to any assessment and collection of delinquent taxes by the department and to taxpayer objections and rights. ~~The taxpayer may seek review of the assessment pursuant to 15-1-211.~~

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

Insert: "Section 100. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing one or more individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, timeshare available for rental, vacation home rental, or bed and breakfast facility.

(c) For the purposes of administering the tax imposed on accommodation charges under Title 15, chapter 65, and the tax imposed on accommodation charges under this chapter, accommodations has the same meaning as facility, as defined in 15-65-101.

~~(c)~~ (d) The term does not include:

(i) a health care facility, as defined in 50-5-101~~,~~;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes~~,~~;

(iii) any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~,~~; or

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) "Accommodation charge" has the meaning provided in 15-65-101.

~~(2)~~(3) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

~~(3)~~(4) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the ~~rental vehicle~~ owner or operator of the rental vehicle business for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

~~(4)~~(5) ~~(a)~~ "Campground" ~~means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.~~

~~(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more~~ has the meaning provided in 15-65-101.

~~(5)~~(6) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(7) "Intermediary" means any person, other than the owner or operator of the accommodations or the owner or operator of a rental vehicle business, who collects an accommodation charge from a user or base rental charge from a purchaser, or both.

~~(6)~~(8) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the

transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 or 1% of the total required payments; or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

~~(7)~~ (9) (a) "Motor vehicle" means a light vehicle as defined in 61-1-101, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, a quadricycle as defined in 61-1-101, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

~~(8)~~ (10) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

~~(9)~~ (11) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

~~(10)~~ (12) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

~~(11)~~ (13) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

~~(12)~~ (14) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. The term includes an intermediary's collection of an accommodation charge from a user and an intermediary's collection of a base rental charge from a purchaser.

~~(13)~~ (15) "Sale" or "selling" means the transfer of property

for consideration or the performance of a service for consideration.

~~(14)~~(16) (a) "Sales price" applies to the measure subject to sales tax and, except as provided in subsections (16)(c) and (16)(d), means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (16)(a)(iii) through ~~(14)(a)(vii)~~ (16)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) When an intermediary collects an accommodation charge from a user, sales price means the accommodation charge.

(d) When an intermediary collects a base rental charge from a purchaser, sales price means the base rental charge.

~~(c)~~(e) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

~~(d)~~(f) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

~~(e)~~(g) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

~~(15)~~ (17) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102 and, in the case of accommodations, the tax imposed by 15-65-111.

~~(16)~~ (18) "Seller" means a person that makes sales, leases, or rentals of personal property or services. The term includes an intermediary that collects an accommodation charge from a user or a base rental charge from a purchaser, or both.

~~(17)~~ (19) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

~~(18)~~ (20) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.

(21) "User" means a purchaser to whom the use of accommodations is provided.""

Insert: "Section 101. Section 15-68-110, MCA, is amended to read:

"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) A person engaging in the business of selling property or services subject to taxation under this chapter shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to this chapter, obtain a seller's permit, as provided in 15-68-401, and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by 15-68-102 from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by 15-68-102 by any ~~retailer~~ person who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under this chapter.

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to this chapter shall provide to the department:

(a) the names and addresses of all of the person's agents operating within this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of

business within this state.

(6) If any application of this section is held invalid, the application to other situations or persons is not affected.""

Insert: "Section 102. Section 15-68-210, MCA, is amended to read:

"15-68-210. Nontaxability -- lease for subsequent lease. (1) Except as provided in subsection (2), ~~The~~ the lease of property is nontaxable if:

~~(1)~~ (a) the lease is made to a lessee who delivers a nontaxable transaction certificate; and

~~(2)~~ (b) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

(2) An intermediary's collection of an accommodation charge from a user or a base rental charge from a purchaser is taxable.""

Insert: "Section 103. Section 15-68-402, MCA, is amended to read:

"15-68-402. Permit application -- requirements -- place of business -- form. (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana, collecting accommodation charges for accommodations located in Montana, or collecting base rental charges for vehicles located in Montana that are subject to this chapter shall file with the department an application for a permit. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) ~~An~~ Except as provided in subsection (1)(c), an applicant who does not maintain an office or other place of business ~~and~~ in the state or who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(c) An intermediary who does not maintain an office or other place of business in the state shall provide a copy of the permit on request of the department or any user or purchaser.

(2) Each person or class of persons required to file a return under Title 15, chapter 65, or this chapter is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity.""

Insert: "Section 104. Section 15-68-501, MCA, is amended to

read:

"15-68-501. Liability for payment of tax -- security for ~~retailer~~ person without place of business -- penalty. (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A ~~retailer~~ person that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with this chapter and may be required to furnish adequate security, as provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the ~~retailer~~ person is liable for the taxes upon all property sold and services provided in this state, accommodation charges collected for accommodations located in this state, and base rental charges for vehicles located in this state in the same manner as a ~~retailer~~ person who maintains an office or other place of business within this state. The seller's permit provided for in 15-68-401 may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer or intermediary doing business within this state may not sell, solicit orders for, ~~or~~ deliver any property or services within Montana, collect any accommodation charges for accommodations located within Montana, or collect any base rental charges for vehicles located in Montana unless the principal, employer, intermediary, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of this chapter, the person is subject to a fine of not more than $100 for each separate transaction or event.""

Insert: "Section 105. Section 15-68-502, MCA, is amended to read:

"15-68-502. Returns -- payment -- electronic filing for intermediaries -- authority of department. (1) (a) Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department. Each person engaged in business within this state, ~~or~~ using property or services within this state that are subject to tax under this chapter, collecting an accommodation charge for an accommodation located in the state, or collecting a base rental charge for a vehicle located in the state shall file a return. ~~A~~ Except as provided in subsection (1)(b), a person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(b) An intermediary collecting accommodation charges for two or more accommodations within the state or accommodation charges and base rental charges shall file a single return on a form provided by the department. The department shall, subject to

the availability of resources, provide intermediaries with an electronic filing option for the reporting and remittance of the lodging facility use tax imposed under Title 15, chapter 65, and the sales and use tax imposed by this chapter.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer or intermediary required to collect the tax; and

(ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall keep records, render statements, make returns, and comply with the provisions of this chapter and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of this chapter, the department is authorized to examine or cause to be examined any books, papers, records, ~~or~~ memoranda, or other documents relevant to making a determination of the amount of tax due, whether the books, papers, records, ~~or~~ memoranda, or other documents are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, ~~or~~ memoranda, or other documents by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.""

Insert: "Section 106. Section 15-68-510, MCA, is amended to read:

"15-68-510. Vendor allowance. (1) A person filing a timely return under 15-68-502 may claim a quarterly vendor allowance for

each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed $1,000 a quarter. An intermediary filing a timely return under 15-68-502 may claim a quarterly vendor allowance in the amount of 5% of the tax determined to be payable to the state, not to exceed $1,000 a quarter. The vendor allowance does not apply to the lodging facility use tax collected under 15-65-112.

(2) The allowance may be deducted on the return.

(3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance.""

Insert: "Section 107. Section 15-68-512, MCA, is amended to read:

"15-68-512. Security -- limitations -- sale of security deposit at auction -- bond. (1) The department may require a retailer or an intermediary to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability, including the average tax liability for the tax imposed under Title 15, chapter 65, for the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer or an intermediary to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter.""

Insert: "Section 108. Section 15-68-516, MCA, is amended to read:

"15-68-516. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under 15-65-115 or this chapter, or both.

(b) If a tax imposed by 15-65-111 or this chapter, or both, 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.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.""

"Section 109. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before ~~state tax appeal board~~ department. A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the ~~state tax appeal board~~ department, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The ~~board~~ department shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the ~~board~~ department may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated. A final order by the department may be appealed to the state tax appeal board."

Insert: "Section 110. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; ~~and~~

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and

(h) the corporation's federal tax identification number.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

(5) The tax identification of the corporation may not be disclosed except to the department of revenue pursuant to 15-31-603.""

Insert: "Section 111. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company; and

(f) the limited liability company's tax identification number.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must

be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

(7) The tax identification number of the limited liability company may not be disclosed except to the department of revenue pursuant to 15-31-603.""

Insert: "Section 112. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels -- certain vehicles exempt from registration fees -- disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (18):

(2) (a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456; and

(iv) a new light vehicle that has an average estimated rating of at least 35 miles per gallon for highway driving, as reported in the current year's Fuel Economy Guide published by the U.S. department of energy and the U.S. environmental protection agency or as reported in another national guide that contains the ratings from the Fuel Economy Guide. To qualify for

the exemption under this subsection (2)(b)(iv), the first-time registration of the light vehicle must occur in Montana and the light vehicle must meet the conditions of a new motor vehicle as defined in 61-1-101. The exemption applies only to the initial registration period and to the subsequent registration period under 61-3-311 if the registration period is for 1 year. If the initial registration period is for 2 years, the exemption applies only to that registration period. The exemption period may not exceed 2 years.

(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.

(d) The annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(i) if the vehicle is 4 or less years old, $217;

(ii) if the vehicle is 5 through 10 years old, $87; and

(iii) if the vehicle is 11 or more years old, $28;

(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.

(3) (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of $61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of $148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.

(4) The annual registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) (a) The registration fee for off-highway vehicles is $61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the fee in lieu of property tax; and

(vii) other information that the department may require.

(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of $237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.

(8) (a) The registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(9) (a) The registration fee for travel trailers under 16 feet in length is $72 and the registration fee for travel trailers 16 feet in length or longer is $152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee as follows:

(i) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(ii) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(iii) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11) (a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is $60.50.

(b) If a snowmobile is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, the business is assessed:

(i) a fee of $40.50 in the first year of registration; and

(ii) if the business reregisters the snowmobile for a second year, a fee of $20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

(12) A fee of $5 must be collected when a new set of standard license plates or a new single standard license plate provided for under 61-3-332 is issued.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(14) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, $195.75;

(ii) if the vehicle is 5 years old through 10 years old, $65.75; and

(iii) if the vehicle is 11 years old or older, $6.75;

(c) motor homes:

(i) less than 2 years old, $250.50;

(ii) 2 years old and less than 5 years old, $192.25;

(iii) 5 years old and less than 8 years old, $100.50; and

(iv) 8 years old and older, $65.50;

(d) motorcycles and quadricycles registered for use on the public highways, $42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, $103.25. This fee is a one-time fee, except upon transfer of ownership.

(e) travel trailers under 16 feet in length, $50.50, and travel trailers 16 feet in length or longer, $130.50. This fee is a one-time fee, except upon transfer of ownership.

(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, $52. This fee is a

one-time fee, except upon transfer of ownership.

(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, $139. This fee is a one-time fee, except upon transfer of ownership.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered for licensing pursuant to this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.""

Insert: "Section 113. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate. (1) In probate proceedings under this code requiring the filing of a duplicate United States estate tax return with the department of revenue pursuant to 72-16-906, a final distribution to successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes.

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration.""

Insert: "Section 114. Section 77-1-213, MCA, is amended to read:

"77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) (a) The board ~~is hereby authorized and empowered to~~ may accept on behalf of the state from any ~~natural person~~ individual gifts, donations, grants, legacies, and devises having a value of not less than $250 ~~from each person~~. All lands ~~passing to~~ acquired by the state under ~~these~~ the provisions of this section or ~~through the operation of~~ as provided by law ~~shall~~ must be managed as other state lands~~,~~. ~~and the~~ Subject to subsection (1)(b), the rents and earnings ~~shall~~ from the land must be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(b) The board may accept on behalf of the state from any real estate investment trust any unrestricted gift, donation, or grant of real property having a value of not less than $250. All land passing to the state under this subsection (1)(b) or as provided by law must be managed as other state lands.

(2) ~~All~~ Subject to subsection (1)(b), all money realized from the sale of ~~such~~ the lands and from other property and all gifts, donations, grants, legacies, and devises made in money or ~~the equivalent of money shall~~ other consideration must be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as ~~further regulated~~ provided by this title. ~~The provisions of this~~ This section ~~shall apply~~ applies to gifts, donations, grants, legacies, and devises ~~already~~ made to the state and ~~now~~ under the administration of the board if not contrary to any specific provisions made ~~therein~~ by the persons from whom they were received.""

Insert: "NEW SECTION. **Section 115. Credit for real estate investment trust contribution of real property to the state.** (1) Except as provided in subsection (4), a real estate investment trust is allowed a credit against taxes otherwise due under this chapter for the fair market value of real property contributed to the state that is accepted by the board of land commissioners as provided in 77-1-213 or 77-1-214.

(2) The amount of the credit is equal to 100% of the fair market value of the property as determined under 77-1-202(3).

(3) If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 3 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(4) The credit allowed under this section may not be claimed if the real estate investment trust has claimed the

contribution as a deduction under 15-31-114."
Insert: "NEW SECTION. **Section 116. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe."
Renumber: subsequent sections

19. Page 5, line 27.
Following: "instruction."
Insert: "(1)"
Strike: "[Section 1] is"
Insert: "[Sections 1, 13 through 24, and 41 through 46] are"

20. Page 5, line 28.
Following: "30," in both places
Insert: "part 2," in both places
Strike: "[section 1]"
Insert: "[sections 1, 13 through 24, and 41 through 46]"

21. Page 5.
Following: line 28
Insert: "(2) [Sections 2 through 8 and 115] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 2 through 8 and 115].

(3) [Sections 25 through 40] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 25 through 40]."

22. Page 5, line 29.
Insert: "COORDINATION SECTION. **Section 118. Coordination instruction.** If [this act] and Senate Bill No. 514 are both passed and approved, then [section 2] of Senate Bill No. 514 is void."
Insert: "NEW SECTION. **Section 119. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Insert: "NEW SECTION. **Section 120. Contingent voidness.** (1) If funds are not appropriated for the property tax refunds provided in [sections 9 through 12], then [sections 9 through 12] are void.

(2) If funds are not appropriated to replace the revenue lost to cities, towns, counties, local schools, and special

districts from the exemptions provided in [sections 55 and 56], then [sections 55 and 56] are void."
Renumber: subsequent sections

23. Page 5, line 30.
Strike: "date"
Insert: "dates"
Following: "date."
Insert: "(1)"
Strike: "[This act] is"
Insert: "[Sections 1 through 12, 25 through 47, 50 through 84, 86 through 92, 109, and 115] are"

24. Page 5.
Following: line 30
Insert: "(2) [Sections 48, 49, 93 through 108, 113, 114, and 116 through 123] are effective July 1, 2007.
(3) [Sections 13 through 24, 85, and 110 through 112] are effective January 1, 2008."

25. Page 6, line 2.
Following: "applicability."
Insert: "(1)"
Strike: "[This act] applies"
Insert: "[Sections 2 through 8, 59, 60, 64 through 72, 75 through 82, 84 through 86, 90 through 92, and 115] apply"

26. Page 6.
Following: line 3
Insert: "(2) [Sections 9 through 11] apply retroactively, within the meaning of 1-2-109, to 2006 Montana property taxes paid before the effective date of [sections 9 through 11].
(3) [Section 12] applies retroactively, within the meaning of 1-2-109, to rent paid during 2006.
(4) The provisions of [section 27(1) and (2)] apply retroactively, within the meaning of 1-2-109, to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment has not expired as of [60 days after the effective date of sections 25 through 31].
(5) (a) Except as provided in subsection (5)(b), the provisions of [section 36] apply retroactively, within the meaning of 1-2-109, to information associated with any return due on or after [the date 2 years before the effective date of [sections 35 through 37].
(b) The provisions of [section 36(2)(b)] apply retroactively, within the meaning of 1-2-109, to any tax year for

which the statute of limitations on assessment has not expired.

(6) The provisions of [section 54] apply retroactively within the meaning of 1-2-109, to new rural telecommunication property placed in service after December 31, 2006.

(7) The provisions of [sections 55 and 56] apply to property tax years beginning after December 31, 2007.

(8) [Section 83] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

Insert: "NEW SECTION. **Section 123. Applicability.** (1) [Section 1] applies to payments made after December 31, 2007.

(2) [Sections 13 through 24] apply to royalty payments made after December 31, 2007.

(3) The provisions of [sections 32 through 37] apply to tax years beginning after December 31, 2008.

(4) The penalties imposed under the provisions of [section 37] apply to any failure to file, retain, or provide any information required pursuant to [section 34, 35, or 36] with respect to any tax year ending on or after [the effective date of sections 34 through 38].

(5) The provisions of [sections 41 through 46] apply to transfer of Montana real estate occurring after September 30, 2007.

(6) [Sections 1, 51, 58, 61 through 63, 73, 87 through 89, and 114] apply to tax years beginning after December 31, 2007."

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Taxation** recommend that **House Bill 529** (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, line 4 through line 5.
Strike: "REDUCING" on line 4 through "PROPERTY;" on line 5

2. Title, line 6.
Following: "EXEMPT"
Insert: "CLASS EIGHT"

3. Title, line 8 through line 9.
Strike: "UNDER" on line 8 through "GRANTS" on line 9
Insert: "THROUGH GUARANTEED TAX BASE FUNDING"

4. Title, line 11.
Following: "PROVIDING"
Insert: "APPROPRIATIONS AND"

5. Title, line 12.
Strike: "7-1-2111,"
Strike: "15-6-138,"
Strike: "20-9-406,"

6. Title, line 13.
Strike: "20-9-630"
Insert: "20-9-366"
Strike: "A DELAYED"
Strike: "DATE"
Insert: "DATES"

Committee Vote:
Yes 10, No 4
Fiscal Note Required _ KH

7. Page 1, line 18.
Following: "15-6-138"
Insert: "under [section 55, House Bill No. 833]"

8. Page 1, line 19.
Following: "15-6-145"
Insert: "because of the rate adjustment required by the amendment of 15-6-138 in [section 55, House Bill No. 833]"

9. Page 1, line 22.
Strike: "4"
Insert: "55, House Bill No. 833"

10. Page 1, line 24.
Strike: "4"
Insert: "55, House Bill No. 833"
Strike: ","

11. Page 1, line 25.
Strike: "SCHOOL DISTRICT,"

12. Page 2, lines 21 and 22.
Following: "DISTRIBUTIONS" on line 21
Insert: "for fiscal year 2009"
Strike: ", AND THE" on line 21 through "20-9-630(2)." on line 22
Insert: ". Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6)."

13. Page 2, line 25.
Strike: "AND FOR EACH SCHOOL DISTRICT"

14. Page 2, line 27 through line 28.
Strike: "BY" on line 27 through "20-9-630." on line 28

15. Page 3, line 11 through page 4 line 13.
Strike: section 2 in its entirety
Renumber: subsequent sections

16. Page 16, line 26 through page 18, line 2.
Strike: section 4 in its entirety
Renumber: subsequent sections

17. Page 18, line 22.
Strike: "first $100,000"
Insert: "specified amount"
Following: "property"

Insert: "exempt"
Following: "15-6-138"
Insert: "(5)"

18. Page 22, line 13 through line 15.
Strike: "SHALL DECREASE" on line 13
Insert: "may not increase"
Strike: "NEW REIMBURSEMENT" on line 13
Insert: "loss of tax base because of legislative action that is reimbursed"
Strike: "THAT" on line 14 through "RECEIVED" on line 15

19. Page 23, line 15.
Following: "~~[section 1];~~"
Insert: "[section 9];"

20. Page 23, line 19.
Strike: "20-9-630;"

21. Page 24, line 8 through page 27, line 18.
Strike: sections 9 and 10 in their entirety
Insert: **"Section 7.** Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by ~~140%~~ 142% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the

elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by ~~175%~~ 181% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by ~~121%~~ 123% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.""

Insert: "NEW SECTION. **Section 8. Appropriation.** (1) There is appropriated to the department of revenue $1,028,863 from the general fund for the administration of the property tax rebate provided in [House Bill No. 833].

(2) There is appropriated to the office of public instruction $9,340,700 from the general fund for the purpose of paying the increase in guaranteed tax base payments established in 20-9-366(4)(a) as amended by [section 7]."

Insert: "NEW SECTION. **Section 9. Statutory appropriation.** The money necessary for the payment of the tax rebates established in [section 55, House Bill No. 833] are statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue for distribution to taxpayers."

Renumber: subsequent sections

22. Page 27, line 23.
Strike: "date"
Insert: "dates"
Strike: "[This"
Insert: "(1) Except as provided in subsections (2) and (3), [this"

23. Page 27.
Following: line 23
Insert: "(2) [Section 8(1) and this section] are effective on passage and approval.

(3) [Section 8(2)] is effective July 1, 2008."

- END -

MONTANA STATE SENATE
2007 LEGISLATURE

TAXATION

ROLL CALL VOTE

DATE 4-16-07 BILL NO. HB-833 NUMBER 1

MOTION: Essmann Conceptual amendment fails 5-5 R.C. Vote

NAME	AYE	NO
SEN. JERRY BLACK (R)	✓	
SEN. JEFF ESSMANN (R)	✓	
SEN. KELLY GEBHARDT(R)	✓	
SEN. KIM GILLAN (D)		✓
SEN. DAN HARRINGTON (D)		✓
SEN. CHRISTINE KAUFMANN (D)		✓
SEN. SAM KITZENBERG (D)		✓
SEN. JIM PETERSON (R)	✓	
SEN. TRUDI SCHMIDT (D)	Excused	
SEN. ROBERT STORY (R)	✓	
SEN. JIM ELLIOTT (D) CHAIRMAN		✓
	5	5

MONTANA STATE SENATE
2007 LEGISLATURE

TAXATION

ROLL CALL VOTE

DATE 4-16-07 BILL NO. HB-833 NUMBER 2

MOTION: approval of Amendment # HB083302.alh
Passed 6-5 R.C. Vote

NAME	AYE	NO
SEN. JERRY BLACK (R)		✓
SEN. JEFF ESSMANN (R)		✓
SEN. KELLY GEBHARDT(R)		✓
SEN. KIM GILLAN (D)	✓	
SEN. DAN HARRINGTON (D)	✓	
SEN. CHRISTINE KAUFMANN (D)	✓	
SEN. SAM KITZENBERG (D)	✓	
SEN. JIM PETERSON (R)		✓
SEN. TRUDI SCHMIDT (D)	✓	P
SEN. ROBERT STORY (R)		✓
SEN. JIM ELLIOTT (D) CHAIRMAN	✓	
	6	5

MONTANA STATE SENATE
2007 LEGISLATURE

TAXATION

ROLL CALL VOTE

DATE 4-16-07 BILL NO. HB-833 NUMBER 3

MOTION: Be Concurred In As Amended

Passes 6-5 R.C. Vote

NAME	AYE	NO
SEN. JERRY BLACK (R)		✓
SEN. JEFF ESSMANN (R)		✓
SEN. KELLY GEBHARDT(R)		✓
SEN. KIM GILLAN (D)	✓	
SEN. DAN HARRINGTON (D)	✓	
SEN. CHRISTINE KAUFMANN (D)	✓	
SEN. SAM KITZENBERG (D)		✓
SEN. JIM PETERSON (R)		✓
SEN. TRUDI SCHMIDT (D)	✓	P
SEN. ROBERT STORY (R)	✓	
SEN. JIM ELLIOTT (D) CHAIRMAN	✓	
	6	5

MONTANA STATE SENATE
2007 LEGISLATURE

TAXATION

ROLL CALL VOTE

DATE 4-16-07 BILL NO. HB 529 NUMBER _____

MOTION: Approval of Amendment #HB052909.alh

NAME	AYE	NO
SEN. JERRY BLACK (R)	✓	
SEN. JEFF ESSMANN (R)	✓	
SEN. KELLY GEBHARDT(R)		✓
SEN. KIM GILLAN (D)	✓	
SEN. DAN HARRINGTON (D)	✓	
SEN. CHRISTINE KAUFMANN (D)	✓	
SEN. SAM KITZENBERG (D)	✓	
SEN. JIM PETERSON (R)		✓
SEN. TRUDI SCHMIDT (D)	✓	P
SEN. ROBERT STORY (R)		✓
SEN. JIM ELLIOTT (D) CHAIRMAN	✓	
	8	3

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator Elliott

to vote my proxy on any issue before the Senate Taxation

Committee

held on April 16, 2007.

amend HB 833 yes
amendment HB-529 - yes
HB-529 Concur as amend - yes

Schmidt

SENATOR
STATE OF MONTANA

MONTANA STATE SENATE
2007 LEGISLATURE

VISITOR REGISTER

TAXATION

DATE April 16, 2007

BILLS BEING HEARD TODAY Executive Action

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

To: Sen. Jim Elliott

From: Dan Dodds, Senior Tax Policy Analyst

Date: February 6, 2007

Subject: Homeowner/Renter Credit (Using Gross Income)

You asked for an estimate of the cost of expanding the current homeowner/renter credit by removing the age restriction. The following table shows the number of households who claimed the credit for 2005 and total credits. It also shows estimates of the number of households who would have claimed the expanded credit and total credits, assuming five different participation levels.

Table 1
Homeowner/Renter Credit
Current Credit and Not Age-Based

	Households	Credits
Current, Age-Based Credit	23,461	$11,580,412
Not Age-Based, Current Participation Rates by Income Group	55,373	$23,304,816
Not Age-Based, Uniform 40% Participation Rate	66,387	$23,575,423
Not Age-Based, Uniform 50% Participation Rate	74,063	$29,469,278
Not Age-Based, Uniform 75% Participation Rate	93,252	$44,203,918
Not Age-Based, Uniform 100% Participation Rate	165,967	$58,938,557

The rest of this memo presents details on current credit use and the basis for these estimates.

Table 2, on the next page shows details of credits claimed on 2005 Form 2ECs. The first column shows ranges of gross household income as reported on the Form 2EC. The second through fourth columns show the number of households claiming the credit by income group, divided between homeowners and renters. The second column shows homeowners, as indicated by reporting property taxes and no rent on their 2EC. The third column shows renters, as indicated by reporting rent and no property taxes on their 2EC. The fourth column show the number of households who reported both property taxes and rent. These are assumed to be household who moved during the year, renting for part of the year and owning a home for part.

Table 2
Households Claiming Elderly Homeowner/Renter Credit
2005 Form 2EC

Income Range	Homeowners	Renters	Both Own and Rent in 2005	Total
Less than $10,000	1,077	1,757	162	2,996
$10,000 to $14,999	2,566	2,044	321	4,931
$15,000 to $19,999	6,222	1,782	355	8,359
$20,000 to $24,999	4,414	515	130	5,059
$25,000 to $34,999	1,917	163	36	2,116
$35,000 to $45,000	0	0	0	0
Total	16,196	6,261	1,004	23,461

Households with income up to $45,000 are eligible for the credit, but the credit phases out steeply between $35,000 and $45,000 of income. No households with income above $35,000 took the credit.

Table 3 shows estimates of the number of households eligible for the credit. These estimates are based on information from the 2005 American Community Survey conducted by the Census Bureau of the US Department of Commerce.

Table 3
Number of Households, 62 or Older Income Under $45,000
Estimate Based on 2005 American Community Survey

Income Range	Homeowners	Renters	Total
Less than $10,000	5,421	8,226	13,647
$10,000 to $14,999	7,335	5,888	13,222
$15,000 to $19,999	7,137	4,230	11,367
$20,000 to $24,999	6,172	4,394	10,566
$25,000 to $34,999	10,967	5,156	16,123
$35,000 to $45,000	8,939	3,143	12,082
Total	45,970	31,037	77,007

Table 4, on the next page, shows estimated participation rates. These are calculated by dividing the number of households in claiming the credit, in Table 2, by the number of households in each category in Table 3, where households who reported paying both property tax and rent are counted as homeowners.

Table 4
Elderly Homeowner/Renter Credit
Estimated 2005 Participation Rates

Income Range	Homeowners	Renters	Total
Less than $10,000	22.9%	21.4%	22.0%
$10,000 to $14,999	39.4%	34.7%	37.3%
$15,000 to $19,999	92.2%	42.1%	73.5%
$20,000 to $24,999	73.6%	11.7%	47.9%
$25,000 to $34,999	17.8%	3.2%	13.1%
$35,000 to $45,000	0.0%	0.0%	0.0%
Total	37.4%	20.2%	30.5%

Participation is highest for households with income between $15,000 and $20,000 and lower at higher and lower incomes.

Table 5 shows the average amount of credit claimed by taxpayers in each of the categories in Table 3. The average credit generally is lower at higher incomes because the credit equals the amount of property tax or rent-equivalent tax minus a percentage of income. For households with income of at least $12,000, the percentage is 5%. For a household with income of $35,000, the credit would be their property tax minus $1,750. Households with income between $35,000 and $45,000 are allowed only a fraction of the credit, with the fraction decreasing from 40% to 10%.

Table 5
Average Elderly Homeowner/Renter Credit
2005 Form 2EC

Income Range	Homeowners	Renters	Both Own and Rent in 2005	All
Less than $10,000	$646	$401	$482	$525
$10,000 to $14,999	$594	$403	$416	$542
$15,000 to $19,999	$539	$464	$461	$527
$20,000 to $24,999	$318	$473	$442	$333
$25,000 to $34,999	$69	$101	$106	$72
$35,000 to $45,000	-	-	-	-
All	$528	$410	$460	$494

While households with incomes above $35,000 are theoretically eligible for the credit, in practice, most would have small credits, many would have a credit of zero, and none find it worthwhile to claim the credit.

Table 6, on the next page, shows estimates of the total number of homeowner and renter households in the income ranges that are eligible for the credit.

Table 6
Number of Households, All Ages Income Under $45,000
Estimate Based on 2005 American Community Survey

Income Range	Homeowners	Renters	Total
Less than $10,000	12,689	21,326	34,015
$10,000 to $14,999	14,137	14,801	28,938
$15,000 to $19,999	14,864	11,667	26,531
$20,000 to $24,999	14,645	12,258	26,903
$25,000 to $34,999	32,875	16,705	49,580
$35,000 to $45,000	22,992	8,070	31,061
Total	112,202	84,827	197,028

The following tables show estimates of the number of households who would claim the credit and amounts of credits claimed if there were no age requirement, with five different levels of program participation. In all of these tables, no credits are assumed for households with income of $35,000 or more.

Table 7
Homeowner/Renter Credit, All Ages Income Under $45,000
Participation Same as Current Program

	Homeowners		Renters		Total	
Income Range	Households	Credits	Households	Credits	Households	Credits
Less than $10,000	2,900	$1,873,826	4,555	$1,825,845	7,455	$3,699,671
$10,000 to $14,999	5,565	$3,306,739	5,138	$2,068,600	10,703	$5,375,339
$15,000 to $19,999	13,698	$7,386,270	4,915	$2,282,043	18,613	$9,668,313
$20,000 to $24,999	10,783	$3,424,687	1,437	$679,482	12,219	$4,104,169
$25,000 to $34,999	5,854	$404,170	528	$53,154	6,382	$457,324
$35,000 to $45,000	0	$0	0	$0	0	$0
Total	38,800	$16,395,692	16,573	$6,909,124	55,373	$23,304,816

Table 8
Homeowner/Renter Credit, All Ages Income Under $45,000
40% Participation

	Homeowners		Renters		Total	
Income Range	Households	Credits	Households	Credits	Households	Credits
Less than $10,000	5,076	$3,279,395	8,530	$3,419,391	13,606	6,698,786
$10,000 to $14,999	5,655	$3,360,390	5,920	$2,383,411	11,575	5,743,802
$15,000 to $19,999	5,946	$3,205,990	4,667	$2,166,838	10,612	5,372,827
$20,000 to $24,999	5,858	$1,860,532	4,903	$2,319,042	10,761	4,179,574
$25,000 to $34,999	13,150	$907,838	6,682	$672,596	19,832	1,580,434
$35,000 to $45,000	0	$0	0	$0	0	0
Total	35,684	$12,614,145	30,703	$10,961,278	66,387	$23,575,423

Table 9
Homeowner/Renter Credit, All Ages Income Under $45,000
50% Participation

	Homeowners		Renters		Total	
Income Range	Households	Credits	Households	Credits	Households	Credits
Less than $10,000	5,076	$4,099,244	10,663	$4,274,239	15,739	8,373,482
$10,000 to $14,999	5,655	$4,200,488	7,401	$2,979,264	13,055	7,179,752
$15,000 to $19,999	5,946	$4,007,487	5,834	$2,708,547	11,779	6,716,034
$20,000 to $24,999	5,858	$2,325,665	6,129	$2,898,802	11,987	5,224,467
$25,000 to $34,999	13,150	$1,134,798	8,353	$840,745	21,503	1,975,543
$35,000 to $45,000	0	$0	0	$0	0	0
Total	35,684	$15,767,681	38,379	$13,701,598	74,063	$29,469,278

Table 10
Homeowner/Renter Credit, All Ages Income Under $45,000
75% Participation

	Homeowners		Renters		Total	
Income Range	Households	Credits	Households	Credits	Households	Credits
Less than $10,000	5,076	$6,148,866	15,995	$6,411,358	21,070	12,560,223
$10,000 to $14,999	5,655	$6,300,731	11,101	$4,468,896	16,756	10,769,628
$15,000 to $19,999	5,946	$6,011,231	8,750	$4,062,821	14,696	10,074,051
$20,000 to $24,999	5,858	$3,488,497	9,194	$4,348,204	15,052	7,836,701
$25,000 to $34,999	13,150	$1,702,196	12,529	$1,261,118	25,679	2,963,314
$35,000 to $45,000	0	$0	0	$0	0	0
Total	35,684	$23,651,521	57,568	$20,552,396	93,252	$44,203,918

Table 11
Homeowner/Renter Credit, All Ages Income Under $45,000
100% Participation

	Homeowners		Renters		Total	
Income Range	Households	Credits	Households	Credits	Households	Credits
Less than $10,000	12,689	$8,198,487	21,326	$8,548,477	34,015	16,746,965
$10,000 to $14,999	14,137	$8,400,975	14,801	$5,958,529	28,938	14,359,504
$15,000 to $19,999	14,864	$8,014,974	11,667	$5,417,094	26,531	13,432,069
$20,000 to $24,999	14,645	$4,651,330	12,258	$5,797,605	26,903	10,448,935
$25,000 to $34,999	32,875	$2,269,595	16,705	$1,681,490	49,580	3,951,085
$35,000 to $45,000	0	$0	0	$0	0	0
Total	89,210	$31,535,362	76,757	$27,403,195	165,967	$58,938,557

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SENATE BILL NO. 120

INTRODUCED BY J. ELLIOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE TAXATION OF REAL ESTATE INVESTMENT TRUSTS; PROVIDING A TAX CREDIT FOR THE MARKET VALUE OF REAL PROPERTY CONTRIBUTED TO THE STATE OF MONTANA BY A REAL ESTATE INVESTMENT TRUST; CONFORMING MONTANA'S TAXATION LAWS WITH THE INTERNAL REVENUE CODE REGARDING THE TREATMENT OF QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARIES AS DISREGARDED ENTITIES; PROVIDING AN EXCLUSION, UNDER CERTAIN CONDITIONS, FROM THE ADJUSTED GROSS INCOME OR FROM THE CORPORATE GROSS INCOME OF SHAREHOLDERS AND HOLDERS OF BENEFICIAL INTERESTS OF REAL ESTATE INVESTMENT TRUSTS FOR DIVIDENDS RECEIVED FROM A REAL ESTATE INVESTMENT TRUST; PROVIDING FOR THE DETERMINATION OF THE NET INCOME OF REAL ESTATE INVESTMENT TRUSTS; DISALLOWING THE DIVIDENDS PAID DEDUCTION ALLOWED UNDER THE INTERNAL REVENUE CODE IN DETERMINING THE TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST; CLARIFYING, IN ACCORDANCE WITH THE INTERNAL REVENUE CODE, THAT A DEDUCTION FOR DIVIDENDS RECEIVED FROM A REGULATED INVESTMENT COMPANY OR A REAL ESTATE INVESTMENT TRUST IS NOT ALLOWED; CLARIFYING THAT ALL TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST IS TAXED AT THE CORPORATE LICENSE TAX RATE; CLARIFYING THE CALCULATION OF THE NET OPERATING LOSS OF A REAL ESTATE INVESTMENT TRUST; ALLOWING THE BOARD OF LAND COMMISSIONERS TO ACCEPT UNRESTRICTED DONATIONS OF REAL PROPERTY FROM REAL ESTATE INVESTMENT TRUSTS; AMENDING SECTIONS 15-30-101, 15-30-111, 15-31-113, 15-31-114, 15-31-119, 15-62-207, 15-62-208, AND 77-1-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Credit for real estate investment trust contribution of real property to the state.** (1) Except as provided in subsection (4), a real estate investment trust is allowed a credit against taxes otherwise due under this chapter for the fair market value of real property contributed to the state that is accepted

by the board of land commissioners as provided in 77-1-213 or 77-1-214.

(2) The amount of the credit is equal to 100% of the fair market value of the property as determined under 77-1-202(3).

(3) If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 3 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(4) The credit allowed under this section may not be claimed if the real estate investment trust has claimed the contribution as a deduction under 15-31-114.

Section 2. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362),~~ is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity that is:

(a) ~~that is~~ disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; ~~or~~

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~(~~26 U.S.C. 1361(b)(3)~~)~~; or

(c) a qualified real estate investment trust subsidiary that is not treated as a separate corporation as provided in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~(~~26 U.S.C. 61~~)~~, ~~or as that section may be labeled or amended,~~ excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, ~~(~~26 U.S.C. 85~~)~~ ~~as amended~~.

(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be

labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" ~~is as defined~~ has the meaning provided in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" ~~means a limited liability partnership as defined~~ has the meaning provided in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical

location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, ~~(26 U.S.C. 401)~~, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, ~~(26 U.S.C. 401 through 408)~~, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" ~~is as defined~~ has the meaning provided in 45-2-101.

(27) "Real estate investment trust" means a real estate investment trust as defined in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

(28) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(28)~~(29) "Resident" ~~applies only to~~ means a natural ~~persons~~ person and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any ~~taxable~~ tax year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(29)~~(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~(~~26 U.S.C. 1362~~)~~, is in effect.

~~(30)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(31)~~(32) "Tax year" means the taxpayer's ~~taxable~~ tax year for federal income tax purposes.

~~(32)~~(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(33)~~ 34 (a) "Taxpayer" ~~includes~~ means any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter.

(b) ~~and unless otherwise specifically provided~~ The term does not include a C. corporation unless specifically provided by this chapter."

Section 3. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law; and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law; and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in

subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113~~(1)(a)(ii)~~(1)(a)(ii)(B);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; ~~and~~

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-113 and 15-31-114.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted

gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

~~(8)~~(7) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)~~(8) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility

as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 4. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income, ~~and~~ net income, and real estate investment trust income defined -- computation of gross income of corporations not exempt from taxation. (1) For the purposes of this chapter, the following definitions apply:

~~(1)~~(a) (i) ~~The term "gross income"~~ "Gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes ~~and:~~ increased as provided in subsection (1)(a)(ii) and decreased as provided in subsection (1)(a)(iii).

~~(a)~~(ii) ~~including:~~ The following items are included in determining a corporation's gross income:

~~(i)~~(A) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5) ~~as that section may be amended or renumbered~~; and

~~(ii)~~(B) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337, ~~as those sections may be amended or renumbered,~~ attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law~~;~~. ~~and~~

~~(b)~~(iii) ~~excluding~~ The following items are excluded in determining a corporation's gross income:

(A) the gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337, ~~as those sections may be amended or renumbered,~~ when the gain is required to be recognized by the liquidating corporation pursuant to subsection ~~(1)(a)(ii)~~ (1)(a)(ii)(B) of this section; and

(B) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-114 and this section.

(b) "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(2)~~(c) (i) ~~The term "net income"~~ "Net income", except as provided in subsection (1)(c)(ii), means the gross income of the corporation less the deductions set forth in 15-31-114.

(ii) If a corporation is taxed as a real estate investment trust as provided in sections 856 through 859 of

the Internal Revenue Code, 26 U.S.C. 856 through 859, the term means real estate investment trust income.

(d) "Real estate investment trust income" means real estate investment trust taxable income, as defined in section 857(b)(2) of the Internal Revenue Code, 26 U.S.C. 857(b)(2), modified as follows:

(i) the exclusion for an amount equal to the net income from foreclosure property provided for in section 857(b)(2)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(D), is not allowed;

(ii) the deduction for an amount equal to the tax imposed for failure to meet certain requirements for the tax year provided for in section 857(b)(2)(E) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(E), is not allowed;

(iii) the exclusion for an amount equal to any net income derived from prohibited transactions provided for in section 857(b)(2)(F) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(F), is not allowed; and

(iv) the deduction for dividends paid provided for in section 561, 858, or 860 of the Internal Revenue Code, 26 U.S.C. 561, 858, or 860, or in any other section of the Internal Revenue Code is not allowed.

~~(3)~~(2) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the ~~taxable~~ tax year."

Section 5. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the ~~taxable~~ tax year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this ~~section~~ subsection (1)(a), and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance

or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the ~~taxable~~ tax year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the ~~taxable~~ tax period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part ~~must be construed to~~ include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170~~, as amended~~.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), ~~as that section may be amended or renumbered,~~ there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, ~~as that section may be amended or renumbered,~~ except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, ~~as those sections may be amended or renumbered,~~ apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 243 through 245~~, as those sections may be amended or renumbered~~.

(4) A deduction is not allowed for any dividend received from:

(a) a regulated investment company including, without limitation:

(i) a capital gains dividend as defined in section 852(b)(3) of the Internal Revenue Code, 26 U.S.C. 852(b)(3); and

(ii) any amount treated as a dividend under section 854(b) of the Internal Revenue Code, 26 U.S.C. 854(b); and

(b) a real estate investment trust including, without limitation:

(i) a capital gain dividend as defined in section 857(b)(3)(C) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(C);

(ii) a capital gain dividend treated by the shareholder or holder of a beneficial interest in a real estate investment trust as a gain from the sale or exchange of a capital asset held for more than 1 year as described in section 857(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(B); and

(iii) the amount designated by a real estate investment trust and includable in computing the long-term capital gains of a shareholder or holder of a beneficial interest as described in section 857(b)(3)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(D)."

Section 6. Section 15-31-119, MCA, is amended to read:

"15-31-119. Net operating losses -- carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the ~~taxable~~ tax period plus the net operating loss carrybacks to the ~~taxable~~ tax period.

(2) (a) ~~The~~ Except as provided in subsection (2)(b), the term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection ~~(6)~~ (5).

(b) The net operating loss of a real estate investment trust must be computed with the adjustments provided in 15-31-113(1)(d).

~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)~~(3) A net operating loss for any ~~taxable~~ tax period ~~ending after December 31, 1975~~, in addition to being a net operating loss carryback to each of the three preceding ~~taxable~~ tax periods, must be a net operating

loss carryover to each of the seven ~~taxable~~ tax periods following the ~~taxable~~ tax period of the loss.

~~(5)~~(4) Except as provided in subsection ~~(11)~~ (10), the portion of the loss that must be carried to each of the other ~~taxable~~ tax years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior ~~taxable~~ tax periods to which the loss was carried. For purposes of this subsection, the net income for the prior ~~taxable~~ tax period must be computed with the modification specified in subsection ~~(6)(b)~~ (5)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any ~~taxable~~ tax period after the loss period, and the net income ~~so~~ that is computed may not be considered to be less than zero.

~~(6)~~(5) The modifications referred to in subsection ~~(2)~~ (2)(a) are as follows:

(a) The net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Except to the extent provided in section 1382(b) of the Internal Revenue Code, 26 U.S.C. 1382(b), a deduction for dividends paid or considered paid is not allowed.

(d) Any net operating loss carried over to any ~~taxable~~ tax year must be calculated under the provisions of this section effective for the ~~taxable~~ tax year for which the return claiming the net operating loss carryover is filed.

~~(7)~~(6) A net operating loss deduction may be allowed only with regard to losses attributable to the business carried on within the state of Montana.

~~(8)~~(7) In the case of a merger of corporations, the surviving corporation ~~may~~ is not ~~be~~ allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity ~~may~~ is not ~~be~~ allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

~~(9)~~(8) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

~~(10)~~(9) The net operating loss deduction must be allowed with respect to ~~taxable~~ tax periods.

~~(11)~~(10) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

~~(12)~~(11) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code ~~of 1986, as that section may be amended or renumbered~~, 26 U.S.C. 851(a) or 851(b)."

Section 7. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(7), by the total amount of the contributions, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

Section 8. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)~~(7).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at

one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

Section 9. Section 77-1-213, MCA, is amended to read:

"77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) (a) The board ~~is hereby authorized and empowered to~~ may accept on behalf of the state from any ~~natural person~~ individual gifts, donations, grants, legacies, and devises having a value of not less than $250 ~~from each person~~. All lands ~~passing to~~ acquired by the state under ~~these~~ the provisions of this section or ~~through the operation of~~ as provided by law ~~shall~~ must be managed as other state lands~~;~~. ~~and the~~ Subject to subsection (1)(b), the rents and earnings ~~shall~~ from the land must be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(b) The board may accept on behalf of the state from any real estate investment trust any unrestricted gift, donation, or grant of real property having a value of not less than $250. All land passing to the state under this subsection (1)(b) or as provided by law must be managed as other state lands.

(2) ~~All~~ Subject to subsection (1)(b), all money realized from the sale of ~~such~~ the lands and from other property and all gifts, donations, grants, legacies, and devises made in money or ~~the equivalent of money shall~~ other consideration must be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as ~~further regulated~~ provided by this title. ~~The provisions of this~~ This

section ~~shall apply~~ applies to gifts, donations, grants, legacies, and devises ~~already~~ made to the state and ~~now~~ under the administration of the board if not contrary to any specific provisions made ~~therein~~ by the persons from whom they were received."

NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

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

NEW SECTION. **Section 12. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

- END -

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

To open, right click on "Select a bill", select Worksheet Object/Edit. To exit, click outside the spreadsheet.

Bill #	SB0120	**Title:**	Revise tax treatment of income and dividends of real estate investment trusts
Primary Sponsor:	Elliott, J.	**Status:**	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Revenue:				
General Fund	$5,970,785	$7,262,338	$8,833,269	$10,744,011
Net Impact-General Fund Balance	$5,970,785	$7,262,338	$8,833,269	$10,744,011

Description of Fiscal Impact: This bill will require Real Estate Investment Trusts (REIT) to pay taxes on income earned in Montana.

FISCAL ANALYSIS

Assumptions:

1. This bill will require Real Estate Investment Trusts (REITs) to pay taxes on income earned in Montana. Under current law REITs do not pay taxes on the income they earn in Montana to the same degree as other businesses. This occurs because of the unique deduction that REITs enjoy under federal law for dividends they pay to their owners. The dividend paid deduction effectively eliminates most, if not all, their income tax in Montana, even though they operate in the same manner as other businesses in the state.
2. If the provisions of this bill were in place during tax year 2004 an additional $3,318,153 in income tax revenue would have been collected.
3. In reviewing tax returns from tax year 2002 through tax year 2004 it was determined that revenue from requiring REITs to pay income tax like other businesses would have grown at a rate of more than 21%.
4. Based on review of SEC filings of several large REITs that have Montana holdings, it is believed that this growth trend will continue through the next decade.
5. The revenue estimate is based on growing tax year 2004 estimated revenue at 21% rate per year through 2010. However, this high growth rate is likely to decline at some future date that is outside the time period covered by this fiscal note.

6. The department will not require any additional resources to administer this change in law.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Revenues:				
General Fund (01)	$5,970,785	$7,262,338	$8,833,269	$10,744,011
TOTAL Revenues	$5,970,785	$7,262,338	$8,833,269	$10,744,011
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$5,970,785	$7,262,338	$8,833,269	$10,744,011

Effect on County or Other Local Revenues or Expenditures:

Long-Range Impacts:

1. The SEC filings of REITs in Montana indicate that the REITs will continue to pay significant dividends in the near future. If the REITs accelerate or decrease earnings subject to tax, the revenue from this bill will increase or decrease in a proportional manner.

Technical Notes:

1. None.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 138

INTRODUCED BY D. WANZENRIED

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PRACTICE COMMONLY KNOWN AS INSURANCE STUFFING BY SPECIFYING WHEN CORPORATIONS MAY PROPERLY TAKE A DIVIDENDS-RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM INSURANCE COMPANIES; SPECIFYING HOW TO CALCULATE THE APPROPRIATE DIVIDENDS-RECEIVED DEDUCTION IN THOSE CIRCUMSTANCES; ~~APPLYING SPECIAL RULES TO CAPTIVE INSURANCE COMPANIES;~~ DISREGARDING THE PERMANENT DEFERRAL OF GAIN RECOGNITION FOR CERTAIN TRANSACTIONS; AUTHORIZING THE DEPARTMENT OF REVENUE TO INCLUDE IN THE GROSS INCOME THE TAXPAYER'S PRO RATA SHARE OF ANY OF THOSE INSURERS' CURRENT EARNINGS AND PROFITS IN THAT TAXABLE YEAR; ~~AMENDING SECTION 33-2-705, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions**. For the purposes of [sections 1 through 7], unless otherwise required by the context, the following definitions apply:

(1) "Capitalization percentage" means the appropriate percentage established in [section 2].

(2) "Combined reporting group" means those corporations whose income is required to be included in the same combined report pursuant to 15-31-301 or 15-31-322.

(3) "Commonly controlled group" means a parent corporation and any one or more corporations or chains of corporations connected through stock ownership or constructive ownership with the parent if:

(a) the parent owns stock with more than 50% of the voting power of at least one corporation; and

(b) stock cumulatively representing more than 50% of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subsection (3)(a), or one or more other corporations that satisfy the conditions of this subsection (3)(b), if applicable.

(4) "Direct written premiums" means amounts written by an insurance company in consideration for insurance and annuity contracts issued to policyholders.

(5) "Dividend" means, for purposes of calculating the dividends-received deduction for any tax year described in [section 2], ~~80% of the amount of the qualified dividends~~ THE TOTAL AMOUNT OF QUALIFIED DIVIDENDS ALLOWED AS A DEDUCTION FOR FEDERAL INCOME TAX PURPOSES received by the corporation from the insurer corporation.

(6) "Five-year average" means the aggregate net written premiums or total income, as the case may be, over the 5 immediately preceding calendar or fiscal years, divided by five. If an insurance company in the commonly controlled group has been in existence for fewer than 5 years, its aggregate net written premiums and total income must each be multiplied by five and divided by the number of years of its existence. If an insurance company does not have a regulatory filing requirement, the period covered is the fiscal year used for the insurance company's financial statements. The use of either the calendar year or fiscal year that is used for the determination of the first tax year 5-year average is considered an accounting method under [sections 1 through 7] and may be changed in subsequent tax years only with the written consent of the department.

(7) (a) "Investment income" means an insurance company's earnings from its investment portfolio, including interest, dividends, realized gains or losses, and rent, that, unless otherwise provided in subsections (7)(b) through (7)(d), is required to be reported in an insurer's statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners.

(b) Except for reinsurance transactions, realized gains or losses do not include losses incurred in transactions with a person that is a member of the taxpayer's or the insurance company's commonly controlled group.

(c) Investment income does not include dividends from a person that is a member of the commonly controlled group. Intercompany dividends that have been eliminated from investment income as would be required to be reported in the statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners may not again be eliminated for this purpose.

(d) Investment income does not include income included in the taxpayer's combined report filed in accordance with this chapter.

(8) "Insurer" has the meaning provided in 33-1-201.

(9) (a) "Net income attributable to investment income" means net income of the insurer multiplied by a ratio, the numerator of which is the insurer's gross investment income from interest, dividends (other than

dividends from members of the taxpayer's commonly controlled group), rent, and realized gains or losses, and the denominator of which is the insurer's gross income (other than dividends from members of the taxpayer's commonly controlled group) from all sources.

(b) For the purposes of this definition, if an insurer is required to file a statutory annual statement pursuant to the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners, "net income" means net income required to be reported in the insurer's statutory annual statement.

(10) (a) "Net written premiums" means direct written premiums plus premiums from reinsurance assumed, less premiums ceded to a reinsurance company, as would be required to be reported in an insurer's statutory annual statement in accordance with the annual statement instructions and accounting practices and procedures manual promulgated by the national association of insurance commissioners.

(b) Net written premiums from life insurance contracts are determined by multiplying the net written premiums received, assumed, or ceded by 1.3.

(c) Net written premiums from financial guaranty insurance contracts are determined by multiplying the net written premiums received, assumed, or ceded by the lesser of 2.3 or an amount that would cause the ratio of the 5-year average net written premiums for all financial guaranty insurance companies in the commonly controlled group to the 5-year average total income for all financial guaranty insurance companies in the commonly controlled group to be equal to the applicable capitalization percentage.

~~(11) (a) "Predominantly captive insurance group" means all insurer members of a commonly controlled group that has a capitalization in excess of $10 million that:~~

~~(i) receive more than 50% of their net written premiums from members of the commonly controlled group, determined without regard to the weighting factors described subsection (10)(b) or (10)(c); or~~

~~(ii) have a ratio determined under [section 3(1)(b)] that is greater than 50% when determined.~~

~~(b) For the purposes of this definition, premiums received or accrued from a member of the insurance company's commonly controlled group do not include premiums if the direct insurance risks ceded by affiliates and assumed by the insurance company originated with a person that is not a member of the insurance company's commonly controlled group.~~

~~(12)~~(11) "Premiums from reinsurance assumed" means amounts received or accrued by an insurance company in consideration for liabilities it assumes from another insurance company.

~~(13)~~(12) "Qualified dividend" means a dividend received by a corporation during the tax year from a

corporation that is an insurer, whether or not the insurer is engaged in business in Montana, if at the time of each dividend payment at least 80% of each class of stock of the insurer was owned, directly or indirectly, by the corporation receiving the dividend.

~~(14)~~(13) "Total income" means net written premiums plus investment income.

NEW SECTION. **Section 2. Deduction of dividends received by corporations -- capitalization percentage.** (1) For the purposes of calculating the dividends-received deduction allowed for Montana purposes, the amount of dividends must be multiplied by the appropriate capitalization percentage determined under subsections (2) through (4).

(2) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is greater than or equal to 60%, then the capitalization percentage is 100%.

(3) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is less than 60% but greater than 10%, then the capitalization percentage is equal to the following fraction, expressed as a percentage:

(a) the numerator is the 5-year average net written premiums for the tax year; and

(b) the denominator is 60% of the 5-year average total income for that tax year.

(4) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is 10% or less, then the capitalization percentage is 0%.

~~NEW SECTION. **Section 3. Deduction of dividends received from insurance company that insures risks of member of commonly controlled group.** (1) A deduction is not allowed for dividends attributable to premiums received or accrued by an insurance company from a member of the insurance company's commonly controlled group. Premiums received or accrued from a member of the insurance company's commonly controlled group do not include premiums if the direct insurance risks ceded by affiliates and assumed by the insurance company originated with a person that is not a member of the insurance company's commonly controlled group. Dividends attributable to premiums received or accrued from a member of a commonly controlled group is equal to total dividends received multiplied by the greater of:~~

~~(a) except as provided in subsection (2), the ratio of net written premiums from a member of the insurance company's commonly controlled group divided by total net written premiums; or~~

~~(b) (i) for a property casualty insurer, the ratio of the underwriting risk associated with a member of the commonly controlled group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk reserves, which are losses plus expense risk-based capital after discount, calculated using the risk-based capital instructions and report promulgated by the national association of insurance commissioners or any substantially equivalent successor instructions and report as the report read on January 1 of the year in which the taxpayer's tax year begins.~~

~~(ii) for a life insurer, the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims held for policies issued to members of the insurance company's commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims.~~

~~(2) Net written premiums do not include premiums received or accrued from another member of the insurance company's commonly controlled group. Premiums from another member of the commonly controlled group is the greater of:~~

~~(a) net written premiums from a member of the insurance company's commonly controlled group; or~~

~~(b) (i) for a property casualty insurer, the net written premiums received or accrued by the insurance company multiplied by the ratio of the underwriting risk associated with the member of the commonly controlled group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk reserves, which is loss plus expense risk-based capital after discount, calculated using the risk-based capital instructions and report promulgated by the national association of insurance commissioners or any substantially equivalent successor instructions and report as the report read on January 1 of the year in which the taxpayer's tax year begins.~~

~~(ii) for a life insurer, net written premiums received or accrued by the insurance company multiplied by the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims held for policies issued to members of the insurance company's commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims.~~

NEW SECTION. **Section 3. Deductions not allowed for certain expenses.** (1) A deduction is not

allowed for any expense under subsection (2) that is paid or incurred to an insurer if the insurer is a member of the taxpayer's commonly controlled group and the amount paid or incurred would constitute income to the insurer if the insurer were subject to the Montana income or franchise tax.

(2) (a) The following interest amounts payable to an insurer in the same commonly controlled group are disallowed:

(i) interest paid or incurred to an insurer in the taxpayer's commonly controlled group with respect to indebtedness, other than qualified marketable debt instruments, the principal amount of which is attributable to a contribution of money by a noninsurer member of the taxpayer's commonly controlled group to the capital of an insurer member of that group, including the principal amount of a loan arising from a direct or indirect transfer of money from that contribution to capital from one insurer to another insurer of the same commonly controlled group;

(ii) interest paid or incurred to an insurer with respect to a note or other debt instrument, other than qualified marketable debt instruments, contributed to the capital of an insurer with respect to its stock by a noninsurer member of the commonly controlled group;

(iii) interest paid or incurred within 5 years after the direct or indirect acquisition of the insurer by a member of the commonly controlled group, other than interest on qualified marketable debt instruments;

(iv) interest paid or incurred during the tax year to any insurer in the commonly controlled group multiplied by the disqualifying percentage. The disqualifying percentage is an amount equal to 100% less the capitalization percentage provided for in [section 2(2), (3), or (4)] for that tax year whether or not a dividend is paid or accrued.

~~(v) interest determined by multiplying the amount of interest paid or incurred to an insurer in the commonly controlled group by the ratio of the commonly controlled group determined under [section 3(1)] for the tax year, whether or not a dividend was paid or accrued in that year.~~

(b) The following noninterest expenses are disallowed:

(i) expenses attributable to property formerly held by the taxpayer or a member of the taxpayer's commonly controlled group that was acquired by the insurer in a transaction in which gain was realized but not recognized, including any income deferred under [section ~~5~~ 4], by the taxpayer or a member of its commonly controlled group;

(ii) expenses attributable to property purchased with the proceeds attributable to a contribution by a noninsurer member of the taxpayers' commonly controlled group to the capital of an insurer member of that group, including amounts attributable to a direct or indirect transfer of money from that contribution from one

insurer to another insurer in the same group.

(3) Expenses that may be disallowed by more than one expense exclusion in subsection (2) may be included only in the exclusion that will result in the highest disallowance amount.

(4) For purposes of this section, the following definitions apply:

(a) "Qualified marketable debt instruments" means publicly available debt instruments of all noninsurer members of the commonly controlled group issued, but only to the extent that the aggregate principal amount of publicly available debt instruments held by all insurer members of the commonly controlled group constitutes less than 10% of the total outstanding principal amount of publicly available debt instruments issued by all noninsurer members.

(b) "Publicly available debt instruments" means debt instruments available to the general public, including bonds, debentures, and negotiable instruments that are rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, in one of its generic rating categories that signifies investment grade.

NEW SECTION. **Section 4. Transfer of property to insurer.** (1) (a) Except as provided in subsection (1)(b), in connection with any exchange described in section 332, 351, 354, 356, or 361 of the Internal Revenue Code, 26 U.S.C. 332, 351, 354, 356, or 361, when a taxpayer transfers property to an insurer, the insurer, for purposes of determining the extent to which gain is recognized on that transfer, is not, for the purposes of this section, considered a corporation.

(b) The provisions of subsection (1)(a) do not apply to any of the following types of transactions, unless that transaction has the effect, either directly or indirectly, of transferring appreciated property from a taxpayer subject to tax under this chapter or a member of the taxpayer's combined reporting group, to an insurer:

(i) an exchange or transfer pursuant to section 368(a)(2)(D) or (a)(2)(E) of the Internal Revenue Code, 26 U.S.C. 368(a)(2)(D) or (a)(2)(E);

(ii) a transfer of stock in an 80%-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting; or

(iii) a transfer or exchange of publicly owned stock of the parent corporation.

(c) (i) If a transaction described in subsection (1)(b) would qualify under that subsection except that the transaction has the effect, directly or indirectly, of transferring appreciated property from a taxpayer or a member of the taxpayer's combined reporting group, subject to tax under this chapter, to an insurer, then, if the property

is used in the active trade or business of the insurer, subsection (2) applies to that transfer.

(ii) For purposes of this subsection (1)(c), "appreciated property" means property whose fair market value, as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

(2) (a) If property subject to subsection (1)(a) or (6) is transferred to an insurer for use in the active conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under subsection (1)(a) or (6) is deferred until the date that:

(i) the property is no longer owned by an insurer in the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group;

(ii) the property is no longer used in the active conduct of the insurer's trade or business or the trade or business of another member in the taxpayer's combined reporting group; or

(iii) the holder of the property is no longer held by an insurer in the commonly controlled group of the transferor or a member of the taxpayer's combined reporting group.

(b) Any of the events described in subsection (2)(a) must be treated as a disposition of the property under this subsection (2), irrespective of whether any other provision of this chapter or in the Internal Revenue Code would otherwise permit nonrecognition treatment of the transaction described in this subsection (2).

(c) An insurer that becomes a member of the taxpayer's commonly controlled group or a corporation that becomes a member of the taxpayer's combined reporting group as a result of a transaction referred to in this subsection (2) must be treated as a member of the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group at the time of the transfer for purposes of this subsection (2).

(d) For purposes of this subsection (2), stock of an insurance subsidiary constitutes property used in the active trade or business of the insurer.

(e) This subsection (2) does not apply to any property described by section 367(a)(3)(B) of the Internal Revenue Code, 26 U.S.C. 367(a)(3)(B).

(f) If the deferred gain required to be taken into account under this subsection (2) is business income as defined in 15-31-302, the gain must be apportioned using the apportionment percentage for the tax year that the gain is required to be taken into account under this subsection (2). Except as provided in 15-31-312 and rules adopted to implement that section, for purposes of the sales factor for that tax year, the transaction giving rise to that gain must be treated as a sale occurring in the tax year the gain is taken into account. The amount of any gain required to be recognized under this subsection (2) upon any disposition described in this subsection (2) may not exceed the lesser of the deferred gain or the gain realized in the transaction in which gain is required

to be recognized under this subsection (2).

(g) For purposes of computing the amount of gain required to be recognized under this subsection (2), appropriate adjustments may be made, pursuant to rules adopted by the department, to the basis of stock to reflect the disallowance of any expenses under [section ~~4(2)~~ 3(2)].

(3) The department may adopt rules providing for an annual reporting requirement in the form of a statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were previously deferred pursuant to subsection (2). If the transferor taxpayer fails to provide information required by the department, the department may, in lieu of the year in subsection (2)(f), require that the transferor taxpayer take those gains into account in the first tax year in which the current ownership of the property is not reported unless the property is still owned by the transferee and the failure to provide the information was due to reasonable cause and not willful neglect. If a taxpayer fails to satisfy the reporting requirements of this subsection (3), then a notice of proposed deficiency assessment resulting from adjustments attributable to gains previously deferred pursuant to subsection (2), with respect to which the reporting requirements were not satisfied, may be mailed to the taxpayer within 4 years from the date on which the reporting requirements are satisfied by the taxpayer.

(4) Unless otherwise provided by rules adopted by the department, a transfer by a taxpayer of an interest in a partnership to an insurer in a transaction described in subsection (1)(a) must be treated as a transfer to that insurer of the taxpayer's pro rata share of the assets of the partnership.

(5) (a) A distribution described by section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, must be treated as an exchange under this section, whether or not the distribution is an exchange. This subsection (5)(a) does not apply to a distribution in which:

(i) the distributing corporation is an insurer; or

(ii) the distributee is a person other than an insurer.

(b) For a distribution described in section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, by a taxpayer to an insurer, the department shall adopt rules regarding the recognition of gain to prevent the removal of gain inherent in property at the time of a transfer from taxation.

(6) For purposes of this section, a transfer of property to an insurer as a contribution to capital of that insurer by one or more persons who, immediately after the transfer, own, within the meaning of section 318 of

the Internal Revenue Code, 26 U.S.C. 318, stock possessing at least 80% of the total combined voting power of all classes of stock of that insurer that are entitled to vote must be treated as an exchange of that property for stock of the insurer equal in value to the fair market value of the property transferred.

(7) (a) In the case of any liquidation to which section 332 of the Internal Revenue Code, 26 U.S.C. 332, applies, unless otherwise provided in rules adopted by the department:

(i) sections 337(a) and (b)(1) of the Internal Revenue Code, 26 U.S.C. 337(a) and (b)(1), do not apply if the 80% distributee is an insurer; and

(ii) if the distributor is an insurer, the distributee shall treat the distribution as a distribution from the insurer's earnings and profits.

(b) For purposes of subsection (7)(a)(ii), the distribution from earnings and profits must be treated as a dividend eligible for a deduction, to the extent otherwise provided in [section 2], as if it was actually distributed as a dividend.

(8) (a) Upon an adequate showing by a taxpayer that a transaction referred to in subsection (1) or (7) would not violate the purposes of this section to prevent the removal of gain inherent in property at the time of a transfer from taxation under this section, the department may grant relief from the application of this section.

(b) In a proceeding contesting the department's actions under this section, relief may be granted a taxpayer only upon a specific finding by the state tax appeal board or district court that the contested transfer did not remove gain inherent in property at the time of transfer from taxation under this section.

NEW SECTION. **Section 5. Includable in gross income.** (1) (a) The department may include in the gross income of the taxpayer or a member of the taxpayer's combined reporting group in that tax year the taxpayer's pro rata share or the pro rata share of a member of the taxpayer's combined reporting group of any of those insurers' current earnings and profits in that tax year, but not to exceed an amount equal to the specific insurer's net income attributable to investment income for that year minus that insurer's net written premiums received in that same tax year, if:

(i) for any tax year, an insurer is a member of a taxpayer's commonly controlled group;

(ii) the ratio of the 5-year average net written premiums to the 5-year average total income of all insurers in the commonly controlled group is equal to or less than 0.10 ~~or, if the insurer members of the commonly controlled group constitute a predominantly captive insurance group, the ratio is equal to or less than 0.40~~; and

(iii) the accumulation of earnings and profits of the insurers in the commonly controlled group had a

substantial purpose of avoidance of taxes on, according to, or measured by income of this state or any other state.

(b) The amount included in gross income pursuant to subsection (1)(a) must be treated as a dividend received from an insurance company during the tax year, and to the extent applicable, [section 2] applies to that amount.

(2) To the extent that the amounts are included pursuant to subsection (1) in the gross income of a taxpayer or a member of the taxpayer's combined reporting group, those amounts may not again be considered as investment income in the application of the ratio in subsection (1)(a)(ii).

(3) (a) The amounts included in gross income under subsection (1) may not again be included in gross income when subsequent distributions are made to:

(i) the taxpayer or a member of the taxpayer's combined reporting group;

(ii) another taxpayer that acquires an interest in the stock of the taxpayer or a member of the taxpayer's combined reporting group with respect to which subsection (1) was applied; or

(iii) any successor or assign of the respective taxpayers or a member of the taxpayer's combined reporting group described in this subsection (3).

(b) For purposes of applying this subsection (3), distributions from an insurer are considered first made from amounts included under subsection (1).

(4) For purposes of this section, the terms "net written premiums", "5-year average net written premiums", and "5-year average total income" have the same meaning as applicable for [section 2], whether or not a dividend is actually received from any insurer member of the taxpayer's commonly controlled group in that tax year.

(5) For the purposes of this section, the taxpayer's pro rata share of the current earnings and profits of an insurer member of a commonly controlled group is the amount that would have been received as a dividend by the taxpayer or a member of the taxpayer's combined reporting group if:

(a) the insurer had directly distributed its current earnings and profits with respect to its stock held by the taxpayer or a member of the taxpayer's combined reporting group; and

(b) the insurer holds the stock of another insurer and all other insurer members of the taxpayer's commonly controlled group had distributed the same current earnings and profits with respect to their stock, in the same tax year, until amounts were received as a dividend by the taxpayer or a member of the taxpayer's combined reporting group from an insurer member of the commonly controlled group.

(6) In the application of this section, amounts treated as a dividend received by a partnership are considered a dividend received by each partner that is a member of the commonly controlled group, either directly or through a series of tiered partnerships.

(7) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN INSURER INVOLVED IN A PROCEEDING UNDER THE INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION ACT, TITLE 33, CHAPTER 2, PART 13, OR ANY SIMILAR PROCEEDING BROUGHT BY ANY OTHER STATE INSURANCE COMMISSIONER.

NEW SECTION. **SECTION 6. LEGITIMATE BUSINESS PURPOSE.** (1) IF A TAXPAYER'S RATIO OF THE 5-YEAR AVERAGE NET WRITTEN PREMIUMS FOR ALL INSURANCE COMPANIES IN A COMMONLY CONTROLLED GROUP TO THE 5-YEAR AVERAGE TOTAL INCOME FOR ALL INSURANCE COMPANIES IN THE COMMONLY CONTROLLED GROUP FOR THE TAX YEAR IS GREATER THAN OR EQUAL TO 60%, AS DETERMINED UNDER [SECTION 2], THEN THE PROVISIONS OF [SECTIONS 1 THROUGH 7] DO NOT APPLY.

(2) IF A TAXPAYER'S RATIO OF THE 5-YEAR AVERAGE NET WRITTEN PREMIUMS FOR ALL INSURANCE COMPANIES IN A COMMONLY CONTROLLED GROUP TO THE 5-YEAR AVERAGE TOTAL INCOME FOR ALL INSURANCE COMPANIES IN THE COMMONLY CONTROLLED GROUP FOR THE TAX YEAR IS LESS THAN 60%, AS DETERMINED UNDER [SECTION 2], AND UPON AN ADEQUATE SHOWING BY A TAXPAYER THAT A TRANSACTION REFERRED TO IN [SECTIONS 2 THROUGH 5] WAS ENTERED INTO WITH A LEGITIMATE BUSINESS PURPOSE, THE DEPARTMENT MAY GRANT RELIEF FROM THE APPLICATION OF [SECTIONS 1 THROUGH 7].

NEW SECTION. **Section 7. Rulemaking authority.** ~~To implement the provisions of [sections 1 through 7],~~ the THE department may adopt rules that it considers necessary TO IMPLEMENT AND ADMINISTER THE PROVISIONS OF [SECTIONS 1 THROUGH 6]. ~~, including but not limited to the following:~~

~~(1) establish a comparable weighting factor as described in the definition of net written premiums for new lines of insurance not addressed in [sections 1 through 7];~~

~~(2) for purposes of determining the applicable ratios described in [sections 3 and 4], the inclusion or exclusion of items of investment income to eliminate the effects of devices designed to manipulate those ratios for purposes of avoiding a tax imposed by this chapter;~~

~~(3) for purposes of determining the applicable ratios described in [sections 3 and 4], the inclusion or exclusion of items of investment income to prevent distortion causing significant reduction in those ratios so that the result does not reflect a valid business purpose;~~

~~(4) providing for an annual reporting requirement in the form of a statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were previously deferred pursuant to [section 5];~~

~~(5) to carry out the purposes of [section 5], which is to prevent the removal of gain inherent in property at the time of a transfer from taxation under this chapter. The rules may provide for appropriate adjustments to the amount of deferred income described in [section 5] to avoid the double inclusion of income for situations including but not limited to the property transferred to an insurer member of the commonly controlled group that is later acquired by a noninsurer member of the taxpayer's combined reporting group.~~

~~(6) to describe conditions under which the accumulation of earnings and profits of those insurers described in [section 6] do not have the substantial purpose of avoidance of taxes on, according to, or measured by income of this state or any other state.~~

~~**Section 8.** Section 33-2-705, MCA, is amended to read:~~

~~**"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct~~

~~premium income and are not subject to tax.~~

~~(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.~~

~~(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.~~

~~(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and, except as provided in [sections 1 through 7], is in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.~~

~~(5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to Title 90, chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).~~

~~(6) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.~~

~~(7) In addition to the penalty provided for in subsection (6), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.~~

~~(8) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."~~

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through

7].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0138	Title:	Prevent corporations from channeling income to insurance subsidiary
Primary Sponsor:	Wanzenried, D.	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Revenue:				
General Fund	$1,500,000	$3,000,000	$2,250,000	$2,250,000
Net Impact-General Fund Balance	$1,500,000	$3,000,000	$2,250,000	$2,250,000

Description of Bill:

This legislation prevents non-insurance companies with an affiliate or subsidiary insurance company from transferring gains, assets or income to the insurance company in order avoid taxation under the preferential tax treatment available to insurance companies. Federal lawmakers recently enacted legislation to address this loophole at the federal level and this bill closes the loophole at the state level.

FISCAL ANALYSIS

Assumptions:

1. Under current law, insurance companies are taxed under the state's premiums tax instead of the state's franchise or income tax. Under the premiums tax rules, certain gains on assets held by insurance companies and dividend payments from fully-owned insurance subsidiaries are not subject to tax. This preferential tax treatment is intended to provide stability to the insurance industry and ensure that insurance companies have sufficient asset growth to cover claims. The preferential tax treatment is unique to insurance companies and is not intended for use by non-insurance corporations. Other types of corporations are subject to the corporate income tax.

2. This legislation will not change the preferential tax treatment given to insurance companies. Instead, this legislation prorates the dividends deduction that can be claimed by non-insurance parent companies on assets transferred to the insurance affiliate. The dividend deduction will be prorated by the capitalization percentage, which is based on the ratio of the premium income to total income of all insurance companies

in the commonly-controlled group. A high ratio of premium income to total income indicates the insurance company is predominately involved in the insurance business, and is not serving as a tax shelter.

3. This legislation also restricts the dividends-received deduction for any dividends attributable to premiums received by the insurance company from a member of the insurance company's commonly-controlled group. This provision ensures affiliated corporations are not paying excessive premiums to the insurance company in order to increase the capitalization percentage, thus increasing the deduction allowed.

4. The proposed legislation limits interest or expense deductions on property transferred to the insurance company by the non-insurance parent corporation for the purpose of tax-free accumulation of investment income. Further, transfers of appreciated property to an insurance company affiliate are recognizable and taxable gains in certain circumstances.

5. Finally, the proposed legislation restricts excessively-overcapitalized insurance companies and captive insurance companies from receiving preferential tax treatment by including the insurance affiliate's share of investment income, minus premiums-received income, in the non-insurance company parent's gross income if the insurance affiliate has less than 10% of its income from premiums (this percentage is 40% for predominately-captive insurance companies).

6. These provisions apply to tax years beginning after December 31, 2006.

7. The Department of Revenue (DOR) has identified 2-4 companies that will likely be subject to additional tax liability upon passage of this bill. The estimated liability increase per company is between $500,000 and $1 million.

8. DOR estimates the fiscal impact of this legislation is $2.250 million in each fiscal year it is fully implemented, assuming 3 companies will be subject to an additional assessment of $750,000.

9. Corporate license tax returns are due on or before the 15th day of the fifth month after the end of the tax year. However, an automatic six-month extension available for corporations, if requested, and additional extensions can be requested. Corporations reporting on a fiscal year basis, whose fiscal year begins December 1, would not be required to file until April 15th. With the automatic six-month extension the due date for the return is October 15th. Therefore, a corporation whose fiscal year began December 1, 2006 would not be required to file until October 15, 2008, which is in FY 2009. Corporations are responsible for making quarterly estimated payments which must be either 80% of the total tax shown on the return for the taxable year, or 100% of the total tax for the prior taxable year. For the purposes of this fiscal note, it is assumed that additional revenue from one of the three corporations projected by DOR to be subject to additional tax liability will be paid beginning in FY 2009. The additional revenue from the other corporations is assumed to be paid beginning in FY 2008. Therefore, revenue for FY 2008 will be $1.5 million ($2.250 million – $0.750 million); FY 2009 revenue will be $3.0 million ($2.250 million + $0.750 million); and FY 2010 and FY 2011 revenue will be $2.250 million.

10. DOR will not incur any additional expenses due to passage of this legislation.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Revenues:				
General Fund (01)	$1,500,000	$3,000,000	$2,250,000	$2,250,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$1,500,000	$3,000,000	$2,250,000	$2,250,000

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 439

INTRODUCED BY ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MINERAL ROYALTY BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING REMITTORS TO WITHHOLD TAXES ON ROYALTY PAYMENTS MADE TO ~~NONRESIDENT~~ ROYALTY OWNERS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING REMITTORS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; PROVIDING FOR PENALTIES AND INTEREST FOR FAILURE TO REMIT TAX; REQUIRING REMITTORS TO PROVIDE ANNUAL STATEMENTS TO ROYALTY OWNERS AND THE DEPARTMENT OF REVENUE; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Mineral Royalty Backup Withholding Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Mineral" has the same meaning as provided in 15-38-103.

(2) "PUBLICLY TRADED PARTNERSHIP" MEANS A PUBLICLY TRADED PARTNERSHIP AS DEFINED IN SECTION 7704 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 7704, THAT IS NOT TREATED AS A CORPORATION.

~~(2)~~(3) "Remittor" means an individual, entity, or trust that makes royalty payments to royalty owners.

~~(3)~~(4) "Royalty owner" means a person or entity entitled to receive periodic payments for a nonworking interest in the production of oil or gas or in the severance of other minerals from the mineral estate.

NEW SECTION. **Section 3. Withholding required on mineral royalty payments.** Except as provided in [section 4], each remittor shall withhold from each royalty payment made to a royalty owner an amount equal to 6% of the net amount payable to the royalty owner.

NEW SECTION. **Section 4. Withholding -- no application under certain conditions.** (1) The provisions of [sections 1 through 12] do not apply to royalty payments made to a royalty owner if the royalty owner is:

~~(a) a Montana resident;~~

~~(b)~~(A) the United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;

~~(c)~~(B) a federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;

~~(d)~~(C) the United States as trustee for individual Indians; ~~or~~

(D) A PUBLICLY TRADED PARTNERSHIP;

(E) AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER 15-31-102; OR

~~(e)(D)~~(F) the same person or entity as the remittor.

(2) (A) THE PROVISIONS OF [SECTIONS 1 THROUGH 12] DO NOT APPLY TO A REMITTOR THAT PRODUCES LESS THAN ~~50,000~~ 100,000 BARRELS OF OIL AND LESS THAN ~~300,000 THOUSAND~~ 500 MILLION CUBIC FEET OF GAS ANNUALLY. THE DEPARTMENT SHALL DETERMINE A REMITTOR'S ANNUAL PRODUCTION OF OIL AND GAS BASED UPON A 3-YEAR ROLLING AVERAGE OF THE REMITTOR'S ANNUAL PRODUCTION AS REPORTED BY THE REMITTOR TO THE MONTANA BOARD OF OIL AND GAS CONSERVATION.

(B) EACH PRODUCER THAT IS EXEMPTED FROM WITHHOLDING UNDER SUBSECTION (2)(A) SHALL MAKE AN ANNUAL RETURN TO REPORT ROYALTY PAYMENTS THAT EXCEED THE DOLLAR AMOUNTS IN SUBSECTION (3). THE RETURN MUST BE MADE UNDER RULES ADOPTED BY THE DEPARTMENT AND BE AS NEARLY IDENTICAL AS POSSIBLE TO FEDERAL RULES FOR INTERNAL REVENUE SERVICE FORM 1099 UNDER SECTION 6041, ET SEQ., OF THE INTERNAL REVENUE CODE, 26 U.S.C. 6041, ET SEQ.

(C) EACH YEAR, A PUBLICLY TRADED PARTNERSHIP THAT IS EXEMPT FROM WITHHOLDING UNDER SUBSECTION (1)(D) SHALL TRANSMIT TO THE DEPARTMENT, IN AN ELECTRONIC FORMAT APPROVED BY THE DEPARTMENT, EACH PARTNER'S U.S. DEPARTMENT OF THE TREASURY SCHEDULE K-1, FORM 1065 OR 1065-B, AS APPLICABLE, FILED ELECTRONICALLY FOR THE YEAR WITH THE INTERNAL REVENUE SERVICE.

(D) A ROYALTY OWNER THAT IS A PUBLICLY TRADED PARTNERSHIP OR AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER 15-31-102 SHALL REPORT TO THE REMITTOR AND DEPARTMENT UNDER OATH, ON A FORM PRESCRIBED BY THE DEPARTMENT, ALL INFORMATION NECESSARY TO ESTABLISH THAT THE REMITTOR IS NOT REQUIRED UNDER [SECTION 3] TO WITHHOLD ROYALTY PAYMENTS MADE TO THE PARTNERSHIP OR ORGANIZATION.

~~(2)~~(3) If the royalty payment made to a royalty owner subject to withholding under the provisions of [sections 1 through 12] is less than $166 for the current withholding period or is less than $2,000 if the payment is annualized, then the department may grant a remittor's request to forego withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if applicable, the royalty payments for the annual period.

(4) THE DEPARTMENT MAY, BY RULE, ESTABLISH MINIMUM ROYALTY AMOUNTS SUBJECT TO WITHHOLDING UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 12], OTHER THAN FOR OIL AND GAS PRODUCTION, IF THE DEPARTMENT DETERMINES THAT THE WITHHOLDING AGAINST THE MINIMAL AMOUNT OF ROYALTIES IS INEFFICIENT.

NEW SECTION. **Section 5. Remittor liable for withholding taxes and statements -- liability mitigation -- sufficiency of mailing address.** (1) Each remittor is liable for the payment required by [section 6], the amount required to be deducted and withheld under [sections 1 through 12], and the annual statements required by [sections 8 and 9]. The payments required by [section 6] and the amounts required to be deducted and withheld, plus penalty and interest due, are a tax. With respect to the tax, the remittor is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from mineral royalty payments and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Subject to subsections (3)(b) and (6), each officer of the corporation is individually liable, along with the corporation, for filing statements, to the extent that the officer has access to the requisite records, and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by [sections 1 through 12] or to pay taxes due as required by [sections 1 through 12].

(b) If a corporate remittor violates the provisions of [sections 1 through 12], the department shall first apply the provisions of [section 11] against the corporation. If the corporation fails to remedy the violation, then the department shall apply the provisions of [section 11] against each responsible corporate officer as determined in subsections (3)(a) and (3)(c).

(c) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available

information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) Subject to subsection (6), for the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under [sections 1 through 12]:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) The liability of an individual described in subsection (3) or (5) for taxes, penalties, and interest is released if and to the extent that the amount required to be deducted and withheld under [sections 1 through 12] is deposited in a separate account that is:

(a) established in a bank, as defined in 32-1-102, located in Montana;

(b) designated as a special fund in trust for the state; and

(c) payable to the department.

(7) If the remittor fails to deduct and withhold the amounts specified in [section 3] and the tax, against which the deducted and withheld amounts would have been credited, is paid, the amounts required to be deducted and withheld may not be collected from the remittor.

~~(8) For purposes of [sections 1 through 12], the residency of a royalty owner may be established by the remittor based upon the address to which the remittor mails the royalty owner's payments. A remittor bears no liability for relying upon the royalty owner's address to establish residency.~~

NEW SECTION. **Section 6. Royalty withholding tax remittance schedule -- alternative schedules**

and methods -- records. (1) Except as provided in subsection (2), each remittor is required to file a quarterly return, on a form prescribed by the department, and remit to the department the amount of tax withheld on royalty payments according to the following schedule:

(a) for royalty payments made during January, February, and March of each calendar year, the amount withheld is due on or before April 30 of the year;

(b) for royalty payments made during April, May, and June of each calendar year, the amount withheld is due on or before July 31 of the year;

(c) for royalty payments made during July, August, and September of each calendar year, the amount withheld is due on or before October 31 of the year; and

(d) for royalty payments made during October, November, and December of each calendar year, the amount withheld is due on or before January 31 of the following year.

(2) A remittor may request an alternative remittance schedule than is required by subsection (1). The department may consider situations such as administrative and taxpayer convenience and frequency of royalty payments in determining whether to approve an alternative remittance schedule.

(3) A remittor may elect to remit and file mineral backup withholding electronically in any format established and approved by the department if the remittor obtains prior approval from the department before remitting the tax by electronic fund transfer.

(4) If a remittor remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment.

(5) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided under 15-1-703.

(6) Each remittor shall keep accurate royalty payment and withholding records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. A remittor that maintains its records outside of Montana shall furnish copies of those records to the department at the remittor's expense.

NEW SECTION. **Section 7. Amount of royalty payment withheld considered taxes collected.** The amounts deducted and withheld from royalty payments are considered taxes collected under the provisions of [sections 1 through 12]. A royalty owner does not have a right of action against the remittor for any amount

deducted and withheld from the royalty owner's royalty and paid to the state in compliance or intended compliance with [sections 1 through 12]. The amounts deducted and withheld and paid to the state in compliance or intended compliance with [sections 1 through 12] are not subject to the provisions of section 82-10-103.

NEW SECTION. **Section 8. Annual withholding statement to royalty owner.** Before January 31 of each year, each remittor shall furnish to each royalty owner a statement, on a form prescribed by the department, showing the total royalties paid by the remittor to the royalty owner during the preceding calendar year and showing the amount of the tax deducted and withheld from the royalty payments. The royalty owner shall file a duplicate of the statement with the royalty owner's state income tax return.

NEW SECTION. **Section 9. Remittor to furnish annual statement to department.** (1) On or before February 28 of each year, each remittor shall file with the department a royalty and tax statement, on a form provided by the department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld from the royalty payments under the provisions of [sections 1 through 12] for the same period.

(2) The annual statement filed by a remittor under this section complies with the requirements of 15-30-301 relating to the duties of information agents. An additional information return is not required with respect to the royalty payments.

(3) The department shall make the forms described in [section 6] and this section available no later than November 15, 2007.

NEW SECTION. **Section 10. Withheld taxes held in trust for state.** Each remittor that deducts and withholds the amounts under the provisions of [sections 1 through 12] shall hold the amounts in trust for the state.

NEW SECTION. **Section 11. Violations by remittor -- penalties -- interest -- remedies.** (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) A remittor that purposely fails to furnish the royalty and tax statement required by [section 9] is subject to a penalty of $50 for each failure, with a minimum of $1,000. The penalties imposed by this subsection are in

addition to the penalties imposed by 15-1-216.

(3) All 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 [sections 1 through 12] unless otherwise specifically provided for in this part.

NEW SECTION. **Section 12. Rulemaking authority.** The department shall adopt rules that may be necessary to administer and enforce the provisions of [sections 1 through 12].

NEW SECTION. **Section 13. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections 1 through 12].

NEW SECTION. **Section 15. Effective date.** [This act] is effective January 1, 2008.

NEW SECTION. **Section 16. Applicability.** [This act] applies to royalty payments made after December 31, 2007.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0439	Title:	Nonresident withholding for natural resource royalty payments
Primary Sponsor:	Elliott, Jim	Status:	Second Reading

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☑ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$443,130	$129,726	$132,969	$136,293
Revenue:				
General Fund	$1,517,046	$2,525,948	$2,536,515	$2,536,515
Net Impact-General Fund Balance	$1,073,916	$2,396,222	$2,403,546	$2,400,222

Description of Fiscal Impact:

Royalties that Montana mineral producers pay to mineral rights owners are Montana source income and are subject to Montana income tax whether the recipient is a resident or non-resident. Under current law, mineral producers are required to report royalty payments of more than $600 to the IRS, but are not required to report them to Montana or to withhold state income tax. Beginning January 1, 2008, this bill would require mineral producers to withhold income tax from mineral royalty payments to individuals, trusts, and business entities who receive more than $2,000 per year in royalties. Smaller oil and gas producers would be allowed to make an annual report in lieu of withholding.

FISCAL ANALYSIS

Assumptions:

1. Under current law, owners of Montana mineral interests pay the income tax they owe on mineral royalties only if they choose to file a Montana income tax return and report their royalty income. This bill would require mineral producers to withhold 6% of mineral royalty payments to taxable parties who they pay $2,000 or more in royalties per year.
2. The Department of Revenue analyzed 2004 payments to taxable individuals reported by one of the larger oil and gas producers, and compared those payments to Montana income tax returns for 2004. Of these royalty payments,

   a. 25.5% of taxable royalties were paid to individuals and 74.5% were paid to corporations,
   b. 92.5% of payments to individuals went to persons who would be subject to withholding under this bill,
   c. 43.0% of payments to individuals went to persons who did not file Montana income tax returns, and
   d. 37.4% of payments to individuals went to persons who would be subject to withholding and did not file Montana income tax returns.
3. Of royalties paid to persons who filed income taxes, 6.8% were paid to persons who did not owe Montana income tax.
4. The average marginal tax rate of royalty recipients who filed Montana income tax returns was 6.11%.
5. The percentage of businesses receiving mineral royalties that pay taxes owed on them is unknown. To avoid over-estimating the impact of this bill, it is assumed to be high, at 95%. All business royalty recipients are assumed to receive at least $2,000 in royalties per year, but half of royalties paid to business are assumed to be paid by a business to itself (i.e. mineral producers who are also mineral rights owners paying royalties to themselves.) The percentage of business royalty recipients who do not owe tax is assumed to be the same as for individuals, 6.8%.
6. This bill would allow oil and gas producers who produce less than 50,000 barrels of oil and 300,000 mcf of gas to provide an annual statement of royalties paid instead of withholding. Over the last twelve quarters, oil and gas producers who were above the production threshold paid 92.3% of taxable oil and gas royalties.
7. The percentages in assumptions 2 through 5 are assumed to hold for all mineral royalties. Thus, under this bill,
   a. income taxes would be withheld on 92.5% of the 25.5% of mineral royalties paid to individuals, and on 50% of the 74.5% of mineral royalties paid to businesses. In total, taxes would be withheld on 60.8% (92.5% x 25.5% + 50% x 74.5%) of taxable royalties, with 38.8% of withholding from individuals (92.5% x 25.5% / 60.8%) and 61.3% from businesses (50% x 74.5% / 60.8%),
   b. 18.75% (38.8% x 37.4% /92.5% + 61.3% x 5%) of taxes owed and withheld would not have been paid without this bill,
   c. 6.8% of taxes withheld would be refunded, and
   d. taxpayers who have tax withheld would owe additional taxes equal to 0.1% of taxes withheld ((6.11% - 6%) x (100% - 6.5%).
8. Taxable royalties were 11.8% of gross value reported on oil and gas tax returns for 2001 through 2005.
9. The gross value of oil and gas production will be $2,795,396,000 in FY 2008 and $2,492,155,000 each year in FY 2009 through FY 2010 (HJR 2).
10. Taxable oil and gas royalties paid by producers subject to withholding will be $304,457,760 in FY 2008 (92.3% x 11.8% x $2,795,396,000) and $271,430,570 each year in FY 2009 through FY 2010 (92.3% x 11.8% x $2,492,155,000).
11. Non-tribal coal production will be 37,567,700 tons in FY 2008 and 36,411,700 tons per year in FY 2009 through FY 2011 (HJR 2 coal severance tax estimate). The market price will be $10.021523 per ton (HJR 2 federal mineral royalties estimate), so that the gross value of production (price times production) will be $376,485,570 in FY 2008 and $364,900,689 each year in FY 2009 through FY 2011.
12. Royalty rates average 12.5%. Total coal royalties will be $47,060,696 in FY 2008 (12.5% x $376,485,570) and $45,612,586 per year in FY 2009 through FY 2011 (12.5% x $364,900,689). State and federal coal royalties will be $36,033,403 in FY 2008 and $29,610,173 per year in FY 2009 through FY 2010 (HJR 2 school trust and federal mineral royalties estimates).
13. Taxable coal royalties will be $11,027,293 in FY 2008 ($47,060,696 - $36,033,403) and $16,002,413 per year in FY 2009 through FY 2010 ($45,612,586 - $29,610,173).
14. The gross value of production from metal mines will be $1,024,764,685 in FY 2008 and $880,261,620 per year in FY 2009 through FY 2010. Total metal mine royalties will be $128,095,586 in FY 2008 (12.5% x

$1,024,764,685) and $110,032,703 per year in FY 2009 through 2011 (12.5% x $880,261,620). There are no state or federal metal mine royalties (HJR 2 school trust and federal mineral royalties estimates) so that all of these royalties are private.

15. Total taxable royalties paid by producers subject to withholding will be $443,580,639 in FY 2008 ($304,457,760 + $11,027,293 + $128,095,586) and $397,465,686 per year in FY 2009 through FY 2011 ($271,430,570 + $16,002,413 + $110,032,703).
16. Withholding will begin in January 2008, half way through FY 2008. Withholding on royalty payments will be $8,090,911 in FY 2008 (1/2 x 6% x 60.8% x $443,580,639) and $14,499,548 per year in FY 2009 through FY 2011 (6% x 60.8% x $397,465,686).
17. Beginning in FY 2009, when taxpayers who had tax withheld file their returns, they will receive refunds of 6.8% of tax withheld over the previous calendar year and make additional payments of 0.1% of tax withheld. Net collections will be $8,090,911 in FY 2008, $13,471,722 in FY 2009 ($14,499,548 – 6.7% x ($8,090,911 + $14,499,548/2)), and $13,528,078 per year in FY 2010 and FY 2011 ($14,499,548 x (100% - 6.7%)).
18. The net increase in general fund revenue would be $1,517,046 in FY 2008 (18.75% x $8,090,911), $2,525,948 in FY 2009 (18.75% x $13,471,722), and $2,536,515 per year in FY 2010 and FY 2011 (18.75% x $13,528,078).
19. The Department of Revenue would need to add a new module to its data processing system at a cost of $300,000 in FY 2008 with testing costs of $1,213 per year. Processing and auditing additional withholding and income tax returns would require one additional auditor and one additional administrative support position, with personal service costs of $103,923 in FY 2008 and FY 2009, increasing to $106,521 in FY 2010 and $109,184 in FY 2011. Set up costs for these positions would be $11,800 in FY 2008. Operating costs would be $21,322 in FY 2008 and $22,218 in FY 2009, increasing by 2.5% per year in later years. Creating a new withholding form would have operating costs of $2,500 in FY 2008, and annual costs for mailing forms of $2,372, increasing by 2.5% in FY 2010 and FY 2011.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	2.00	2.00	2.00	2.00
Expenditures:				
Personal Services	$103,923	$103,923	$106,521	$109,184
Operating Expenses	$339,207	$25,803	$26,448	$27,109
TOTAL Expenditures	$443,130	$129,726	$132,969	$136,293
Funding of Expenditures:				
General Fund (01)	$443,130	$129,726	$132,969	$136,293
TOTAL Funding of Exp.	$443,130	$129,726	$132,969	$136,293
Revenues:				
General Fund (01)	$1,517,046	$2,525,948	$2,536,515	$2,536,515
TOTAL Revenues	$1,517,046	$2,525,948	$2,536,515	$2,536,515
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$1,073,916	$2,396,222	$2,403,546	$2,400,222

Long-Range Impacts:

1. The additional revenue from this bill will vary over time depending on mineral production and prices.

Technical Notes:

1. Section 4(2)A of the bill as amended, exempts from withholding "a remittor that produces less than 50,000 barrels of oil and less than 300,000 thousand cubic feet of gas annually." Section 4(4) gives the Department of Revenue authority to establish minimum royalty amounts subject to withholding for producers of other minerals. This fiscal note assumes that any thresholds established for producers of other minerals will have a negligible impact on revenue. It also assumes that any possible ambiguities, such as thresholds for a company producing both coal and natural gas, will be resolved through the rulemaking process.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 416

INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DISCLOSURE OF THE FEDERAL TAX IDENTIFICATION NUMBER OF A BUSINESS ENTITY ON THE ANNUAL REPORT FILED WITH THE OFFICE OF THE SECRETARY OF STATE; LIMITING DISCLOSURE OF THE FEDERAL TAX IDENTIFICATION NUMBER; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION FROM TAX RETURNS AND REPORTS TO THE SECRETARY OF STATE; AMENDING SECTIONS 15-30-303, 15-31-511, 15-31-603, 35-1-1104, AND 35-8-208, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return

or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; ~~or~~

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311; or

(d) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability partnership that filed a tax return or report required by this chapter.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

Section 2. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule

of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20; or

(g) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability partnership that filed a tax return or report required by this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction."

Section 3. Section 15-31-603, MCA, is amended to read:

"15-31-603. List of entities furnished by and to secretary of state. (1) On or before the 15th day of each month, the secretary of state shall provide a list of all new corporations, business trusts, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, chapters 1, 4, 5, 8 through 10, and 12, to the department ~~of revenue~~. The list must include the following information:

~~(1)~~(a) the name of the entity;

~~(2)~~(b) the principal office of the entity;

~~(3)~~(c) the name and address of the registered agent of the entity in Montana, if applicable; ~~and~~

(d) the federal tax identification number of the entity, if applicable; and

~~(4)~~(e) other information that the director of the department ~~of revenue~~ may require.

(2) On or before December 15 of each year, the department shall furnish to the secretary of state a list of all corporations, business trusts, limited partnerships, limited liability companies, and limited liability partnerships that have filed a tax return or report required by chapter 30 or 31. The list must include the following information:

(a) the name of the entity;

(b) the address of the entity; and

(c) the business activity code of the entity, if available."

Section 4. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; ~~and~~

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and

(h) the corporation's federal tax identification number.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

(5) The tax identification number of the corporation may not be disclosed except to the department of revenue pursuant to 15-31-603."

Section 5. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company; and

(f) the limited liability company's tax identification number.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional

information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

(7) The tax identification number of the limited liability company may not be disclosed except to the department of revenue pursuant to 15-31-603."

NEW SECTION. **Section 6. Effective date.** [This act] is effective January 1, 2008.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0416	Title:	Secretary of state - department of revenue taxpayer identification
Primary Sponsor:	Kaufmann, Christine	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
Proprietary	$24,000	$0	$0	$0
Revenue:				
Proprietary	$0	$0	$0	$0
Net Impact-General Fund Balance	$0	$0	$0	$0

Description of Fiscal Impact:
The bill creates coordination between the Secretary of State's Office and the Department of Revenue related to federal tax identification numbers. The Secretary of State will modify its existing database for a one time cost of $24,000 of proprietary funding.

FISCAL ANALYSIS

Assumptions:

Secretary of State

1. SB 416 requires the disclosure of the federal tax identification number of a business entity on the Annual Report filed with the Secretary of State's Office (SOS).
2. The SOS database shall be enhanced to maintain the Federal Tax ID number and the Department of Revenue specific tax year data as defined by the bill.
3. The one time cost to modify the existing database is $24,000. The estimated cost includes time to code and test modifications to the existing system used for the web interface process for accessing Corporation and LLC mainframe data, test the application online modifications to add, change, inquiry, and update history screens, test batch reporting enhancements, a process to update the current SOS database to include existing

Federal Tax IDs, and additional data as received from DOR, and to define security for both the SOS mainframe application and the BEAR interface process.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Secretary of State				
Expenditures:				
Operating Expenses	$24,000	$0	$0	$0
Funding of Expenditures:				
Proprietary	$24,000	$0	$0	$0
TOTAL Funding of Exp.	$24,000	$0	$0	$0
Revenues:				
Proprietary	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
Proprietary	($24,000)	$0	$0	$0

Technical Concerns:

1. Section 3 requires that the list be furnished by December 15. It is not clear whether the list would include all returns from January 1 through December 15 or the list would be established between the two agencies. It is assumed that the list would not include tax returns filed prior to the effective date of the legislation.
2. The business activity code is not currently entered into computer systems. The legislation only requires the business activity code "if available."

Sponsor's Initials *Date* *Budget Director's Initials* *Date*

HOUSE BILL NO. 108

INTRODUCED BY R. ERICKSON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING STATE WITHHOLDING PROVISIONS TO FEDERAL WITHHOLDING PROVISIONS FOR PENSIONS, ANNUITIES, AND CERTAIN OTHER DEFERRED INCOME; REQUIRING WITHHOLDING AT 30 PERCENT OF THE AMOUNT WITHHELD FOR FEDERAL TAX PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Withholding from pensions, annuities, and certain other deferred income.** (1) In conformity with section 3405 of the Internal Revenue Code, 26 U.S.C. 3405, the payor of any periodic or nonperiodic payment, as defined in that section, shall:

(a) withhold from the payment 30% of the amount, if any, withheld for federal tax purposes; and

(b) withhold the amount in subsection (1)(a) and is liable for payment of the tax when required to withhold the amount for federal purposes.

(2) A designated distribution must be treated as if it was wages paid by an employer to an employee subject to withholding under 15-30-202. If a designated distribution is not subject to federal withholding because a federal election of no withholding was made under section 3405 of the Internal Revenue Code, 26 U.S.C. 3405, state withholding is not required and the amount withheld is considered zero.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to payments made after December 31, 2007.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	HB0108	Title:	Follow Federal Practice of Withholding for Retirement Fund Withdrawals
Primary Sponsor:	R. Erickson	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Include in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$1,425	$1,425	$1,425	$1,425
Revenue:				
General Fund	$150,000	$150,000	$0	$0
Net Impact-General Fund Balance:	$148,575	$148,575	($1,425)	($1,425)

Description of Fiscal Impact:

This bill would require withholding for income taxes when a taxpayer makes a withdrawal from a tax-advantaged account such as an IRA and federal taxes are withheld. There would be no change in tax liability, but fewer taxpayers would end up paying income taxes late because they failed to set aside funds from a withdrawal.

FISCAL ANALYSIS

Assumptions:

1. Distributions from tax-deferred accounts such as IRAs, retirement funds, and deferred compensation accounts are subject to federal and state income tax. Under current law, when an individual makes certain types of lump-sum withdrawals from a tax-deferred account, the account manager is required to withhold 20% of the amount withdrawn to cover the recipient's federal income tax liability. There is no corresponding requirement to withhold for Montana income taxes.
2. This bill would require account managers to withhold 30% of any amount withheld for federal taxes to cover the recipient's Montana income tax liability for distributions made after December 31, 2007. No state withholding would be required if the recipient elects to have no federal withholding.
3. This bill would not change income tax liability and would have a very small effect on the amount of income tax collected.

4. Each year, taxpayers who receive lump-sum distributions and do not keep funds to pay the tax on the distribution have about $300,000 in income tax liability that they are unable to pay in full when they file their next return. Most of these taxpayers do pay their tax, but end up paying it late, often in installments.
5. With withholding, about $300,000 in taxes that would have been paid in later years would be paid in the year they are due. This would results in $300,000 of additional revenue in CY 2008, split evenly between FY 2008 and FY 2009, but no change in revenue in later years.
6. Employment in Montana is approximately 436,000. Nationally, 63% of employees are covered by some type of pension plan. From 2000 through 2005, the Montana Public Employee Retirement System had an average ratio of lump sum disbursements to active members of 10.8%. This gives an estimate of the number of annual Montana lump sum disbursements of 29,665 (436,000 x 63% x 10.8%). In about half of disbursements, funds will be rolled over to another tax-deferred account or the recipient will elect to forgo withholding. Thus, the Department of Revenue will process about 15,000 withholding statements and payments each year. Additional general fund operating costs would be $1,425 per year.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Expenditures:				
Operating Expenses	$1,425	$1,425	$1,425	$1,425
Funding of Expenditures:				
General Fund (01)	$1,425	$1,425	$1,425	$1,425
Revenues:				
General Fund (01)	$150,000	$150,000	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$148,575	$148,575	($1,425)	($1,425)

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

HOUSE BILL NO. 147

INTRODUCED BY M. JOPEK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING CERTAIN PROVISIONS OF THE RESORT TAX, LODGING FACILITY USE TAX, AND THE SALES AND USE TAX; REVISING THE DEFINITION OF "FACILITY" FOR THE LODGING FACILITY USE TAX AND THE DEFINITION OF "ACCOMMODATIONS" FOR THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF ACCOMMODATION CHARGES THAT ARE SUBJECT TO THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF THE BASE RENTAL CHARGES THAT ARE SUBJECT TO THE SALES AND USE TAX; PROVIDING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX ON ACCOMMODATION CHARGES AND BASE RENTAL CHARGES APPLY TO CERTAIN CHARGES IMPOSED BY INTERMEDIARIES; REQUIRING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX BE INTERPRETED AND ADMINISTERED TOGETHER; PROHIBITING RESORT COMMUNITIES, RESORT AREAS, AND RESORT AREA DISTRICTS FROM REQUIRING AN INTERMEDIARY TO COLLECT THE RESORT TAX; AMENDING SECTIONS 7-6-1502, 7-6-1505, 15-65-101, 15-65-102, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-110, 15-68-210, 15-68-402, 15-68-501, 15-68-502, 15-68-510, 15-68-512, AND 15-68-516, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 7-6-1502, MCA, is amended to read:

"7-6-1502. Resort community taxing authority -- specific delegation -- limitation. (1) As required by 7-1-112 and subject to subsection (2), 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507.

(2) The power delegated in subsection (1) does not include the power to require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort tax."

Section 2. Section 7-6-1505, MCA, is amended to read:

"7-6-1505. Resort tax administration -- intermediary not required to collect tax. (1) In this section, "governing body" means:

(a) the governing body of a resort community;

(b) if the resort tax has been approved by the electors of a resort area, the board of county commissioners; or

(c) if the electors of the resort area establish a resort area district, the district board of directors.

(2) Not less than 30 days prior to the date that the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax.

(5) The governing body of a resort area or the board of county commissioners on behalf of a resort district may not require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort area tax."

Section 3. Section 15-65-101, MCA, is amended to read:

"15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) (a) "Accommodation charge" means the fee charged ~~by the owner or operator of a facility~~ to the user for use of ~~the~~ a facility located in the state for lodging~~.~~.

(b) Accommodation charge includes amounts charged to the user for reserving use of the facility, processing the reservation, or providing any other service, including bath house facilities, in connection with a user's use of the facility for lodging.

(c) ~~but excluding~~ The term does not include separately stated charges for meals, transportation, entertainment, or any other similar charges unrelated to a user's use of the facility for lodging or charges for rooms used for purposes other than lodging.

(2) (a) "Campground" means a place~~, publicly or privately owned,~~ used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) (a) "Facility" means a building or structure containing one or more individual sleeping rooms or suites~~,~~ ~~providing~~ that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) The term includes a facility or accommodations represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, timeshare available for rental, vacation home rental, or bed and breakfast facility.

(c) For the purposes of administering the tax on accommodation charges imposed under Title 15, chapter

68, and the tax imposed on accommodation charges under this part, facility has the same meaning as accommodations, as defined in 15-68-101.

~~(b)~~(d) The term does not include:

(i) any health care facility, as defined in 50-5-101~~;~~;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes~~;~~;

(iii) any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~;~~; or

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Intermediary" means a person, other than the owner or operator of the facility, who collects an accommodation charge from a user.

~~(5)~~(6) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

~~(6)~~(7) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

~~(7)~~(8) "Resort area" means an area established pursuant to 7-6-1508.

~~(8)~~(9) "Resort area district" has the meaning provided in 7-6-1531.

(10) "User" has the meaning provided in 15-68-101."

Section 4. Section 15-65-102, MCA, is amended to read:

"15-65-102. Rulemaking authority. The department ~~of revenue~~ shall adopt ~~such~~ rules ~~as~~ that may be necessary to implement and administer this part. Unless otherwise specifically provided by law, the provisions of Title 15, chapter 68, and this part must be interpreted and administered together. The department shall adopt rules and provide a single form for reporting taxes imposed under Title 15, chapter 68, and this part."

Section 5. Section 15-65-111, MCA, is amended to read:

"15-65-111. Tax rate -- no advertising to absorb or refund tax. (1) There is imposed on the user of

a facility a tax at a rate equal to 4% of the accommodation charge collected from the user by the owner or operator of the facility or by an intermediary.

(2) ~~Accommodation charges do not include charges for rooms used for purposes other than lodging~~ A person may not advertise, hold out, or state to the public or to any user that the tax imposed under this section will be absorbed or refunded."

Section 6. Section 15-65-112, MCA, is amended to read:

"15-65-112. Collection and reporting. (1) ~~The owner or operator of a facility~~ Except as provided in subsection (2), a person who collects an accommodation charge from a user shall:

(a) collect the ~~tax~~ taxes imposed by 15-65-111 and 15-68-102~~.~~; and

(b) on or before the end of the calendar month following the end of each calendar quarter:

~~(2) The owner or operator shall~~

(i) report to the department ~~of revenue, at the end of each calendar quarter,~~ the gross receipts collected during ~~that~~ the quarter attributable to accommodation charges ~~for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1)~~ and any additional information that the department requires; and

(ii) remit to the department with the report described in subsection (1)(b)(i) the taxes collected on accommodation charges during the calendar quarter.

(2) (a) Except as provided in subsection (2)(b), a report is not required for a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility described in 15-65-101(4)(d)(iii).

(b) The owner or operator of a facility described under subsection (2)(a) shall annually report, at a time prescribed by the department, the information that the department requests to verify the average daily accommodation charge."

Section 7. Section 15-65-113, MCA, is amended to read:

"15-65-113. Audits -- records -- revision of return. (1) The department ~~of revenue~~ may audit the books and records of ~~any~~ an owner or operator of a facility or an intermediary to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner, ~~or~~ operator, ~~of a facility~~ or intermediary or at any other convenient location.

(2) The department may request the owner or operator of a facility or an intermediary to provide the department with books, ~~ledgers, registers~~ papers, records, memoranda, or other documents ~~necessary to verify the correct amount of tax~~ as provided in 15-68-502(4).

(3) ~~The~~ Each owner or operator of a facility or intermediary shall maintain and have available for inspection by the department books, ~~ledgers, registers~~ papers, records, memoranda, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made~~,~~. ~~and the department thereafter is barred from revising any such~~ After the 5-year period, the department may not revise the return or ~~recomputing~~ recompute the tax due ~~thereon,~~ on the return. ~~and no~~ A proceeding in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within ~~such~~ the 5-year period.

(5) An owner or operator of a facility or an intermediary may file an application for revision ~~may be filed~~ of a return with the department ~~by an owner or operator of a facility~~ within 5 years from the original due date of the return."

Section 8. Section 15-65-114, MCA, is amended to read:

"15-65-114. Registration number -- application to department. (1) ~~The owner or operator of a facility~~ Each person that collects an accommodation charge from a user shall ~~apply to the department of revenue for a registration number~~ obtain a permit as provided in 15-68-402.

~~(2) The application must be made on a form provided by the department.~~

~~(3)~~(2) Upon completion ~~of the application~~ and delivery of the permit application to the department, the department ~~must~~ shall assign a registration number to the owner, operator, ~~or~~ facility, or intermediary, as appropriate."

Section 9. Section 15-65-115, MCA, is amended to read:

"15-65-115. Failure to pay or file -- ~~penalty and interest -- review -- interest~~ application of sales and use tax provisions. (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 or an intermediary 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 or the intermediary. The provisions of ~~15-1-211~~ 15-68-513, 15-68-514, and 15-68-516 apply to any assessment and collection of delinquent taxes by the department and to taxpayer objections and rights. ~~The taxpayer may seek review of the assessment pursuant to 15-1-211.~~

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

Section 10. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing one or more individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, timeshare available for rental, vacation home rental, or bed and breakfast facility.

(c) For the purposes of administering the tax imposed on accommodation charges under Title 15, chapter 65, and the tax imposed on accommodation charges under this chapter, accommodations has the same meaning as facility, as defined in 15-65-101.

~~(c)~~(d) The term does not include:

(i) a health care facility, as defined in 50-5-101;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes;

(iii) any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily

accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~.~~; or

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) "Accommodation charge" has the meaning provided in 15-65-101.

~~(2)~~(3) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

~~(3)~~(4) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the ~~rental vehicle~~ owner or operator of the rental vehicle business for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

~~(4)~~(5) ~~(a)~~ "Campground" ~~means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.~~

~~(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more~~ has the meaning provided in 15-65-101.

~~(5)~~(6) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(7) "Intermediary" means any person, other than the owner or operator of the accommodations or the owner or operator of a rental vehicle business, who collects an accommodation charge from a user or base rental

charge from a purchaser, or both.

~~(6)~~(8) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 or 1% of the total required payments; or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

~~(7)~~(9) (a) "Motor vehicle" means a light vehicle as defined in 61-1-101, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, a quadricycle as defined in 61-1-101, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

~~(8)~~(10) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

~~(9)~~(11) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

~~(10)~~(12) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

~~(11)~~(13) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

~~(12)~~(14) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. The term includes an intermediary's collection of an accommodation charge from a user and an intermediary's collection of a base rental charge from a purchaser.

~~(13)~~(15) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

~~(14)~~(16) (a) "Sales price" applies to the measure subject to sales tax and, except as provided in subsections (16)(c) and (16)(d), means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (16)(a)(iii) through ~~(14)(a)(vii)~~ (16)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) When an intermediary collects an accommodation charge from a user, sales price means the accommodation charge.

(d) When an intermediary collects a base rental charge from a purchaser, sales price means the base rental charge.

~~(c)~~(e) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

~~(d)~~(f) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

~~(e)~~(g) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

~~(15)~~(17) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102 and, in the case of accommodations, the tax imposed by 15-65-111.

~~(16)~~(18) "Seller" means a person that makes sales, leases, or rentals of personal property or services. The term includes an intermediary that collects an accommodation charge from a user or a base rental charge from a purchaser, or both.

~~(17)~~(19) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

~~(18)~~(20) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use

solely outside this state, in the ordinary course of business.

(21) "User" means a purchaser to whom the use of accommodations is provided."

Section 11. Section 15-68-110, MCA, is amended to read:

"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) A person engaging in the business of selling property or services subject to taxation under this chapter shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to this chapter, obtain a seller's permit, as provided in 15-68-401, and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by 15-68-102 from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by 15-68-102 by any ~~retailer~~ person who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under this chapter.

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to this chapter shall provide to the department:

(a) the names and addresses of all of the person's agents operating within this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(6) If any application of this section is held invalid, the application to other situations or persons is not affected."

Section 12. Section 15-68-210, MCA, is amended to read:

"15-68-210. Nontaxability -- lease for subsequent lease. (1) Except as provided in subsection (2), ~~The~~ the lease of property is nontaxable if:

~~(1)~~(a) the lease is made to a lessee who delivers a nontaxable transaction certificate; and

~~(2)~~(b) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

(2) An intermediary's collection of an accommodation charge from a user or a base rental charge from a purchaser is taxable."

Section 13. Section 15-68-402, MCA, is amended to read:

"15-68-402. Permit application -- requirements -- place of business -- form. (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana, collecting accommodation charges for accommodations located in Montana, or collecting base rental charges for vehicles located in Montana that are subject to this chapter shall file with the department an application for a permit. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) ~~An~~ Except as provided in subsection (1)(c), an applicant who does not maintain an office or other place of business ~~and~~ in the state or who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(c) An intermediary who does not maintain an office or other place of business in the state shall provide a copy of the permit on request of the department or any user or purchaser.

(2) Each person or class of persons required to file a return under Title 15, chapter 65, or this chapter is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity."

Section 14. Section 15-68-501, MCA, is amended to read:

"15-68-501. Liability for payment of tax -- security for ~~retailer~~ person without place of business -- penalty. (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A ~~retailer~~ person that does not maintain an office or other place of business within this state is liable

for the sales tax or use tax in accordance with this chapter and may be required to furnish adequate security, as provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the ~~retailer~~ person is liable for the taxes upon all property sold and services provided in this state, accommodation charges collected for accommodations located in this state, and base rental charges for vehicles located in this state in the same manner as a ~~retailer~~ person who maintains an office or other place of business within this state. The seller's permit provided for in 15-68-401 may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer or intermediary doing business within this state may not sell, solicit orders for, ~~or~~ deliver any property or services within Montana, collect any accommodation charges for accommodations located within Montana, or collect any base rental charges for vehicles located in Montana unless the principal, employer, intermediary, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of this chapter, the person is subject to a fine of not more than $100 for each separate transaction or event."

Section 15. Section 15-68-502, MCA, is amended to read:

"15-68-502. Returns -- payment -- electronic filing for intermediaries -- authority of department. (1) (a) Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department. Each person engaged in business within this state, ~~or~~ using property or services within this state that are subject to tax under this chapter, collecting an accommodation charge for an accommodation located in the state, or collecting a base rental charge for a vehicle located in the state shall file a return. ~~A~~ Except as provided in subsection (1)(b), a person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(b) An intermediary collecting accommodation charges for two or more accommodations within the state or accommodation charges and base rental charges shall file a single return on a form provided by the department. The department shall, subject to the availability of resources, provide intermediaries with an electronic filing option for the reporting and remittance of the lodging facility use tax imposed under Title 15, chapter 65, and the sales and use tax imposed by this chapter.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer or intermediary required to collect the tax; and

(ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall keep records, render statements, make returns, and comply with the provisions of this chapter and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of this chapter, the department is authorized to examine or cause to be examined any books, papers, records, ~~or~~ memoranda, or other documents relevant to making a determination of the amount of tax due, whether the books, papers, records, ~~or~~ memoranda, or other documents are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, ~~or~~ memoranda, or other documents by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed."

Section 16. Section 15-68-510, MCA, is amended to read:

"15-68-510. Vendor allowance. (1) A person filing a timely return under 15-68-502 may claim a quarterly vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed $1,000 a quarter. An intermediary filing a timely return under 15-68-502 may claim a quarterly vendor allowance in the amount of 5% of the tax determined to be payable to the state, not to exceed $1,000 a quarter. The vendor allowance does not apply to the lodging facility use tax collected under 15-65-112.

(2) The allowance may be deducted on the return.

(3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance."

Section 17. Section 15-68-512, MCA, is amended to read:

"15-68-512. Security -- limitations -- sale of security deposit at auction -- bond. (1) The department may require a retailer or an intermediary to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability, including the average tax liability for the tax imposed under Title 15, chapter 65, for the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer or an intermediary to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter."

Section 18. Section 15-68-516, MCA, is amended to read:

"**15-68-516. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under 15-65-115 or this chapter, or both.

(b) If a tax imposed by 15-65-111 or this chapter, or both, 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.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset."

NEW SECTION. **Section 19. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 20. Applicability.** [This act] applies to accommodation charges and base rental charges occurring after June 30, 2007.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	HB0147	Title:	Revise and clarify application of bed tax and sales and use tax
Primary Sponsor:	Jopek, M.	Status:	As Introduced-Revised

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
State Special Revenue	$298,077	$303,010	$308,025	$313,122
Revenue:				
General Fund	$315,919	$320,186	$324,545	$328,997
State Special Revenue	$298,077	$303,010	$308,025	$313,122
Net Impact-General Fund Balance	$315,919	$320,186	$324,545	$328,997

Description of Bill:

This bill clarifies that fees charged by intermediaries, such as on-line reservation services, are part of the base on which the lodging facility use tax, the accommodations sales tax, and rental car sales tax is collected. It also requires an intermediary to collect and remit the tax when the intermediary takes payment for lodging or car rentals.

FISCAL ANALYSIS

Assumptions:

1. This bill expands the list of lodging facility or accommodations to include timeshares available for rental and vacation home rental. The definition of lodging facility or accommodations includes all facilities that provide overnight lodging facilities for periods of less than 30 days to the public for compensation. Therefore these types of facilities are subject to lodging and accommodations tax currently. No data is available to determine if the revision will affect revenues.
2. Sections 3 and 10 of this bill clarify that fees charged by intermediaries, such as on-line reservation services are part of the base for the lodging facility use tax, the accommodations sales tax, and the rental car sales tax.

3. The bill is effective July 1, 2007.
4. The Department of Revenue obtained quotes for rooms in Helena, Billings, Missoula, Kalispell, Bozeman, Great Falls, and Glendive through three on-line reservation services and directly from the lodging facilities. On average, the intermediaries' quotes were $8.07 higher. Intermediaries often obtain discounts from lodging operators when they book a room, so that the intermediaries' fees probably are higher than this. However, since the discounts intermediaries obtain are unknown, the average intermediary fee is estimated to be $8.07.
5. In 2003, the number of lodging rooms rented in Montana was 5,146,000. From 1999 to 2003, room rental grew at an average annual rate of 1.65% (Institute for Tourism and Recreation Research, University of Montana). Assuming that lodging rentals continue to grow at the same rate, rentals will number 5,540,472 in FY 2008, 5,632,160 in FY 2009, 5,725,365 in FY 2010, and 5,820,113 in FY 2011.
6. One-third of hotel rooms are booked on line (*Time* magazine, Vol. 164, 2004) and half of reservations made on line are made through an intermediary (PhoCusWright (research firm) 2004 research cited on Orbitz website). Thus, one-sixth of rooms are booked through intermediaries.
7. Taxable intermediary charges will be $7,451,935 in FY 2008 ($8.07 x 5,540,476 x 1/6), $7,575,255 in FY 2009 ($8.07 x 5,632,160 x 1/6), $7,700,616 in FY 2010 ($8.07 x 5,725,365 x 1/6), and $7,828,052 in FY 2011 ($8.07 x 5,820,113 x 1/6).

Accommodations Sales Tax

8. The rate for the accommodations sales tax is 3%, and vendors are allowed to retain 5% of taxes collected, up to $1000 per quarter. Additional revenue will be $212,380 in FY 2008 (95% x 3% x $7,451,935), $215,895 in FY 2009 (95% x 3% x $7,575,255), $219,468 in FY 2010 (95% x 3% x $7,700,616), and $223,099 in FY 2011 (95% x 3% x $7,828,052).
9. All revenue from the accommodations sales tax is deposited in the general fund.

Lodging Facility Use Tax

10. The rate for the lodging facility use tax is 4%, and no vendor allowance is deducted. Additional revenue will be $298,077 in FY 2008 (4% x $7,451,935), $303,010 in FY 2009 (4% x $7,575,255), $308,025 in FY 2010 (4% x $7,700,616), and $313,122 in FY 2011 (4% x $7,828,052).
11. The Department of Revenue would need to upgrade its data processing system to accommodate electronic filing for lodging taxes at a cost of $100,000 in FY 2008. To handle the increased volume and complexity of returns, the Department of Revenue would require an additional 1.00 FTE auditor and an additional 0.50 FTE for processing. The additional costs would be $221,833 in FY 2008 and $109,719 per year in following years.
12. State agencies are reimbursed 4% of their lodging costs. Thus, they are already being reimbursed for the tax on any intermediary fees they pay and there will be no change in agency reimbursements.
13. The lodging facility use tax is allocated first to pay the department's costs of administering the tax and to reimburse state agencies for taxes paid on employees' business travel.
14. Remaining revenue is allocated 67.5% to the Department of Commerce; 1% to the Montana Historical Society; 2.5% to the University System for the Montana Travel Research Program; 6.5% to the Department of Fish, Wildlife, and Parks; and 22.5% to regional and local nonprofit tourism organizations. Total additional revenue to these entities is $76,244 in FY 2008, $193,292 in FY 2009, $198,306 in FY 2010 and $203,403 in FY 2011. The following table provides a breakdown of the change in revenue to each entity receiving a percentage of lodging facility use tax revenue. These funds would be statutorily appropriated as currently provided in statute.

Estimated Change in Revenues Under HB 147				
	FY2008	FY2009	FY2010	FY2011
Department of Commerce	$51,465	$130,472	$133,856	$137,297
Montana Historical Society	$762	$1,933	$1,983	$2,034
Montana Travel Research Program	$1,906	$4,832	$4,958	$5,085
Department of Fish Wildlife and Parks	$4,956	$12,564	$12,890	$13,221
Regional and Local Non-profit Tourism Organizations	$17,155	$43,491	$44,619	$45,766

Rental Car Sales Tax

15. To estimate the average fee intermediaries charge to book a rental car on line, the Department of Revenue compared price quotes from eight rental car companies in seven Montana cities for four different types of vehicles with prices for the same vehicles quoted by three on-line intermediaries. The average difference was $1.41, or 2.39% of the pre-tax price. The actual fee is likely to be larger because the intermediaries negotiate discounts with the rental companies, but since the discounts are unknown, the average fee is assumed to be 2.39% of the pre-tax price.
16. About 48% of travelers who rent a car reserve it on line (*Travel Weekly*, September 2001). It is assumed that, as with lodging, half of on-line reservations are made through an intermediary. Thus, this bill will increase revenue by 0.574% each fiscal year (2.39% x 48% x 50%).
17. Under current law, rental car tax receipts will be $3.000 million in FY 2008, $3.131 million in FY 2009, $3.268 million in FY 2010 and $3.411 million in FY 2011. Additional revenue due to this bill would be $17,220 in FY 2008 (0.574% x $3.000 million), $17,972 in FY 2009 (0.574% x $3.131 million), $18,758 in FY 2010 (0.574% x $3.268 million), and $19,579 in FY 2011 (0.574% x $3.411 million). All rental car tax revenue is deposited in the general fund.

Department of Revenue Audit Revenues

18. Department of Revenue auditors generate an average of $500,000 per year in audit revenues. As a conservative estimate, the additional accommodations tax auditor is assumed to generate additional revenue equal to the ongoing costs associated with audit FTE. These audit revenues are deposited into the general fund.

Department of Revenue Administrative Expenses

19. The bill will require 1.00 FTE auditor and associated operating expenses including travel totaling $92,171 in FY 2008 and $86,319 in FY 2009. In addition, 0.50 FTE seasonal employees and associated operating expenses would be required for revenue collection processing. Finally, $100,000 contracted services is necessary in FY 2008 for contracted computer systems.

Total General Fund Revenues

20. Total additional revenue to the general fund is the sum of rental car tax revenue, accommodations sales tax revenue and audit revenue. Total additional revenue is:
    $315,919 in FY 2008 ($17,220 + $212,380 +$86,319),
    $320,186 in FY 2009 ($17,972 + $215,895 + $86,319),
    $324,545 in FY 2010 ($18,758 + $219,468 + $86,319),
    $328,997 in FY 2011 ($19,579 + $223,099 + $86,319).

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	1.50	1.50	1.50	1.50
Expenditures:				
Personal Services	$75,030	$71,221	$71,221	$71,221
Operating Expenses (DOR)	$146,803	$38,499	$38,499	$38,499
Operating Expenses (Stat. Ar	$76,244	$193,290	$198,305	$203,402
TOTAL Expenditures	$298,077	$303,010	$308,025	$313,122
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$298,077	$303,010	$308,025	$313,122
TOTAL Funding of Exp.	$298,077	$303,010	$308,025	$313,122
Revenues:				
General Fund (01)	$315,919	$320,186	$324,545	$328,997
State Special Revenue (02)	$298,077	$303,010	$308,025	$313,122
TOTAL Revenues	$613,996	$623,196	$632,570	$642,119
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$315,919	$320,186	$324,545	$328,997
State Special Revenue (02)	$0	$0	$0	$0

Effect on County or Other Local Revenues or Expenditures:

1. Regional and local non-profit tourism promotion organizations would receive additional revenue of $17,155 in FY 2008, $43,491 in FY 2009, $44,619 in FY 2010, and $45,766 in FY 2011.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 220

INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TAX LAWS; ADOPTING PROVISIONS OF THE MULTISTATE TAX COMMISSION MODEL ACT ON REPORTABLE TRANSACTIONS, MODEL ACT ON COMPILATION OF STATE TAX RETURN DATA, AND MODEL ACT FOR A TAX EVASION TRANSACTION VOLUNTARY COMPLIANCE PROGRAM; REQUIRING TAXPAYERS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING MATERIAL ADVISORS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING TAX SHELTER PROMOTERS TO DISCLOSE CERTAIN TRANSACTIONS AND MAINTAIN CERTAIN RECORDS; REQUIRING CERTAIN MULTISTATE TAXPAYERS TO COMPILE AND FILE CERTAIN FILINGS OR FILE COPIES OF STATE INCOME TAX RETURNS; PROVIDING FOR A VOLUNTARY COMPLIANCE INITIATIVE; CREATING THE MONTANA REAL ESTATE BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING WITHHOLDING FOR INCOME TAX PURPOSES ON THE GAIN FROM THE SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE; ESTABLISHING A WITHHOLDING TAX RATE; PROVIDING EXCEPTIONS TO WITHHOLDING; ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS; REQUIRING THAT CERTAIN INFORMATION BE SUBMITTED WITH THE REALTY TRANSFER CERTIFICATE; PROHIBITING THE RECORDING OF A TRANSFER OF MONTANA REAL ESTATE OR A CHANGE IN OWNERSHIP RECORDS OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES IF THE REQUIRED INFORMATION IS NOT PROVIDED; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; CLARIFYING THE LIABILITY OF CLERKS AND RECORDERS; INCREASING THE BUSINESS EQUIPMENT TAX EXEMPTION ~~THRESHOLD FROM $20,000 TO $150,000~~ TO THE FIRST $80,000 OF MARKET VALUE OF PROPERTY; REQUIRING THAT THE CLASS 8 PROPERTY OF RELATED PERSONS BE AGGREGATED IN DETERMINING WHETHER THE $150,000 EXEMPTION THRESHOLD IS EXCEEDED; EXEMPTING FROM TAXATION ITEMS OF PERSONAL PROPERTY WITH A MARKET VALUE OF LESS THAN $100; AMENDING SECTIONS 7-4-2623 ~~AND~~, 15-6-138, AND 15-6-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 7] may be cited as "The

Reportable Transaction Act".

(2) The purpose of enacting [sections 1 through 7] is to address reportable transactions and tax evasion. [Sections 1 through 7] are not intended to prevent taxpayers from minimizing their taxes in compliance with the law.

NEW SECTION. **Section 2. Definitions**. As used in [sections 1 through 7], the following definitions apply:

(1) "Disqualified opinion" has the meaning provided in section 6664(d)(3)(B)(iii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(iii).

(2) "Disqualified tax advisor" has the meaning provided in section 6664(d)(3)(B)(ii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(ii).

(3) "Gross valuation overstatement" has the meaning provided in section 6700(b) of the Internal Revenue Code, 26 U.S.C. 6700(b), and also means any statement as to the value of any property or services if:

(a) the stated value exceeds 200% of the amount determined to be the correct valuation; and

(b) the value of the property or services is directly related to the amount of any deduction or credit allowable under Title 15, chapter 30 or 31, to any participant.

(4) "Internal Revenue Code" has the meaning provided in 15-30-101.

(5) "Listed transaction" has the meaning provided in section 6707A(c)(2) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(2), and also means a reportable transaction that is the same as or substantially similar to a transaction or arrangement specifically identified by the ~~director of revenue~~ DEPARTMENT pursuant to [section 7] as a tax evasion transaction.

(6) "Material advisor" has the meaning provided in section 6111(b)(1) of the Internal Revenue Code, 26 U.S.C. 6111(b)(1).

(7) "Noneconomic substance transaction" means any transaction or arrangement that lacks economic substance, as defined by Montana or federal law, including a transaction or arrangement in which the separate legal existence of an entity is not respected because the creation or use of the entity lacks a valid nontax Montana business purpose.

(8) "Reportable transaction" has the meaning provided in section 6707A(c)(1) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(1)~~, and also means any transaction or arrangement with respect to which information is required to be included with a Montana return, report, or statement because, as determined under rules~~

~~adopted pursuant to [sections 1 through 7], the transaction or arrangement is of a type that the director of revenue determines pursuant to [section 7] as having a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, whether through deduction or credit, the excludability or omission of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit~~. A reportable transaction includes, but is not limited to:

(a) any transaction or arrangement described in U.S. treasury regulations 1.6011-4(b)(1) through 1.6011-4(b)(7), 26 CFR 1.6011-4(b)(1) through (b)(7);

(b) a listed transaction; and

(c) a noneconomic substance transaction.

(9) "Tax shelter" has the meaning provided in section 6662(d)(2)(C)(ii) of the Internal Revenue Code, 26 U.S.C. 6662(d)(2)(C)(ii), and also means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of the partnership, entity, plan, or arrangement is the evasion of a tax imposed by Title 15, chapter 30 or 31. AS USED IN THIS SUBSECTION, "SIGNIFICANT PURPOSE" HAS THE SAME MEANING GIVEN THE TERM UNDER FEDERAL TAX LAW.

NEW SECTION. **Section 3. Taxpayer responsibility for disclosure of reportable transactions -- penalties -- waiver -- extension of statute of limitations.** (1) For each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member has participated in a reportable transaction, including a listed transaction, the taxpayer, pass-through entity, federal consolidated group, or unitary group is required to disclose the transaction as provided in subsection (2). In addition, for each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member is required to make a disclosure statement under U.S. treasury regulation 1.6011-4, 26 CFR 1.6011-4, with respect to a reportable transaction, including a listed transaction, in which the taxpayer, pass-through entity, federal consolidated group, or unitary group participated, the taxpayer, pass-through entity, federal consolidated group, or unitary group shall file a copy of the disclosure with the department as provided in subsection (2).

(2) (a) Reportable transactions, including listed transactions, must be disclosed in the manner prescribed in U.S. treasury regulations 1.6011-4, 26 CFR 1.6011-4, and department rules. A taxpayer who is an individual is required to disclose only transactions that are required to be disclosed as listed transactions or reportable

transactions for federal income tax purposes.

(b) (i) With respect to a listed transaction entered into after February 28, 2000, but before December 31, 2006, disclosure must be made on or before the due date of and attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for tax year 2006 and to the original and any amended Montana income or corporation license tax or pass-through entity information return for any subsequent tax year that reflects a reduction in Montana tax resulting from the listed transaction, including a loss, deduction, or credit resulting from a reportable transaction that is being carried forward or back.

(ii) With respect to a reportable transaction, including a listed transaction, entered into after December 31, 2006, disclosure must be attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for the tax year during which the transaction was entered into and to the original and any amended Montana individual income or corporation license tax or pass-through entity information return for any later tax year that reflects a reduction in tax resulting from the reportable or listed transaction, including a loss, deduction, or credit that is being carried forward or back and that is a result of the transaction.

(iii) Disclosure of a reportable transaction entered into after February 28, 2000, must also be attached to any amended Montana individual income or corporation license tax or pass-through entity information return filed after December 31, 2006, if the filing reflects a determination by the internal revenue service of the federal tax treatment of a reportable transaction.

(3) The provisions of subsections (1) and (2) apply to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of this act].

(4) (a) A person who does not include on a return or statement information with respect to a reportable transaction that is required under subsection (2) or (3) to be included with the return or statement shall pay a penalty, in addition to any other penalty imposed, in the amount determined under subsections (4)(b) and (4)(c).

(b) Except as provided in subsection (4)(c), the amount of the penalty imposed under subsection (4)(a) is $10,000 in the case of an individual and $50,000 in any other case.

(c) With respect to a listed transaction, the amount of the penalty under subsection (4)(a) is $100,000 in the case of an individual and $200,000 in any other case.

(5) A penalty imposed under subsection (4) is considered assessed on the due date of the tax return upon or attached to which the disclosure of the reportable transaction was required pursuant to this section and department rules.

(6) The ~~director of revenue~~ DEPARTMENT may waive all or any portion of any penalty imposed by this section with respect to any violation if:

(a) the violation is with respect to a reportable transaction other than a listed transaction; and

(b) rescinding the penalty would promote compliance with the requirements of Title 15, chapter 30 or 31, and effective tax administration.

(7) The penalty imposed under subsection (4) applies to any failure to disclose any listed transaction entered into after February 28, 2000, or any other reportable transaction entered into after [the effective date of this act] for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of this act].

(8) (a) If a taxpayer has a reportable transaction understatement for any tax year as determined under subsection (8)(b), there must be added to the tax a penalty in an amount equal to 20% of the amount of the understatement. If the requirements of subsection (1) are not met, the percentage to be used for the penalty determination is 30% with respect to the portion of any reportable transaction understatement.

(b) (i) Except as provided by department rule, a tax treatment included with an amendment or supplement to a return of tax may not be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the department regarding the examination of the return or any other date that is adopted by rule pursuant to [section 7].

(ii) A reportable transaction understatement is the sum of:

(A) the product of:

(I) the highest rate of tax imposed by 15-30-103 if the taxpayer is an individual and 15-31-121 if the taxpayer is a C. corporation; and

(II) the amount of the increase, if any, in Montana taxable income, as determined under subsection (8)(c), that results from a difference between the proper tax treatment of an item to which subsection (3) applies and the taxpayer's treatment of that item as shown on the taxpayer's return of tax, including an amended return if the amended return is filed prior to the date that the taxpayer is first contacted by the department regarding the

examination of the tax year for which the amended return is filed; and

(B) the amount of the decrease, if any, in the aggregate amount of credits that results from a difference between the taxpayer's treatment of an item to which subsection (3) applies as shown on the taxpayer's return of tax and the proper tax treatment of that item.

(c) The amount of the increase in Montana taxable income for a particular tax year includes the restatement for another tax year to which a loss or deduction is carried forward or carried back that is attributable to the reportable transaction for that year in which the carryforward or carryback of the loss or deduction applies. Any reduction of the excess of deductions allowed for the tax year over gross income for the year and any reduction in the amount of capital losses that would be allowed for the year are treated as an increase in taxable income.

(d) This subsection (8) applies to any item that is attributable to:

(i) any listed transaction; and

(ii) any reportable transaction, other than a listed transaction, if section 6662A of the Internal Revenue Code, 26 U.S.C. 6662A, applies to the transaction or if a significant purpose of the transaction is the evasion of Montana income or corporation license tax.

(e) A penalty imposed under this subsection (8) is considered assessed on the due date of the Montana tax return that shows the understatement of tax resulting from a reportable transaction to which the penalty relates.

(9) (a) For an amended return filed after December 31, 2007, and before the taxpayer is contacted by the U.S. internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to all other applicable penalties, equal to 50% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date of payment.

(b) If the taxpayer has been contacted by the internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to any other applicable penalties, equal to 100% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date the notice of proposed assessment is mailed.

(10) (a) Except as provided in subsection (10)(b), the ~~director of revenue~~ DEPARTMENT may waive all or

any portion of any penalty imposed by subsections (8) and (9) with respect to any portion of a reportable transaction understatement if it is shown that the taxpayer had a reasonable basis for the tax treatment applicable to that portion and acted in good faith with respect to that treatment.

(b) Subsection (10)(a) does not apply to any reportable transaction understatement unless:

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with all requirements of subsection (1) and department rules or the penalty for the taxpayer's failure to fully disclose was waived pursuant to subsection (6);

(ii) there is or was substantial authority for the tax treatment; and

(iii) the taxpayer reasonably believed that the tax treatment was more likely than not the proper tax treatment, but only if the belief:

(A) is based on the facts and law that exist at the time the return that includes the tax treatment is filed;

(B) relates solely to the taxpayer's chances of success on the merits of the tax treatment and does not take into account the possibility that a return will not be audited, the tax treatment will not be raised on audit, or the tax treatment will be resolved through settlement if it is raised; and

(C) does not rely upon the opinion of a disqualified tax advisor or on a disqualified opinion.

(11) A penalty imposed under subsections (8) and (9) applies to any understatement of tax resulting from a listed transaction entered into after February 28, 2000, or from any other reportable transaction entered into after [the effective date of this act] in any tax year or years for which the statute of limitations on assessment, taking into account the extension provided in subsection (12), has not expired as of [the effective date of this act].

(12) If a taxpayer does not include on a return or statement for any tax year information about a listed transaction required under subsection (1), the time for assessment of a tax imposed by Title 15, chapter 30 or 31, with respect to that transaction does not expire before the date that is 1 year after the earlier of the date:

(a) on which the department is furnished the information required; or

(b) that a material advisor meets the requirements of [section 4] with respect to a request by the department under [section 4(3)] relating to the transaction with respect to the taxpayer.

NEW SECTION. **Section 4. Material advisor responsibility for disclosure of reportable transactions and maintenance of advisee lists -- penalties -- waiver.** (1) (a) With respect to any reportable transaction, a material advisor shall make a return in the form that the department prescribes setting forth:

(i) information identifying and describing the transaction;

(ii) information describing any potential tax benefits expected to result from the transaction; and

(iii) any other information that the ~~director of revenue~~ DEPARTMENT may prescribe.

(b) A material advisor who is required to disclose a reportable transaction pursuant to section 6111 of the Internal Revenue Code, 26 U.S.C. 6111, shall file a copy of the disclosure with the department.

(c) The return required by subsection (1)(a) and disclosure required by subsection (1)(b) must be filed not later than the date specified by the department.

(d) The department may adopt rules that provide:

(i) that only one person is required to meet the requirements of this subsection (1) in cases in which two or more persons would otherwise be required to meet the requirements; and

(ii) exemptions from the requirements of this subsection (1).

(2) (a) Each material advisor with respect to any reportable transaction shall, whether or not required to file a return under subsection (1)(a), maintain a list identifying each Montana taxpayer, pass-through entity, member of a federal consolidated group, or member of a unitary group for whom the advisor has acted as a material advisor with respect to the transaction.

(b) The list required under subsection (2)(a) must include the same information and must be maintained in the same form and manner as required under section 6112 of the Internal Revenue Code, 26 U.S.C. 6112, U.S. treasury regulation 301.6112-1, 26 CFR 301.6112-1, and any additional information or maintenance requirements as the department may by rule require.

(3) A person required to maintain a list under subsection (2)(a):

(a) shall make the list available to the department upon written request; and

(b) except as otherwise provided by the department by rule, shall retain any information that is required to be included on the list for 7 years.

(4) The department may, by rule, provide that in cases in which two or more persons are required to maintain the same list or a portion of the list under subsection (2), only one person is required to maintain the list or portion of the list.

(5) (a) If a person who is required to file a return or disclosure under subsection (1) with respect to any reportable transaction does not file the return or disclosure on or before the due date or files false or incomplete information with the department with respect to the transaction, the person shall pay a penalty with respect to the return or disclosure in the amount determined under subsections (5)(b) and (5)(c).

(b) Except as provided in subsection (5)(c), the penalty imposed under (5)(a) with respect to any failure

is $50,000.

(c) The penalty imposed under subsection (5)(a) with respect to any listed transaction is an amount equal to the greater of:

(i) $200,000; or

(ii) except as provided in subsection (5)(d), 50% of the gross income derived by the person with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return and, if applicable, disclosure is filed under subsection (1).

(d) For an intentional failure or act described in subsection (5)(a), the percentage amount for the penalty computation in subsection (5)(c)(ii) is 75%.

(e) If a person is required to maintain a list under subsection (2) but does not make the list available upon written request to the department in accordance with subsection (3) within 20 business days after the date of the request, the person shall pay a penalty of $10,000 for each day the list is not made available after the 20-day period has expired.

(6) Each of the penalties imposed by subsection (5) is in addition to any other applicable penalties.

(7) The ~~director of revenue~~ DEPARTMENT may waive all or any portion of penalty imposed under subsection (5):

(a) with respect to any violation of subsection (1) if:

(i) the violation relates to a reportable transaction other than a listed transaction; and

(ii) a waiver of the penalty would promote compliance with the requirements of Title 15, chapters 30 and 31, and effective tax administration; and

(b) with respect to any violation of subsection (2), if on any day the violation was due to a reasonable cause.

(8) The provisions of this section apply to transactions with respect to which material aid, assistance, or advice is provided by a material advisor after [the effective date of this act].

NEW SECTION. **Section 5. Tax shelters -- penalty for promotion.** (1) The penalty provided in subsection (3) must be paid by a person who:

(a) (i) organizes or assists in the organization of:

(A) a partnership or other entity;

(B) any investment plan or arrangement; or

(C) any other plan or arrangement; or

(ii) participates, directly or indirectly, in the sale of any interest in an entity, plan, or arrangement referred to in subsection (1)(a); and

(b) makes or furnishes or causes another person to make or furnish in connection with the organization or sale:

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in a plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter; or

(ii) a gross valuation overstatement as to any material matter.

(2) Activities described in subsection (1)(a) with respect to each entity or arrangement must be treated as a separate activity and participation in each sale described in subsection (1)(b) must be treated as a separate activity.

(3) A person described in subsection (1) shall pay, with respect to each activity described in subsection (1)(a) and in addition to any other penalty provided by law, a penalty equal to:

(a) the lesser of:

(i) $1,000; or

(ii) 100% of the gross income derived or to be derived by the person from the activity; or

(b) if an activity with respect to which a penalty imposed under this subsection involves a disclosure described in subsection (1)(b), a penalty of 50% of the gross income derived or to be derived from the activity by the person on which the penalty is imposed.

(4) The ~~director of revenue~~ DEPARTMENT may waive all or any part of the penalty provided by subsection (3) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that the valuation was made in good faith.

(5) A privilege of confidentiality does not apply to any written communication that is:

(a) between a tax practitioner and:

(i) any person;

(ii) the ~~director of revenue~~ DEPARTMENT or any officer, employee, agent, or representative of the person; or

(iii) any other person holding a capital or profits interest in the person; and

(b) in connection with the promotion of the direct or indirect participation of the person in any tax shelter.

(6) The provisions of this section apply to activities after [the effective date of this act].

NEW SECTION. **Section 6. Injunction of certain conduct related to reportable transactions and tax shelters**. (1) A civil action in the name of the state to enjoin any person from further engaging in conduct specified in subsection (3) may be commenced at the request of the ~~director of revenue~~ DEPARTMENT. ~~An~~ IF THE PERSON IS AN INDIVIDUAL WHO RESIDES IN MONTANA, AN ACTION UNDER THIS SECTION MUST BE BROUGHT IN THE COUNTY IN WHICH THE INDIVIDUAL RESIDES. IF THE PERSON IS NOT AN INDIVIDUAL WHO RESIDES IN MONTANA, AN action under this section must be brought in the first judicial district court of Lewis and Clark County. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state against the person.

(2) In any action under this section, if the court finds that the person has engaged in the conduct specified in subsection (3) and that injunctive relief is appropriate to prevent recurrence of that conduct, the court may enjoin the person from engaging in that conduct or in any other activity subject to penalty under [sections 1 through 7].

(3) Conduct subject to injunction under this section is any action or failure to take action that is:

(a) subject to penalty under [sections 1 through 7]; or

(b) in violation of any requirement under rules issued pursuant to [sections 1 through 7].

NEW SECTION. **Section 7. ~~Power of director of revenue~~ POTENTIAL FOR EVASION OF TAX -- TAX TAX EVASION TRANSACTIONS -- department rules**. (1) ~~In determining whether a transaction or arrangement is of a type that has a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, and whether to specifically identify a transaction or arrangement as a tax evasion transaction, the director of revenue shall~~ THE DEPARTMENT MAY NOT SPECIFICALLY IDENTIFY A TRANSACTION OR ARRANGEMENT AS A TAX EVASION TRANSACTION UNLESS THE DEPARTMENT:

(a) ~~consult~~ CONSULTS with the multistate tax commission to promote uniformity;

(b) ~~consider~~ CONSIDERS whether the transaction or arrangement INVOLVES SOME COMBINATION OF THE FOLLOWING:

(i) lacks meaningful economic risk of loss or potential for gain;

(ii) results in PURPOSELY inconsistent financial and accounting treatment;

(iii) involves complexity, unnecessary steps, or novel investments; ~~or~~

(iv) utilizes tax indifferent parties; OR

(V) WAS MARKETED TO MULTIPLE INVESTORS;

(c) ~~consider~~ CONSIDERS whether disclosure of the transaction is limited in any manner by express or implied understanding or agreement, whether or not the understanding or agreement is legally binding;

(d) ~~consider~~ CONSIDERS whether the taxpayer has the right to a full or partial refund of fees paid to any person who makes or provides an oral or written statement about the potential tax consequences of a transaction if it is not sustained or if fees are contingent on the taxpayer's realization of tax benefits from the transaction; and

(e) ~~determine~~ DETERMINES and ~~consider~~ CONSIDERS the costs of taxpayer compliance.

(2) The department shall by rule identify each ~~reportable transaction that the director of revenue determines is of a type having a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, and each~~ transaction or arrangement specifically identified by the ~~director of revenue~~ DEPARTMENT pursuant to subsection (1) as a tax evasion transaction.

(3) THE DEPARTMENT SHALL FILE A REPORT WITH EACH RULE PROPOSAL NOTICE WHEN IT PROPOSES TO ADOPT A RULE TO IDENTIFY A LISTED TRANSACTION, SETTING FORTH HOW IT APPLIED THE CRITERIA LISTED IN SUBSECTION (1) IN PROPOSING TO IDENTIFY A TRANSACTION OR ARRANGEMENT AS A LISTED TRANSACTION.

~~(3)~~(4) In adopting rules pursuant to [sections 1 through 7], the department shall determine and consider the costs of taxpayer compliance.

NEW SECTION. **Section 8. Short title**. [Sections 8 through ~~14~~ 13] may be cited as "The Compilation of State Tax Return Data Act".

NEW SECTION. **Section 9. Definitions**. As used in [sections 8 through ~~14~~ 13], the following definitions apply:

(1) "Allocation" means assignment of income to one or more income tax states by means other than apportionment.

(2) "Apportionment factor" means any component ratio used in the apportionment percentage to apportion business income, such as a property factor, a payroll factor, or a sales factor.

(3) "Apportionment percentage" means the percentage formula used to assign a portion of the business income of the taxpayer or the combined reporting group of which the taxpayer is a member to an income tax state.

(4) "Business activity" means any activity conducted in a state that gives rise to:

(a) gross income;

(b) an expense reflected in the taxpayer's federal income tax return or income tax return of any state; or

(c) the use or availability for use of property in the state.

(5) "Business income" means the total income or loss subject to apportionment.

(6) "Combined reporting" means a method of determining business income and apportionment that takes into account the business income and apportionment factors of more than a single corporation and for purposes of this section includes a consolidated return.

(7) "Income tax state" means any state that imposes a tax on, according to, or measured by income.

(8) "Nonbusiness income" means income or loss subject to allocation to a specific state or states.

NEW SECTION. **Section 10. Taxpayer responsibility for filing compilation of state tax return data.** ~~A~~ (1) SUBJECT TO SUBSECTION (2), A taxpayer that conducts business activity in this state and one or more other states or is a member of a combined reporting group that conducts business activity in this state and one or more other states shall compile the information described by [section 11] and file, in the form and manner required by [section 11], state tax return data as reported on its tax returns filed in this and all other income tax states with respect to business income, nonbusiness income, apportionment, and combined reporting whether or not a filing is required.

(2) A TAXPAYER IS SUBJECT TO THE PROVISIONS OF [SECTION 10, 11, 12, OR 13] FOR ANY TAX YEAR:

(A) FOR WHICH THE TAXPAYER OR A COMBINED REPORTING GROUP OF WHICH THE TAXPAYER IS A MEMBER:

(I) IS REQUIRED TO FILE INTERNAL REVENUE SERVICE SCHEDULE M-3 WITH ITS FEDERAL TAX RETURN; AND

(II) IS SUBJECT TO ALLOCATION AND APPORTIONMENT UNDER 15-31-301; AND

(B) IN WHICH THE MONTANA APPORTIONMENT PERCENTAGE, AS SHOWN ON THE TAXPAYER'S MONTANA TAX RETURN, IS LESS THAN 20%.

NEW SECTION. **Section 11. Information required to be compiled and filed -- time and manner of filing.** (1) For each income tax state in which a taxpayer or a member of a combined reporting group of which a taxpayer is a member has business activity, the following information must be compiled and filed:

(a) whether the taxpayer filed in that state;

(b) the business income of the taxpayer or of the taxpayer's combined reporting group reported to that

state;

(c) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group;

(d) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group that is allocable to that state;

(e) for each of the apportionment factors used to determine the apportionment percentage, the dollar amount of the numerator and the denominator of the ratio used in that factor;

(f) the apportionment percentage used to apportion income subject to taxation in that state;

(g) the dollar amount of business income apportioned to that state;

(h) for those states that use combined reporting to apportion income for each combined reporting group of which the taxpayer is a member, a list of all corporations whose business income was included in business income of the combined reporting group; and

(i) any other information relating to the determination of business income, nonbusiness income, or the apportionment or allocation of that income that the department by rule requires.

(2) The compilation of state tax return data required by subsection (1) must be filed within 180 days of the filing of the original federal income tax return and any amended Montana corporation license tax return exclusive of federal changes.

(3) (a) Except as provided in subsection (3)(b), the compilation of state tax return data required by subsection (1) must be filed in the form and manner required by the department and must be consistent with the format developed and maintained for those filings by the multistate tax commission.

(b) In lieu of the requirements of subsection (3)(a), a taxpayer may elect to file a copy of each income tax return filed in each income tax state in which the taxpayer or a member of a combined reporting group of which the taxpayer is a member has business activity.

NEW SECTION. **Section 12. Retention and provision of records required.** (1) A taxpayer shall retain a copy of its filings of the Montana corporate license tax schedule for apportionment factors for multistate taxpayers and the equivalent schedule filed by the taxpayer or a member of the taxpayer's combined reporting group in the other state or states in which the taxpayer or the taxpayer's combined reporting group conducted business activity. The taxpayer shall, within 60 days of a written request or within any additional time that the department grants upon written request for extension, provide a copy of the schedules to the department.

Information required to be retained under this section must be retained for that period of time during which the taxpayer's corporation license tax liability to this state for that tax year may be subject to adjustment, including all periods in which additional income taxes or penalties may be assessed, or during which a protest, appeal, or lawsuit is pending with respect to Montana corporation license.

(2) (a) Except as provided in subsection (2)(b), the provisions of this section apply to information associated with any return due on or after [the date 2 years prior to the effective date of this act].

(b) During the course of an audit investigation, the ~~director of revenue~~ DEPARTMENT may, following [the effective date of this act], require production of information in possession of the taxpayer or, if applicable, a member of the taxpayer's combined reporting group for any tax year for which the statute of limitations on assessment has not expired.

NEW SECTION. **Section 13. Penalties for failure to file, retain, or provide information -- assessment date -- waiver.** (1) (a) A taxpayer who does not file, retain, or provide information with respect to state tax return data as required by [sections 10 through 12] and department rules is subject to penalty in an amount determined under subsections (1)(b) and (1)(c) in addition to any other applicable penalties.

(b) For failure to file a compilation of state tax return data as required pursuant to [section 11], the amount of the penalty is the greater of $10,000 or 0.25% of the amount of net income properly apportioned and allocated to this state;

(c) For failure to provide information required to be retained under [section 12] within 60 days of a request by the department or within any additional time the department allows by extension, the amount of the penalty is $1,000 and an additional penalty of $5,000 must be assessed for each additional 30 days that the information is not provided. If a taxpayer states that the information required under [section 12] does not exist and submits an affidavit to that affect, the taxpayer is subject to a penalty in the amount of $30,000 in lieu of additional 30 day penalties.

(2) (a) The penalty imposed under subsection (1)(b) is considered assessed on the due date of the filing required pursuant to [section 11] and department rules.

(b) The penalty imposed under subsection (1)(c) is considered assessed on the 30th day following a request by the department and, if applicable, is assessed for each additional 30-day period during which the taxpayer fails to provide the information required to be retained pursuant to [section 12].

(3) The ~~director of revenue~~ DEPARTMENT may waive or abate all or any portion of any penalty imposed

by this section with respect to any violation if rescinding the penalty would promote compliance with the requirements of [sections 8 through ~~14~~ 13] and effective tax administration.

~~NEW SECTION. **Section 14. Extension of statute of limitations for assessments associated with non-filing**. If a taxpayer fails to file all information required under [section 11] and department rules with respect to state tax return data, an assessment and notice of deficiency may be issued. The notice of deficiency must be issued not later than 6 years after the tax return was due or filed, whichever is later, with respect to which the filing of state tax return data was required. An extension of the statute of limitations under this section is limited to an extension for the purpose of assessment of a tax deficiency, penalty, and interest resulting from an application of the proper tax treatment with respect to information that was not filed pursuant to [section 11] and that was not reported in the same or similar manner in a tax return filed with another state.~~

NEW SECTION. **Section 14. Short title**. [Sections ~~15~~ 14 through ~~17~~ 16] may be cited as "The Act for Tax Evasion Transaction Voluntary Compliance Program".

NEW SECTION. **Section 15. Definitions**. As used in [sections ~~15~~ 14 through ~~17~~ 16], the following definitions apply:

(1) "Eligible taxpayer" means any taxpayer who, during the period from September 1, 2007, through December 31, 2007, does both of the following:

(a) files an amended Montana tax return for each tax year for which the taxpayer has previously filed a Montana tax return using a tax evasion transaction to underreport the taxpayer's income or corporation license tax liability reporting the total Montana net income and tax for the tax year computed without regard to any tax evasion transactions and without regard to any other adjustments that are unrelated to tax evasion transactions; and

(b) makes full payment or enters into an installment payment agreement as provided in [section ~~17(6)~~ 16(6)] for payment of the entire amount of Montana income or corporation license tax and interest due for each tax year that is attributable to the use of the tax evasion transaction.

(2) "Program" means the voluntary compliance program established in [sections ~~15~~ 14 through ~~17~~ 16].

(3) "Tax evasion transaction" means a transaction, plan, or arrangement devised for the principal purpose of evading federal income tax or Montana income or corporation license tax. A tax evasion transaction

includes but is not limited to a reportable transaction as defined in [section 2], including a listed transaction as defined in [section 2].

NEW SECTION. **Section 16. Tax evasion transaction voluntary compliance program.** (1) There is a tax evasion transaction voluntary compliance program for eligible taxpayers subject to tax under Title 15, chapter 30 or 31, as provided in [sections ~~15~~ 14 through ~~17~~ 16]. The department shall develop and administer the program. The program must be conducted from September 1, 2007, through December 31, 2007, and applies to tax liabilities attributable to the use of tax evasion transactions for tax years beginning before January 1, 2007. The department shall adopt rules, issue forms and instructions, and take any other action that it considers necessary to implement the program.

(2) An eligible taxpayer may elect to participate in the program with respect to any tax year to which the program applies under either subsection (3) or (4). The election must be made for all tax years for which the taxpayer will participate, and a separate election for different tax years or for different transactions in different tax years is not allowed. The election must be made in the form and manner prescribed by the department and, once made, is irrevocable.

(3) If an eligible taxpayer elects to participate under this subsection (3):

(a) the department shall waive all penalties applicable to the underreporting or underpayment of Montana income or corporation license tax attributable to the use of tax evasion transactions for the tax years for which the taxpayer voluntarily complies, including penalties imposed under [sections 1 through ~~14~~ 13];

(b) except as otherwise provided in this section, the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under this section if the penalty imposed relates to an amount of Montana income or corporation license tax assessed or paid prior to September 1, 2007; and

(d) the taxpayer may not file a claim for credit or refund with respect to the tax evasion transactions for that tax year or for any amounts paid under the program.

(4) If an eligible taxpayer elects to participate under this subsection (4):

(a) the department shall waive any penalty imposed under [sections 1 through ~~14~~ 13] with respect to disclosure of tax evasion transactions and underpayment of Montana income and corporation license tax resulting from the use of tax evasion transactions for any tax years for which the taxpayer voluntarily complies, but may

not waive penalties imposed prior to [the effective date of this act];

(b) except as otherwise provided in subsection (5) or (6), the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under ~~[section 16] or~~ this section if the penalty imposed relates to an amount of Montana income or corporation license tax assessed or paid prior to September 1, 2007;

(d) the fact a taxpayer participated in the program may not be considered evidence the taxpayer engaged in a tax evasion transaction;

(e) any penalties that are not waived are considered assessed upon the due date of the return, determined without regard to extensions, upon which the amount should have been paid;

(f) the taxpayer may file a claim for credit or refund as provided in Title 15, chapter 30 or 31, with respect to the tax year; and

(g) notwithstanding 15-1-211, the taxpayer may not file an appeal until after either of the following:

(i) the department issues a final determination with respect to the transactions at issue; or

(ii) the earlier of:

(A) the date that is 180 days after the date of a final determination by the internal revenue service with respect to the transactions at issue; or

(B) the date that is 4 years after the date that the claim for refund was filed or 1 year after the full payment of all Montana income or corporation license tax, including penalty and interest.

(5) The provisions of 15-1-211(2)(c) and (4)(c) and 15-2-302(2) do not apply to claims filed under this section.

(6) The department may enter into an installment payment agreement in lieu of full payment of the entire amount of Montana income or corporation license tax and interest due for the tax year that is attributable to the use of the tax evasion transaction. Any installment payment agreement authorized by this subsection must include interest on the unpaid amount at the rate prescribed by 15-1-216. Failure by the taxpayer to fully comply with the terms of the installment payment agreement renders the waiver of penalties void, and the total amount of tax, interest, and all penalties is immediately due and payable.

(7) After December 31, 2007, the department may issue a deficiency assessment upon an amended return filed by an eligible taxpayer as defined in [section ~~16~~ 15], impose penalties, or initiate criminal action with respect to the difference between the amount shown on that return and the correct amount of tax. The penalty

relief provided in subsection (3) or (4) does not apply to any portion of the underpayment attributable to a tax evasion transaction not paid to the state.

(8) Any correspondence mailed by the department to a taxpayer at the taxpayer's last-known address outlining the program constitutes a contact for purposes of [section 3(9)].

(9) (a) In addition to any other authority to examine returns for the purpose of improving state tax administration, the department may inquire into the facts and circumstances related to the use of tax evasion transactions to underreport the tax liabilities for which a taxpayer has participated in the program under [sections ~~15~~ 14 through ~~17~~ 16].

(b) A taxpayer shall cooperate fully with inquiries described in subsection (9)(a).

(c) Failure by a taxpayer to fully cooperate in an inquiry described in subsection (9)(a) renders the waiver of penalties under [sections ~~15~~ 14 through ~~17~~ 16] void and the taxpayer may be assessed any penalties that may apply.

NEW SECTION. **Section 17. Short title.** [Sections ~~18~~ 17 through ~~23~~ 22] may be cited as the "Montana Real Estate Backup Withholding Act".

NEW SECTION. **Section 18. Definitions.** As used in [sections ~~18~~ 17 through ~~23~~ 22], the following definitions apply:

(1) "Certified calculated gain" means the gain the transferor certifies in writing to the department, under penalty of false swearing as provided in 45-7-202, that the transferor will realize on a disposition of Montana real estate.

(2) "Improvements" has the meaning provided in 15-1-101.

(3) "Montana real estate" means real estate or improvements located in Montana.

(4) "Principal residence" means a principal residence within the meaning of section 121 of the Internal Revenue Code, 26 U.S.C. 121.

(5) "Real estate" has the meaning provided in 15-1-101.

(6) "Sales price" means the total consideration for the transfer of Montana real estate, including the market value of any property transferred to the transferor, and any liability assumed or taken subject to the sales price.

(7) "Transferor" means any person or entity disposing of Montana real estate.

NEW SECTION. **Section 19. Withholding required on sale or exchange of Montana real estate -- rate.** Except as provided in [section ~~21~~ 20], there must be withheld from the proceeds from a sale or exchange of Montana real estate an amount equal to the lesser of:

(1) 2.5% of the sales price of the Montana real estate conveyed; or

(2) the amount of the transferor's certified calculated gain multiplied by the highest rate of tax provided for in 15-30-103.

NEW SECTION. **Section 20. Withholding -- application not required.** Withholding is not required on the transfer of Montana real estate under the provisions of [section ~~20~~ 19] if:

(1) the sales price of the Montana real estate conveyed is less than $100,000;

(2) the transfer occurs:

(a) pursuant to a power of sale under a mortgage or deed of trust;

(b) as the result of a decree of foreclosure; or

(c) by deed in lieu of foreclosure; or

(3) the transferor establishes that:

(a) the transferor is an individual who is a Montana resident;

(b) the Montana real estate being transferred is the principal residence of the transferor or was the principal residence of a decedent;

(c) the last use of the property being transferred was by the transferor as the transferor's principal residence;

(d) the Montana real estate has been compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033, and the transferor intends to acquire property similar or related in service or use so that the gain is not recognized under the provisions of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033;

(e) the Montana real estate is being relinquished in an exchange in which gain and loss is not recognized pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. 1031; or

(f) the transferor is a corporation, a pass-through entity, or a disregarded entity incorporated or organized under the laws of the state of Montana.

NEW SECTION. **Section 21. Reporting and remittance.** (1) The transferor shall report to the department under oath, on a form prescribed by the department, all information necessary to compute the amount withheld pursuant to [section ~~20~~ 19] or to establish that the transferor is not required to withhold pursuant to [section ~~21~~ 20].

(2) Within 5 business days of closing on the sale or exchange of Montana real estate, the transferor shall file the report and remit the amount withheld, if any, to the department.

(3) A copy of the report and a copy of the payment, if any, for withholding must be attached to the realty transfer certificate required by 15-7-305. The county clerk and recorder may not record any deed or other instrument transferring title to Montana real estate if the copies required by this section are not provided.

(4) The department may not change any ownership records used for the assessment or taxation of Montana real estate unless the copies required by subsection (3) are attached to the realty transfer certificate.

(5) Any amount required to be paid pursuant to [section ~~20~~ 19] and remitted to the department pursuant to this section is considered a payment on the account of the transferor for the purposes of individual income tax under Title 15, chapter 30, or for the purposes of the corporation license tax or corporation income tax under Title 15, chapter 31. If the transferor is a pass-through entity, the payment is considered a payment on the account of the pass-through entity's shareholders, partners, or members, as applicable.

NEW SECTION. **Section 22. Rulemaking authority.** The department shall adopt rules to implement and administer [sections ~~18~~ 17 through ~~23~~ 22].

Section 23. Section 7-4-2623, MCA, is amended to read:

"7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages that may result and is punishable as provided in this code if the county clerk to whom an instrument is delivered for record:

(1) neglects or refuses to record the instrument within reasonable time after receipt except when the information required by law to record the instrument is not provided;

(2) falsely records an instrument or records an instrument in any other manner than as directed in this part;

(3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the proper entries in the indexes; or

(4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter in the records."

Section 24. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property -- description -- taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) ~~The Except as provided in subsection (5)(b), the~~ THE FIRST $80,000 OF MARKET VALUE OF class eight property ~~of~~ OWNED BY ~~a person~~ an individual or business entity ~~that owns, directly or indirectly, class eight property with an aggregate market value of $20,000~~ $150,000 ~~or less in market value of class eight property~~ is exempt from taxation.

(b) ~~The class eight property of the taxpayer and of any person who bears a relationship to the taxpayer described in section 267(b) of the Internal Revenue Code, 26 U.S.C. 267(b), is aggregated in determining whether the taxpayer owns, directly or indirectly, class eight property with an aggregate market value of $150,000 or less.~~ (I) THE DEPARTMENT SHALL, BY RULE, ESTABLISH REPORTING REQUIREMENTS THAT WOULD NOT ALLOW MULTIPLE BUSINESS IDENTITIES TO BE FORMED TO OBTAIN MULTIPLE EXEMPTION THRESHOLDS FOR WHAT ARE FUNCTIONALLY SINGLE BUSINESSES. THE RULES MAY REQUIRE INDIVIDUAL AND TAXPAYER IDENTIFICATION NUMBERS FOR PASS-THROUGH ENTITIES, AS DEFINED IN 15-30-101, AND THEIR OWNERS, PARTNERS, AND OFFICERS TO ALLOW THE DEPARTMENT TO TRACK EXEMPTIONS THROUGH THE ENTITIES.

(II) WHENEVER ONE MEMBER OF A FIRM OR ONE OF THE PROPER OFFICERS OF A CORPORATION HAS MADE A STATEMENT SHOWING THE PROPERTY OF THE FIRM OR CORPORATION, ANOTHER MEMBER OF THE FIRM OR ANOTHER OFFICER IS NOT REQUIRED TO INCLUDE THE PROPERTY IN THAT PERSON'S STATEMENT BUT THE STATEMENT MUST SHOW THE NAME OF THE PERSON OR OFFICER WHO MADE THE STATEMENT IN WHICH THE PROPERTY IS INCLUDED.

(III) THE FACT THAT A STATEMENT IS NOT REQUIRED OR THAT A PERSON HAS NOT MADE A STATEMENT, UNDER OATH OR OTHERWISE, DOES NOT RELIEVE THE PERSON'S PROPERTY FROM TAXATION."

SECTION 25. SECTION 15-6-219, MCA, IS AMENDED TO READ:

"15-6-219. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) items of personal property with a market value of less than $100;

~~(1)~~(2) harness, saddlery, and other tack equipment;

~~(2)~~(3) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(a) construct, repair, and maintain improvements to real property; or

(b) repair and maintain machinery, equipment, appliances, or other personal property;

~~(3)~~(4) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

~~(4)~~(5) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;

~~(5)~~(6) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than $15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(6)~~(7) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and

~~(7)~~(8) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105."

NEW SECTION. **Section 26. Codification instruction.** (1) [Sections 1 through ~~14~~ 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through ~~14~~ 13].

(2) [Sections ~~18~~ 17 through ~~23~~ 22] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections ~~18~~ 17 through ~~23~~ 22].

NEW SECTION. **Section 27. Contingent voidness.** If funds are not appropriated to replace the revenue lost to cities, towns, counties, local schools, and special districts from increase of the business equipment tax exemption threshold provided in 15-6-138, [this act] is void.

NEW SECTION. **Section 28. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 29. Applicability -- retroactive applicability.** (1) The provisions of [section 3(1) and (2) apply retroactively, within the meaning of 1-2-109, to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under [section 3(12)], has not expired as of [60 days after the effective date of this act].

(2) The provisions of [sections 8 through 11] apply to tax years beginning after December 31, 2008.

(3) (a) Except as provided in subsection (3)(b), the provisions of [section 12] apply retroactively, within the meaning of 1-2-109, to information associated with any return due on or after [the date 2 years before the effective date of this act].

(b) The provisions of [section 12(2)(b)] apply retroactively, within the meaning of 1-2-109, to any tax year for which the statute of limitations on assessment has not expired.

(c) The penalties imposed under the provisions of [section 13] apply to any failure to file, retain, or provide any information required pursuant to [section 10, 11, or 12] with respect to any tax year ending on or after [the effective date of this act].

(4) The provisions of [sections ~~18~~ 17 through ~~23~~ 22] apply to transfers of Montana real estate occurring after September 30, 2007.

(5) The provisions of 15-6-138 apply to business equipment taxes imposed after December 31, 2006.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0220	Title:	Tax law administration -- transactions, compliance, withholding, class 8 exempt.
Primary Sponsor:	Elliott, Jim	Status:	As Amended in Senate Taxation

☑ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☑ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2007 Difference	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:					
General Fund	$532,600	$868,405	$321,886	$329,933	$338,181
State Special Revenue	$0	$0	$0	$0	$0
Revenue:					
General Fund	($1,095,228)	$11,774,262	$11,008,200	$11,803,804	$12,673,344
State Special Revenue	($70,836)	($187,348)	($195,496)	($203,993)	($212,855)
Net Impact-General Fund Balance	($1,166,064)	$10,905,857	$10,686,314	$11,473,871	$12,335,163

Description of Fiscal Impact:

This bill consists of four parts. Sections 1 through 14 relate to taxpayer reporting requirements. Sections 1 through 7 require additional reporting of potentially abusive tax avoidance transactions and impose penalties for failure to report and for using abusive tax avoidance transactions to mis-state income or corporate tax liability. Sections 8 through 14 require corporations to provide information about their tax returns filed in other states. Sections 15 through 17 provide a voluntary compliance program for taxpayers who have engaged in an abusive tax avoidance transaction. Sections 18 through 24 require withholding for taxes on capital gains from the sale of real estate, other than the seller's principle residence, by non-residents. As amended, Section 25 increases the business tax exemption to the first $80,000 in market value for all taxpayers and exempts personal property with a market value of less than $100 from taxation.

FISCAL ANALYSIS

Assumptions:

Reporting Requirements (Sections 1-14)

1. Section 3 requires taxpayers who have used potentially abusive tax avoidance transactions, as defined by the IRS or the Department of Revenue, to report those transactions and provides penalties for failing to report them. Section 4 requires parties who have assisted taxpayers in using potentially abusive tax

avoidance transactions to report those transactions and provides penalties for failure to report. Section 5 provides penalties for promoting tax shelters and assisting taxpayers in mis-stating income or tax liability. Section 8 requires corporations that file tax returns in Montana and other states to provide information from those returns to the Department of Revenue to allow the department to determine whether the information is consistent.

2. The reporting requirements and penalties in Sections 1 through 14 will increase voluntary compliance with the individual income tax and corporation license tax and will make it easier for the Department to detect taxpayers who are not in compliance. Based on the size and number of cases identified using information shared by other states, this is expected to produce $3.2 million per year in additional revenue beginning in FY 2009.

Voluntary Compliance Initiative (Sections 15-17)

3. Sections 15 through 17 would allow taxpayers who have used abusive tax avoidance transactions to file amended returns and pay tax due from previous years in September through December of 2007 with no civil or criminal penalties.
4. Several states have conducted similar voluntary compliance programs. Four states, California, New York, North Carolina, and Illinois provided information on the results of their programs that distinguished between payments from corporations and individuals.
5. For these states, increased individual income tax collections were divided by the highest individual marginal tax rate to give an estimate of the increase in reported taxable income. For each state, the increase in taxable income was multiplied by the ratio of Montana's 2005 personal income to that state's 2005 personal income to give a proportionate increase in taxable income for Montana. These were then multiplied by the top marginal tax rate of 6.9% to give equivalent increases in Montana personal income tax revenue.
6. Similarly, increased corporation income tax collections in each of the four states was divided by that state's corporate tax rate, multiplied by the ratio of Montana's 2005 gross state product to the other state's gross state product and then multiplied by the Montana corporation tax rate of 6.75% to give equivalent increases in Montana corporation tax revenue.
7. The total increases in Montana tax liability equivalent to the results from the four states ranged from $10.2 million to $22.5 million with an average of $16.53 million Montana differs in some ways from states that have already run programs. Therefore, it is conservatively estimated that a voluntary compliance program in Montana would be half as successful as the least successful program in the four states, producing $5.1 million in additional revenue in FY 2008.

Real Estate Withholding (Sections 18-24)

Residential Property

8. In 2005, records from the department's property tax database (CAMAS) combined with sales history file data reveal a total of 989 with a total sales amount of at least $100,000 class 4 real property sales by non-residents totaling $401,843,532 in sales.
9. Section 20 of the bill provides that the withholding amount required is either 2.5% of the sales price or the amount of the transferor's certified calculated gain multiplied by the highest rate of tax. It is assumed non-resident sellers will choose the lower of the two amounts.
10. To determine the amount of additional non-resident withholding revenue this bill will generate, the department did a study to determine the rate of non-compliance. Based on tax year 2003, business and income tax staff found that 70% of non-residents failed to file state tax returns on the gain of sales for class 4 property.
11. A random sample of 692 recorded sales, or 70%, of the 989 non-resident sales in 2005 were selected to provide data for this fiscal note. The total sales amount for these 692 records was $244,525,855.

12. Of the 989 total sales in calendar year 2005, 657 records had a previous sales amount. Based on a review of these 657 sales, the most frequent percentage gain was 47%.
13. Multiplying the $244,525,855 x 47% results in an estimated $114,927,152 in unreported capital gains on class 4 sales.
14. At a 4% tax rate (6% average income tax rate less the 2% capital gains credit), the resulting tax revenue from unreported capital gains on sales of real property is estimated as $4,597,086 ($114,927,152 X 4%).

Agricultural Property

15. For class 3 Agricultural Land, based on the property's class code, a per acre value was selected from the appropriate USDA 2005 average value per acre for the particular type of land (farm real estate, cropland, irrigated, non-irrigated, and pasture acreage). In 2005, there were 2,341 class 3 sales agricultural land sales by non-residents. Multiplying the acreage quantity by the appropriate USDA per acre rate resulted in estimated sales of $148,869,350.
16. A randomly selected sample of 1,639 observations was drawn from the 2005 agricultural land sales. Based on this sample, in 2005 agricultural land properties totaling $107,287,457 in sales were sold by non-residents for gains that were not reported.
17. From 1994-2004, the USDA average increase in the value of farmland was 4.93% per year for a 62% increase over 10 years. This rate was used to estimate unreported capital gains of $66,518,223 ($107,287,457 X 62%) on the agricultural land sales. Applying a 4% tax results in revenue of $2,660,729 ($66,518,223 X 4%).

Total Additional Withholding Revenues

18. Combining the anticipated unreported capital gains from class 3 and class 4 sales results in $7,257,815 in estimated revenue from sales in 2005. The Center for Applied Economic Research reports that between 1999 and 2003, the average home price increased at an annual rate of growth of 8.6%. Data maintained by the Federal Reserve Bank of Kansas City indicates fairly comparable land value changes for agricultural farmland since the first half of 2004. Therefore this growth rate was used to estimate revenues which are projected to be $9,295,984 in FY 2008, $10,095,439 in FY 2009, and $10,963,646 in FY 2010, and $11,906,520 in FY 011.

Increase Class 8 Threshold (Section 25)

Reduction in the Taxable Value of Class 8 Property

19. Section 25 of this bill raises the threshold exemption amount for class 8 property. Under current law, the threshold exemption amount is $20,000 or less of class 8 property. The current law exemption amount is a statewide amount of class 8 property owned by an individual or business entity.
20. Effective for tax year 2007, SB 220 provides an exemption on the first $80,000 of market value of class 8 property owned by an individual or business entity even if the taxpayer has more than $80,000 of class 8 property. The bill also exempts personal property items with a market value of less than $100.
21. Under current law, 17,328 business entities or individuals were subject to class 8 property tax in tax year 2006. Under SB 220, 10,795 class 8 business owners would be removed from the tax rolls. The new total taxable value decrease, before adjusting for TIF districts and local abatement, will be $29,004,599.
22. The $864,192 in taxable value of property located in a tax increment financing (TIF) district must be removed for the calculation of the state general fund revenue loss since the 95 mill levy and 1.5 mill levy tax revenue from class 8 property is retained by the TIF district. Adjusting for TIF districts, the taxable value of class 8 property in tax year 2006 that would have been exempted under this bill is $28,140,407 ($29,004,599 – $864,192).
23. The 2.7%, or $783,124 ($29,004,599 x 0.027), of abated property tax not collected at the local level must be added back in to calculate the general fund revenue loss.

Increase in Taxable Value of Class 12 Property

24. The total market value of class 12 property in Montana was $1,171,178,046 in calendar year 2006. Under current law the tax rate is an annually calculated blended rate composed of all the tax rates applied to commercial property. For calendar year 2006 the class 12 tax rate was 3.55%. The total taxable value of class 12 property was $41,576,814 in calendar year 2006.
25. SB 220 will cause the class 12 tax rate to increase to 3.58% in calendar year 2006. Therefore, the taxable value increase in class 12 property would have been $351,353 ($41,928,167-$41,576,814) in calendar year 2006 under SB 220. The class 12 tax rate is projected to remain the same through FY 2011. No class 12 property is located within tax increment financing districts. Therefore, the impact of the class 12 tax rate change would be limited to state and local government and education tax revenue.

General Fund Revenue Reduction

26. To calculate the future general fund revenue impacts of SB 529, the taxable value reduction found in assumption 21 is reduced by the amount of taxable value from TIF districts, increased by the abated taxable which is collected at the state level but not collected at the local government level, and grown at HJR 2 growth rates. ($29,004,599 – $864,192 + $783,124 = $28,923,531)
27. The statewide 95 mill levy and the 1.5 college of technology mill levy must be applied to the estimated taxable value of the exempt property to calculate the loss in state general fund revenue. The average statewide mill applied to the taxable value is 95.54. The tax year 2006 revenue loss associated with the 95 and 1.5 mill levies would have been $2,763,354 ($28,923,531 x 0.09554).
28. The class 8 growth rate forecast by HJR 2 is 4.3% for FY 2008 and FY 2009. For the purposes of this fiscal note, the growth rate is assumed to be 4.3% for FY 2010 and FY 2011.
29. The class 8 revenue loss associated with the 95 and 1.5 mill levies is projected to be:
    - $2,882,178 ($2,763,354 x 1.043) in tax year 2007
    - $3,006,112 ($2,882,178 x 1.043) in tax year 2008
    - $3,135,375 ($3,006,112 x 1.043) in tax year 2009
    - $3,270,196 ($3,135,375 x 1.043) in tax year 2010
    - $3,410,814 ($3,270,196 x 1.043) in tax year 2011
30. For class 8 property, fiscal year tax payments are not based on the prior calendar year taxable value as are other classes of property. Class 8 property not liened to real property (38%) is taxed in the spring of the calendar year. Class 8 property liened to real property (62%) is collected in the following fiscal year when the normal property tax payments are made in November and May. Therefore, FY 2008 taxable value is 62% of calendar year 2007 taxable value and 38% of calendar year 2008 taxable value, etc. The increase to the class 8 exemption threshold under this bill has a partial year impact on property tax revenue in FY 2007. The bill will cause a general fund revenue loss of:
    - $1,095,228 ($2,882,178x 0.38) in FY 2007,
    - $2,929,273 (($2,882,178x 0.62) + ($3,006,112 x 0.38)) in FY 2008
    - $3,055,232 (($3,006,112 x 0.62) + ($3,135,375 x 0.38)) in FY 2009
    - $3,186,607 (($3,135,375 x 0.62) + ($3,270,196 x 0.38)) in FY 2010
    - $3,323,631 (($3,270,196 x 0.62) + ($3,410,814 x 0.38)) in FY 2011
31. The class 12 revenue increase associated with the 95 and 1.5 mill levies is projected to be $33,664 ($351,353 x 0.09554) in FY 2008 through FY 2011.
32. The total fiscal year general fund revenue loss will be:
    - $1,095,228 in FY 2007
    - $2,895,609 ($2,929,273 - $33,664) in FY 2008
    - $3,021,568 ($3,055,232 - $33,664) in FY 2009
    - $3,152,943 ($3,186,607 - $33,664) in FY 2010
    - $3,289,967 ($3,323,631 - $33,664) in FY 2011

University Revenue Reduction

33. The statewide university 6 mill levy must also be applied to the estimated taxable value of exempt property to calculate the loss in state special revenue. TIF districts do not affect this mill levy. The tax year 2006 revenue loss association with the 6 mill levy would have been $178,726 (($28,923,531 + $864,192) x 0.006).
34. The class 8 growth rate forecast by HJR 2 is 4.3% for FY 2008 and FY 2009. For the purposes of this fiscal note, the growth rate is assumed to be 4.3% for FY 2010 and FY 2011.
35. The class 8 revenue loss associated with the 6 mill levy will be:
    - $186,412 ($178,726 x 1.043) in tax year 2007
    - $194,427 ($186,412 x 1.043) in tax year 2008
    - $202,788 ($194,427 x 1.043) in tax year 2009
    - $211,508 ($202,788 x 1.043) in tax year 2010
    - $220,602 ($211,508 x 1.043) in tax year 2011
36. The fiscal year class 8 university revenue loss will be:
    - $70,836 ($186,412 x 0.38) in FY 2007
    - $189,458 (($186,412 x 0.38) + ($194,427 x 0.62)) in FY 2008
    - $197,604 (($194,427 x 0.38) + ($202,788 x 0.62)) in FY 2009
    - $206,101 (($202,788 x 0.62) + ($211,508 x 0.38)) in FY 2010
    - $214,964 (($211,508 x 0.62) + ($220,602 x 0.38)) in FY 2011
37. The fiscal year class 12 university system revenue increase will be $2,108 ($351,353 x 0.006) for FY 2008 through FY 2011.
38. The total university system revenue loss will be:
    - $70,836 in FY 2007
    - $187,349 ($189,458 - $2,108) in FY 2008
    - $195,496 ($197,604 - $2,108) in FY 2009
    - $203,993 ($206,101 - $2,108) in FY 2010
    - $212,855 ($214,964 - $2,108) in FY 2011

TIF District Revenue Reduction

39. The taxable value of class 8 property within TIF districts is projected to grow 4.3%. The taxable value of TIF districts will be $901,352 ($864,192 x 1.043) in tax year 2007, $940,110 ($901,352 x 1.043) in tax year 2008, $980,535 ($940,110 x 1.043) in tax year 2009, $1,022,698 ($980,535 x 1.043) in tax year 2010, and $1,066,674 ($1,022,698 x 1.043) in tax year 2011.
40. It is assumed that the average statewide mill levy will grow at the calendar year 2000 through calendar year 2006 growth rate of 3.4%. The TIF districts do not receive the revenue from the 6 mill levy. In calendar year 2006 (FY 2007) the average statewide mill levy was 526.84. In calendar year 2007 (FY 2008) the average statewide mill levy, less the university 6 mill levy, will be 538.75 ((526.84 x 1.034) - 6). Property within a tax increment financing district is either in the TIF's base or in its' increment. For the purposes of this fiscal note it will be assumed the reduction in class 8 taxable value is taken from the value of the increment. This results in a property tax revenue reduction within TIF districts of:
    - $178,395 ($901,352 x 0.38 x 0.52084) in FY 2007
    - $493,541 (($901,352 x 0.62) + ($940,110 x 0.38) x 0.53875) in FY 2008
    - $532,460 (($940,110 x 0.62) + ($980,535 x 0.38) x 0.55727) in FY 2009
    - $574,441 (($980,535 x 0.62) + ($1,022,698 x 0.38) x 0.57643) in FY 2010
    - $619,725 (($1,022,698 x 0.62) + ($1,066,674 x 0.38) x 0.59623) in FY 2011

Business Tax Revenue Increase

41. With lower property taxes, businesses will have lower property tax expenses to deduct in calculating taxable net revenue. This bill would reduce property taxes businesses pay by:
    - $6,087,902 ($1,095,228 + $70,863 + $178,395 + $4,743,443) in FY 2007
    - $16,322,493 ($2,895,609 + $187,349 + $493,541 + $12,745,994) in FY 2008
    - $17,628,884 ($3,021,568 + $195,496 + $532,460 + $13,879,360) in FY 2009
    - $19,044,564 ($3,152,943 + $203,993 + $574,441 + $15,113,187) in FY 2010
    - $20,578,913 ($3,289,967 + $212,855 + $619,725 + $16,456,366) in FY 2011
42. Corporations that do business in Montana and other states are required to report their Montana property on their corporation license tax returns. Of this property, 66.65% was reported by corporations that had positive taxable income. It is assumed that the same proportion of total business property is owned by businesses with positive net income.
43. The corporation license tax rate is 6.75%. It is assumed that the average marginal tax rate on business income reported on individual income tax returns is also 6.75%.
44. The increase in corporate tax liability is estimated to be $273,887 ($6,087,902 x 0.6665 x 0.0675) in FY 2007, $734,329 ($16,322,493 x 0.6665 x 0.0675) in FY 2008, $793,101 ($17,628,884 x 0.6665 x 0.0675) in FY 2009, $856,791 ($19,044,564 x 0.6665 x 0.0675) in FY 2010, and $925,820 ($20,578,913 x 0.6665 x 0.0675) in FY 2011.
45. Businesses frequently use the option for an extended deadline for filing tax returns. Because of this, the changes in tax liability will be reported on tax returns filed over the course of the following fiscal year and are assumed to be received in that year.

Summary of General Fund Revenue Impacts

Bill Provision	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Reporting Requirements			$3,200,000	$3,200,000	$3,200,000
Voluntary Compliance		$5,100,000			
Real Estate Withholding		$9,295,984	$10,095,439	$10,963,646	$11,906,520
Business Tax Revenue Increase		$273,887	$734,329	$793,101	$856,791
General Fund Revenue Increases		$14,669,871	$14,029,768	$14,956,747	$15,963,311
Plus Class 8 and 12 Decrease	($1,095,228)	($2,895,609)	($3,021,568)	($3,152,943)	($3,289,967)
General Fund Revenue Impact	($1,095,228)	$11,774,262	$11,008,200	$11,803,804	$12,673,344

Office of Public Instruction Fiscal Impact on Expenditures

46. The decrease in property tax values due to SB 220 will impact state's obligation to fund the guaranteed tax base aid for school districts and counties.
47. Property tax values will decrease by $27,789,054 ($28,140,407 - $351,353) in FY 2007 (calendar year 2008) or 0.763%. There will be a one-year guaranteed base aid (GTB) cost increase. The guaranteed level is determined by the prior year taxable values applied against current year taxable values. The lower guaranteed level in FY 2007 will apply to the lower taxable values in FY 2008 and cause decreased state contribution as districts levy less mills to compensate for the increase in taxable value. The one-time increased expenditures will be $362,000 in FY 2007 for district levies as calculated by the school fund model.
48. Countywide retirement GTB will increase $136,000 based on a historical average of 28% of the costs paid by the state and FY 2006 county levies equal to $63.8 million (0.763% times 63.8 million local levies times 28%).

49. In FY 2008 and beyond the lower overall level of taxable values will not have a significant impact in statewide guaranteed tax base aid costs.

Administrative Costs

50. SB 220 would require the department to allocate the exemption by owner. The distribution must be based on the ratio of the market value of class 8 property within a given levy district to the total market value of all class 8 property owned. This will require significant changes to current property tax databases (MODS and BEVS) and to the new Orion system under development. For FY 2007, the estimated cost to modify MODS is $34,600 and in FY 2008 the cost for contracted services for the Orion change is $493,020.
51. The department would also need to conduct taxpayer education to inform taxpayers about the impacts of the bill. The estimated costs are $1,000 for radio, $2,200 for television, $12,000 for statewide coordination for a total cost of $15,200 in FY 2008.
52. To administer the non-resident withholding requirement, the department would require an additional 2.0 FTE in FY 2008 and thereafter. For the class 8 equipment exemption change, 3.0 auditors are necessary to ensure compliance. Information technology would require the equivalent of 0.38 FTE in FY 2008 and 0.14 FTE thereafter for contracted services. Total FTE associated with SB 220 as amended are 5.0 in FY 2008 and thereafter, exclusive of contract services.
53. Total costs associated with the bill as amended are $34,600 in FY 2007, $869,145 in FY 2008, $321,886 in FY 2009, $321,886 in FY 2010, and $321,886 in FY 2011.

	FY 2007 Difference	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:					
FTE	0.00	5.00	5.00	5.00	5.00
Expenditures:					
Personal Services	$0	$274,176	$274,176	$281,030	$288,056
Operating Expenses	$34,600	$564,729	$47,710	$48,903	$50,125
Equipment	$0	$29,500	$0	$0	$0
Local Assistance	$498,000	$0	$0	$0	$0
TOTAL Expenditures	$532,600	$868,405	$321,886	$329,933	$338,181
Funding of Expenditures:					
General Fund (01)	$532,600	$868,405	$321,886	$329,933	$338,181
State Special Revenue (02)	$0	$0	$0	$0	$0
TOTAL Funding of Exp.	$532,600	$868,405	$321,886	$329,933	$338,181
Revenues:					
General Fund (01)	($1,095,228)	$11,774,262	$11,008,200	$11,803,804	$12,673,344
State Special Revenue (02)	($70,836)	($187,349)	($195,496)	($203,993)	($212,855)
TOTAL Revenues	($1,166,064)	$11,586,913	$10,812,704	$11,599,811	$12,460,489
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):					
General Fund (01)	($1,627,828)	$10,905,857	$10,686,314	$11,473,871	$12,335,163
State Special Revenue (02)	($70,836)	($187,349)	($195,496)	($203,993)	($212,855)

Effect on County or Other Local Revenues or Expenditures:

1. Sections 1-17 of this bill should have no significant impacts on local government revenues or expenditures.
2. There may be additional costs incurred by county clerks and recorders in administering Sections 18-24 of this bill. These costs are not anticipated to be significant.

3. Section 25 will have significant impacts on local governments and school district revenues if the taxable value loss is not reimbursed by the State of Montana
4. To calculate the local governments and schools revenue impacts of SB 220, the taxable value reduction of class 8 property excluding TIF districts and abated property must be used. The estimated loss in taxable value to local jurisdictions is $29,350,445 in tax year 2007, $30,612,514 in tax year 2008, $31,928,852 in tax year 2009, $33,301,792 in tax year 2010, and $34,733,769 in tax year 2011.
5. The statewide average mill levy for property in tax year 2006 is 526.84 mills. Removing the states 101.54 (95.54 + 6) mills, local governments and schools would have an estimated average statewide mill levy of 425.30 (526.84 – 101.54).
6. The statewide average mill levy in calendar year 2006 is 526.84 mills. Removing the state's 101.54 (95.54 + 6) mills, local governments and school have an estimated average statewide mill levy of 425.30 (526.84 – 101.54). Local government and school mills grew 4.35% annually from calendar year 2000 to calendar year 2006. This 4.35% growth is assumed to continue through FY 2011. The class 8 tax year reduction in revenue to local governments and schools will be:
   - $12,482,744 ($29,350,445 x 0.4438) in tax year 2007
   - $13,585,850 ($30,612,514 x 0.4631) in tax year 2008
   - $14,786,439 ($31,928,852 x 0.4832) in tax year 2009
   - $16,093,124 ($33,301,792 x 0.5042) in tax year 2010
   - $17,515,281 ($34,733,769 x 0.5262) in tax year 2011
7. The class 8 fiscal year local government and school revenue loss will be:
   - $4,743,443 ($12,482,744 x 0.38) in FY 2007
   - $12,901,924 (($12,482,744 x 0.62) + ($13,585,850 x 0.38)) in FY 2008
   - $14,042,074 (($13,585,850 x 0.62) + ($14,786,439 x 0.38)) in FY 2009
   - $15,282,979 (($14,786,439 x 0.62) + ($16,093,124 x 0.38)) in FY 2010
   - $16,633,544 (($16,093,124 x 0.62) + ($17,515,281 x 0.38)) in FY 2011
8. The class 12 fiscal year revenue increase to local governments and schools will be:
   - $155,931 ($351,353 x 0.4438) in FY 2008
   - $162,714 ($351,353 x 0.4631) in FY 2009
   - $169,792 ($351,353 x 0.4832) in FY 2010
   - $177,178 ($351,353 x 0.5043) in FY 2010
9. The total fiscal year revenue loss to local governments and schools will be:
   - $4,743,443 in FY 2007
   - $12,745,994 ($12,901,924 - $155,931) in FY 2008
   - $13,879,360 ($14,042,074 - $162,714) in FY 2009
   - $15,113,187 ($15,282,979 - $169,792) in FY 2010
   - $16,456,366 ($16,633,544 - $177,178) in FY 2011
10. Under 15-10-420, MCA, county and city governments could float their mill levies to offset this property tax revenue loss. Since the amount of loss associated with this bill is significant, mill levy increases could be large; this would shift the impacts onto other taxpayers.

Long-Range Impacts:

1. The reduction in the taxable value for class 8 equipment will continue to have significant impacts on state, local government, and tax increment financing district revenues beyond the biennia.

Technical Notes:

1. As amended, the bill still refers to a $150,000 exemption threshold in the title. The reference should be to the $80,000 exemption as amended.
2. The department records penalties and interest within the MODS property tax system under an assigned class code. This allows proper billing of property taxpayers. This fiscal note assumes that the value associated with these penalties is not to be included in the $80,000 exemption provided to a given property owner. The sponsor may wish to include specific direction regarding the treatment of penalties within this bill.
3. The MODS database reports class 8 property aggregated by class code. For example, furniture is aggregated under a single class code. Because of this aggregation, the estimates in this fiscal note of the impact of exempting any class 8 item worth $100 or less may be somewhat understated.
4. The exemption in Section 25 of items of personal property with a market value of less than $100 would, as written, apply to all classes of property not just class 8 property. This fiscal note assumes that the sponsor's intent was to apply this exemption to class 8 property only.
5. The change to the exemption for class 8 in this bill is applicable to tax years after December 31, 2006. This would require the department to have significant computer modifications in place within one month. It is estimated that 346 man hours would be required for the BEVS/MODS modifications. The required system changes to implement this bill will cause the mailing of assessments to be postponed a minimum of 2 months. The applicability date would also have impacts on the reporting of certified values by taxing jurisdictions. Current statute (15-10-202, MCA) requires the certified values to be given to all local taxing jurisdictions by the first Monday in August. Both issues could be resolved by changing the applicability date to December 31, 2007.
6. The amended language in section 24 of SB 220 allows for tracking pass-through businesses, but does not address the issue of tracking exemptions for other business ownership types including individuals and limited liability corporations. Administrating the exemption will require a taxpayer identification number for every business owner.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 139

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A REFUND OF UP TO A TOTAL OF $400 OF 2006 MONTANA REAL PROPERTY TAXES PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THAT THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006 AND OF CERTAIN 2005 AND 2004 MONTANA REAL PROPERTY TAXES PAID ON THE PRINCIPAL RESIDENCE; PROVIDING THE PROCEDURE FOR ESTABLISHING ENTITLEMENT TO THE REFUND AND THE PERIOD WITHIN WHICH THE ENTITLEMENT MUST BE ESTABLISHED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "~~2006~~ Montana property taxes" means the ad valorem real property taxes imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed in THE SPECIFIED calendar year ~~2006~~.

(2) "Owned" includes purchasing under a contract for deed and being the grantor or grantors under a trust indenture.

NEW SECTION. **Section 2. Property tax refund -- manner of claiming -- limitations.** (1) (A) A refund of up to $400 of 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3).

(B) IF THE 2006 MONTANA PROPERTY TAXES ASSESSED TO AND PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006 WERE MORE THAN $25 AND LESS THAN $400, A REFUND OF THE 2005 MONTANA PROPERTY TAXES ASSESSED TO AND PAID BY

THE TAXPAYER OR TAXPAYERS ON THE PRINCIPAL RESIDENCE, IF THEY OWNED AND OCCUPIED IT AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2005, MAY BE CLAIMED AS PROVIDED IN SUBSECTION (2), SUBJECT TO THE LIMITATIONS PROVIDED IN SUBSECTION (3), IN AN AMOUNT THAT TOGETHER WITH THE REFUND UNDER SUBSECTION (1)(A) DOES NOT EXCEED $400.

(C) IF THE 2006 MONTANA PROPERTY TAXES ASSESSED TO AND PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006, TOGETHER WITH THE 2005 MONTANA PROPERTY TAXES ALLOWED AS A REFUND UNDER SUBSECTION (1)(B), WERE MORE THAN $50 AND LESS THAN $400, A REFUND OF THE 2004 MONTANA PROPERTY TAXES ASSESSED TO AND PAID BY THE TAXPAYER OR TAXPAYERS ON THE PRINCIPAL RESIDENCE, IF THEY OWNED AND OCCUPIED IT AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2004, MAY BE CLAIMED AS PROVIDED IN SUBSECTION (2), SUBJECT TO THE LIMITATIONS PROVIDED IN SUBSECTION (3), IN AN AMOUNT THAT TOGETHER WITH THE REFUND UNDER SUBSECTIONS (1)(A) AND (1)(B) DOES NOT EXCEED $400.

(2) (a) Subject to subsection (2)(b), the claim for refund, in the form that the department prescribes, must be executed by each taxpayer under penalty of false swearing and must include the information that the department requires.

(b) The personal representative of the estate of a deceased taxpayer may execute and file the claim for refund on behalf of a deceased taxpayer who qualifies for the refund.

(3) The claim for a refund is subject to the following limitations:

(a) The claim must be filed with the department of revenue on or before December 31, 2007, unless the department, for good cause shown, grants a reasonable extension of time for filing.

(b) Only one claim may be made with respect to any property.

(C) THE CLAIMS BY A TAXPAYER OR TAXPAYERS FOR 2006, 2005, AND 2004 MUST BE FOR THE SAME PROPERTY.

NEW SECTION. **Section 3. Property tax refund -- penalty for false or fraudulent claim.** A person who files a false or fraudulent claim for a property tax refund is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other tax owed the state, together with a penalty of 25% and interest on the amount of the refund at the rate of 12% a year, until paid.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to 2006 Montana real property taxes paid before [the effective date of this act].

NEW SECTION. **Section 6. Termination.** [This act] terminates June 30, ~~2007~~ 2008.

NEW SECTION. **Section 7. Contingent voidness.** If funds are not appropriated for the property tax refunds provided in [sections 1 through 3], then [this act] is void.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0139	Title:	Governor's $400 property tax rebate
Primary Sponsor:	Harrington, D.	Status:	As Amended

☐ Significant Local Gov Impact ☐ Include in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$99,758,567	$0	$0	$0
Revenue:				
General Fund	$4,021,685	$0	$0	$0
Net Impact-General Fund Balance	($95,736,882)	$0	$0	$0

Description of fiscal Impact:
This bill provides a rebate of up to a $400 in property taxes paid over three years to qualified Montana homeowners on their primary residence.

FISCAL ANALYSIS

Assumptions:

1. Section 2 of this bill provides owners of a primary residence in Montana a rebate on tax year 2004, tax year 2005, and tax year 2006 property taxes assessed and paid up to a maximum rebate amount of $400.
2. Based on figures from the 2005 American Community Survey, there are 254,458 owner-occupied houses in Montana.
3. As Section 2 of this bill allows any residential owner to qualify if they paid $400 in total taxes on their residence over a 3 year period, it is assumed the estimated 254,458 owner-occupied homeowners will qualify for the rebate. The estimate rebate for these taxpayers will be $101,783,200 ($400 x 254,458).
4. This fiscal note assumes the full rebate amount will be paid in FY 2008 and 97% of the rebate will be claimed. Based on these assumptions, the impact of the rebate on the general fund in FY 2008 is $98,729,704 ($101,783,200 x 97%).

5. Taxpayers who claim an itemized deduction for property taxes on their 2006 state income tax returns would be required to report their rebates as income on their 2007 tax returns. It is assumed that all income taxpayers who itemize would be receiving $400 in rebate.
6. In 2005, 161,311 resident households claimed an itemized deduction for property taxes. Based on the 2003 growth rate for itemizers of 3%, this number is expected to grow 6% (3% x 2 years) to 170,990 (161,311 x 1.06) by 2007. These households will report their rebates as an additional $68,396,000 ($400 x 170,990) of income on the 2007 income tax returns they file in the spring of 2008.
7. In 2005, the average marginal tax rate of taxpayers who claimed an itemized deduction for property taxes was 5.88%. Taxpayers who receive rebates and took an itemized deduction for property taxes in 2006 will owe an additional $4,021,685 (5.88% x $68,396,000) when they file their 2007 income tax returns in the spring of 2008.
8. The Department of Revenuewill hire 58 temporary employees to administer the rebate program. Personal services costs for these employees would be $215,634. Associated operating costs would be $60,706 and equipment costs would be $6,050. Computer systems costs would be $300,000. The cost of developing, printing, and mailing rebate checks would be $446,473. Total costs for the department to administer the rebate program would be $1,028,863.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	9.50	0.00	0.00	0.00
Expenditures:				
Personal Services	$215,634	$0	$0	$0
Operating Expenses	$807,179	$0	$0	$0
Equipment	$6,050	$0	$0	$0
Transfers	$98,729,704	$0	$0	$0
TOTAL Expenditures	$99,758,567	$0	$0	$0
Funding of Expenditures:				
General Fund (01)	$99,758,567	$0	$0	$0
TOTAL Funding of Exp.	$99,758,567	$0	$0	$0
Revenues:				
General Fund (01)	$4,021,685	$0	$0	$0
TOTAL Revenues	$4,021,685	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($95,736,882)	$0	$0	$0

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

HOUSE BILL NO. 816

INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE INCLUSION OF ALL DOMESTICALLY INCORPORATED SUBSIDIARIES IN THE WATER'S-EDGE GROUP; PROVIDING FOR THE INCLUSION IN THE WATER'S-EDGE GROUP INCOME THAT HAS A FEDERALLY REPORTABLE U.S. SOURCE; PREVENTING INCOME-SHIFTING TO FOREIGN INTANGIBLE HOLDING COMPANIES; UPDATING THOSE COUNTRIES CONSIDERED TAX HAVENS; PROVIDING IMPACTED TAXPAYERS THE ABILITY TO RESCIND A WATER'S-EDGE ELECTION; AMENDING SECTIONS 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election -- inclusion of tax havens. (1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 ~~that has more than 20% of its payroll and property assignable to locations inside the United States~~. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation in a unitary relationship with the taxpayer incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer or common foreign parent and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; ~~or~~

(f) a corporation that is in a unitary relationship with the taxpayer and that earns more than 20% of its income, directly or indirectly, from intangible property or service-related activities that are deductible against the business income of other members of the water's-edge group, to the extent of that income and the apportionment factors related to that income; or

~~(f)~~(g) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection ~~(1)(f)~~ (1)(g).

(3) A corporation that is in a unitary relationship with the taxpayer and is not described in subsections (1)(a) through (1)(e) shall include the portion of its income derived from or attributable to sources within the United States, as determined under the Internal Revenue Code without regard to federal treaties, and its apportionment related to the income."

Section 2. Section 15-31-323, MCA, is amended to read:

"15-31-323. Apportionment factors -- inclusion of tax havens. (1) For purposes of 15-31-322(1)(a) through ~~(1)(e)~~ (1)(f), the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

(2) For the purposes of 15-31-322~~(1)(f)~~(1)(g), income shifted to a tax haven, to the extent taxable, is considered income subject to apportionment."

Section 3. Section 15-31-324, MCA, is amended to read:

"15-31-324. Water's-edge election period -- consent -- change of election. (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter after the water's-edge election is considered to have consented to the election. The election must disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation incorporated in a tax haven as set forth in 15-31-322~~(1)(f)~~(1)(g), in which the taxpayer or common foreign parent owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.

(2) Except as provided in subsections (3) ~~and (4)~~ through (5), each water's-edge election must be for 3-year renewable periods.

(3) A water's-edge election may be changed by a taxpayer before the end of each 3-year period only with the permission of the department. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

(4) A taxpayer subject to the provisions of 15-31-322~~(1)(f)~~(1)(g) who has a water's-edge election that is in effect for tax periods beginning both before and after October 1, 2003, may rescind ~~the~~ that specific election for any tax period beginning after October 1, 2003.

(5) A taxpayer subject to the provisions of 15-31-322(1)(a), (1)(f), or (3) who has a water's-edge election that is in effect for tax periods beginning both before and after December 31, 2006, may rescind that specific election for any tax period beginning after December 31, 2006."

Section 4. Section 15-31-326, MCA, is amended to read:

"15-31-326. Domestic disclosure spreadsheet -- inclusion of tax havens. (1) The department may require a taxpayer making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

(2) The department may require a taxpayer subject to the provisions of 15-31-322~~(1)(f)~~(1)(g) to disclose the same information for tax havens as is required for states in subsection (1)."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	HB0816	Title:	Revise water's edge tax law
Primary Sponsor:	Erickson, Ron	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
Revenue:				
General Fund	$0	$2,600,000	$2,600,000	$2,600,000
Net Impact-General Fund Balance	$0	$2,600,000	$2,600,000	$2,600,000

Description of fiscal impact:
This bill makes several changes to the apportionment of income for members of a group of related corporations that have elected to have income apportioned to Montana based on its United States income rather than its worldwide income. These changes are expected to increase corporation license tax revenue to the general fund by $2.6 million per year.

FISCAL ANALYSIS

Assumptions:
1. Montana requires corporations that have common ownership (for example, one owns another or both are owned by a common corporate parent) and are part of a common line of business to file a combined report. The income of members of such a "unitary group" is apportioned to Montana based on the combined income and apportionment factors of the group. This makes the income apportioned to Montana independent of financial arrangements between group members, such as the pricing of inter-company sales.
2. The normal corporation license tax rate is 6.75%. This rate is applied to the share of a corporation's worldwide income apportioned to Montana and its Montana source income. A corporation can elect to pay a higher rate of 7% and have only its United States income included in the apportionment process.

This is called a "water's-edge election." When a corporation that is part of a unitary group makes a water's-edge election, some of its foreign affiliates may be excluded from the apportionment process.

3. This bill makes several changes to the tests for whether a foreign affiliate is included in the apportionment process of a member of a unitary group that has made a water's-edge election. It allows a corporation to rescind an existing water's-edge election beginning with the first tax period that would be affected by this bill.
    a. Under current law, domestically incorporated affiliates are excluded from the combined reporting requirement if less than 20% of their payroll and property is in the United States. This bill eliminates this exclusion.
    b. Under current law, a subsidiary incorporated in another country must be included if more than 20% of its property and payroll is in the United States. For a foreign-owned corporation, this bill includes subsidiaries of the foreign parent corporation that meet the 20% property and payroll test.
    c. If a member of a water's edge affiliated group earns more than 20% of its income from selling services or intangibles to other members of the group, this bill would include the income and apportionment factors from those sales of services and intangibles.
    d. Under current law, any member of an affiliated group that is incorporated in a tax haven must be included in the combined report. This bill adds five countries to the list of tax havens.
    e. This bill would require that the United States income and apportionment factors of a member of a unitary group be included in the combined report if the tests for including its total income and apportionment factors are not met.
4. The Department of Revenue recalculated taxes for the largest companies with water's-edge elections for the last three tax years as if this bill had been in effect for those years. Tax liability with the provisions of this bill averaged $2.6 million per year higher than with current law.
5. The returns from the last three years did not provide information on the income and apportionment factors of some affiliates that would be included under this bill. Assuming that these corporations continued their water's-edge elections, the actual increase in revenue would be more than $2.6 million per year.
6. Corporations make the water's-edge election because it reduces their tax liability. Some corporations might find that their water's-edge tax liability under this bill is more than their regular tax liability, which is more than their water's-edge tax liability under current law. A corporation in this situation might rescind its water's-edge election. The increase in tax liability for such a corporation would be less than the amount found from recalculating its last three year's returns.
7. The impact on revenue from affiliates that were not included in recalculating returns is expected to be larger than the impact from some corporations possibly rescinding their water's-edge elections. The increase in revenue is therefore expected to be at least $2.6 million per year.
8. This bill applies to tax years beginning after December 31, 2006. The increase in revenue will first be seen in FY 2009 when corporations file their tax year 2007 returns.
9. This bill would not affect the Department of Revenue's costs of administering the corporation license tax.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Revenues:				
General Fund (01)	$0	$2,600,000	$2,600,000	$2,600,000
TOTAL Revenues	$0	$2,600,000	$2,600,000	$2,600,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$2,600,000	$2,600,000	$2,600,000

Long-Range Impacts:

1. The revenue impact of this bill is likely to grow over time with growth in corporation license tax collections.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

HOUSE BILL NO. 345

INTRODUCED BY M. LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A REFUNDABLE RENTER'S INCOME TAX CREDIT; LIMITING THE CREDIT TO INDIVIDUALS BELOW A CERTAIN INCOME LEVEL; ~~PROVIDING PENALTIES FOR A FRAUDULENT CLAIM FOR A CREDIT;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Renter's tax credit -- eligibility -- requirements -- limitations -- refund -- penalties for fraudulent claims.** (1) Except as provided in subsections ~~(7)~~ (6) and ~~(8)~~ (7) and subject to the provisions of this section, an individual required to file a return under this chapter is allowed a renter's credit against the taxes imposed by 15-30-103 in an amount equal to ~~$10 a month for each month~~ 3% OF THE GROSS RENT PAID BY THE TAXPAYER in the tax year that the taxpayer rented a dwelling or dwellings as the taxpayer's principal residence for at least 7 months during the tax year. The maximum credit allowed under this section may not exceed $120.

(2) In order to be eligible to make a claim for a credit under this section, the taxpayer must have:

(a) resided in Montana for at least 9 months of the tax year for which the claim is made; and

(b) occupied one or more dwellings in the state as a renter or lessee for at least 7 months of the tax year.

(3) A taxpayer is not disqualified from claiming the credit under this section because of a change of residence during the tax year if the taxpayer occupies one or more dwellings in Montana as a renter or lessee for at least 7 months during the tax year.

~~(4) Only one taxpayer in each household is allowed a credit under this section.~~

~~(5)~~(4) (A) A receipt or other evidence of gross rent paid must be filed with the claim for a credit. In addition, each taxpayer shall, at the request of the department, supply all additional information to support the claim.

(B) IF TWO OR MORE INDIVIDUALS ARE SHARING A DWELLING, EACH INDIVIDUAL MAY CLAIM THE CREDIT BASED ON THE PROPORTIONAL SHARE THAT THE INDIVIDUAL PAYS OF THE GROSS RENT.

~~(6)~~(5) If the amount of credit exceeds the taxpayers's tax liability under this chapter, the amount of the

excess must be refunded to the taxpayer.

~~(7)~~(6) A claim for a credit is not allowed under this section if the individual's ~~gross household~~ ADJUSTED GROSS income is greater than $45,000. ~~For the purposes of this section, income includes the income items specified in 15-30-171(9)(a) reduced by the amount specified in 15-30-171(9)(b).~~

~~(8)~~(7) A taxpayer who receives a residential property tax credit for the elderly under 15-30-171 through 15-30-179 may not claim the credit under this section for the same tax year.

~~(9) A person who files a false or fraudulent claim for a renter's credit allowed under this section is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent refund has been paid, the amount paid may be recovered as any other tax owed the state, together with a penalty of 25% and interest on the amount of the refund at the rate of 12% a year until paid.~~

~~(10)~~(8) For the purposes of this section, the following definitions apply:

(a) "Dwelling" means:

(i) a single-family dwelling or unit of a multiple-unit dwelling and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling;

(ii) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15; or

(iii) a single-family dwelling or unit of a multiple-unit dwelling in which any portion of the individual's rent payment is derived from rent equivalent payments or from a public rent or tax subsidy program.

~~(b) "Gross household income" has the meaning provided in 15-30-171.~~

~~(c)~~(B) "Gross rent" has the meaning provided in 15-30-171.

~~(d) "Household" has the meaning provided in 15-30-171.~~

~~(e)~~(C) "Rent equivalent" means a rental payment paid by a governmental agency to a lessor or landlord.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

NEW SECTION. **Section 5. Termination.** [This act] terminates December 31, 2008.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	HB0345	Title:	Renters tax credit
Primary Sponsor:	Lange, Michael	Status:	As Amended

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$39,061	$34,301	$35,009	$0
Revenue:				
General Fund	($6,022,222)	($6,022,222)	$0	$0
Net Impact-General Fund Balance	($6,061,283)	($6,056,523)	($35,009)	$0

Description of fiscal impact:
This bill will allow renters with adjusted gross income no more than $45,000 to take a refundable credit of 3% of gross rent with a limit of $120 per dwelling unit against individual income taxes for 2007 and 2008. General fund revenue in FY 2008 and FY 2009 is reduced. Costs of administering the credit continue into FY 2010.

FISCAL ANALYSIS

Assumptions:
1. This bill provides a credit against income taxes for 2007 and 2008 of 3% of gross rent paid during a year with a maximum of $120 per dwelling unit. To be eligible, the taxpayer must be a resident for at least nine months of the tax year and rent for at least 7 months of the tax year. Taxpayers who share a dwelling unit must share the credit in proportion to the rent they paid. Taxpayers with adjusted gross income greater than $45,000 per year and households claiming the elderly homeowner/renter credit are not eligible.
2. There are 83,604 dwelling units in Montana, rented for cash and occupied by households with household income less than $50,000 (U.S. Census Bureau, 2005 American Community Survey). Since household income includes tax exempt income, and is therefore more than adjusted gross income, this will be assumed to be the number of dwelling units where the renters are eligible for the credit.

3. The elderly homeowner/renter credit was claimed by 7,470 renter households in 2006. The number will be the same in 2007 and 2008.
4. There are 76,134 households eligible for this credit (83,604 – 7,470).
5. Not all taxpayers eligible for a credit claim it. Use of means tested programs and tax credits varies from close to zero up to two-thirds to three-fourths of eligible households. Usage of this credit is unknown, but this fiscal note assumes that the credit will be well publicized and that 70% of eligible households will claim the credit.
6. Renters with annual rent of $4,000 or more ($120 / 3%) will claim the maximum credit of $120.
7. Rental units with annual rent of $4,000 or more make up 86% of the total. The average rent of rental units with rent less than $4,000 is $2,385. (U.S. Census Bureau, 2005 American Community Survey)
8. The average credit claimed by occupants of a rental unit will be $113 (86% x $120 + 14% x $2,385 x 3%).
9. Each year, 53,294 households (70% x 76,134) will claim credits averaging $113. Total credits will be $6,022,222 (53,294 x $113). Credits will be claimed on tax returns filed in the spring of FY 2008 and the spring of FY 2009. General fund revenue will be reduced by $6,022,222 in FY 2008 and FY 2009.
10. The Department of Revenue would require an additional 0.5 FTE tax examiner in each of FY 2008 through FY 2010 to process and audit returns claiming the credit. Salary would be $18,085 and benefits and insurance would be $9,578 in FY 2008 for total personal services costs of $27,663 in FY 2008, increasing by 2.5% in subsequent years. Costs in FY 2008 for a desk, computer, and other equipment would be $5,900. Operating costs would be $5,498 in FY 2008 and $5,946 in FY 2009 and FY 2010. Total costs would be $39,061 in FY 2008 and $33,609 in FY 2009 and FY 2010.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	0.50	0.50	0.50	0.00
Expenditures:				
Personal Services	$27,663	$28,355	$29,063	$0
Operating Expenses	$5,498	$5,946	$5,946	$0
Equipment	$5,900	$0	$0	$0
TOTAL Expenditures	$39,061	$34,301	$35,009	$0
Funding of Expenditures:				
General Fund (01)	$39,061	$34,301	$35,009	$0
TOTAL Funding of Exp.	$39,061	$34,301	$35,009	$0
Revenues:				
General Fund (01)	($6,022,222)	($6,022,222)	$0	$0
TOTAL Revenues	($6,022,222)	($6,022,222)	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($6,061,283)	($6,056,523)	($35,009)	$0

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 470

INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING A GRANTOR TRUST AS A DISREGARDED ENTITY; TREATING GRANTOR TRUSTS AS PASS-THROUGH ENTITIES FOR WITHHOLDING AND REPORTING PURPOSES; DEFINING "GRANTOR TRUST"; DIRECTING THE DEPARTMENT OF REVENUE TO WAIVE REPORTING REQUIREMENTS FOR GRANTOR TRUSTS THAT ESTABLISH THAT THEIR MONTANA SOURCE INCOME WILL BE FULLY ACCOUNTED FOR IN INDIVIDUAL INCOME TAX RETURNS, CORPORATION LICENSE TAX RETURNS, OR CORPORATION INCOME TAX RETURNS FILED WITH THE STATE; AMENDING SECTION 15-30-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Waiver of grantor trust reporting requirements**. The department shall waive the reporting requirements provided in 15-30-1102 for a grantor trust that establishes that the trust's Montana source income will be fully accounted for in individual income tax returns, corporation license tax returns, or corporation income tax returns filed with the state.

Section 2. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items,

for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362)~~, is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means ~~a business entity~~:

(a) a business entity that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; ~~or~~

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~(26 U.S.C. 1361(b)(3))~~; or

(c) a grantor trust.

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Grantor trust" means a trust any portion for which the grantor or another person is treated as owner as provided in Chapter 1, Subchapter J, Part I, Subpart E, of the Internal Revenue Code, 26 U.S.C. 671, et seq.

~~(10)~~(11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~(26 U.S.C. 61)~~, or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of

the Internal Revenue Code, ~~(~~26 U.S.C. 85~~)~~, as amended.

~~(11)~~(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

~~(12)~~(13) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(13)~~(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(14)~~(15) "Knowingly" is as defined in 45-2-101.

~~(15)~~(16) "Limited liability company" means a limited liability company, a domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(16)~~(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(17)~~(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(18)~~(19) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(19)~~(20) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(20)~~(21) "Nonresident" means a natural person who is not a resident.

~~(21)~~(22) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(22)~~(23) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(23)~~(24) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

~~(24)~~(25) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(25)~~(26) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, ~~(26 U.S.C. 401)~~, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed

services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, ~~(26 U.S.C. 401 through 408)~~, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(26)~~(27) "Purposely" is as defined in 45-2-101.

~~(27)~~(28) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(28)~~(29) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any ~~taxable~~ tax year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(29)~~(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362)~~, is in effect.

~~(30)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(31)~~(32) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(32)~~(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(33)~~(34) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0470	Title:	Make grantor trusts pass-through entities for tax withholding and reporting
Primary Sponsor:	Elliott, Jim	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: This bill provides the Department of Revenue a clear definition of how Grantor Trusts should be treated for income tax purposes including conditions when the reporting requirements should be waived. Under current law there is no specific definition of how Grantor Trusts should be treated for tax purposes, so the Department of Revenue and tax practitioners are unsure of how to treat Grantor Trusts.

FISCAL ANALYSIS

Assumptions:

1. This bill is likely to correct for underreporting of taxable income, thus creating a positive revenue impact. However, quantifying the impact to state general fund revenue is not possible because of the lack of previous reporting.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 99

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A 5-YEAR PERIOD OF LIMITATIONS FOR ASSESSMENT ~~OR~~, COLLECTION, OR REFUND OF CORPORATION LICENSE TAX; AMENDING SECTION 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~3~~ 5 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until ~~3~~ 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after ~~3~~ 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the

refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, ~~in lieu of the 3-year~~ 5-year ~~period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback~~ THE OVERPAYMENT MAY BE REFUNDED OR CREDITED WITHIN THE PERIOD THAT EXPIRES ON THE 15TH DAY OF THE 41ST MONTH FOLLOWING THE CLOSE OF THE 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.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0099	Title:	Five year statute of limitations for corporation license tax
Primary Sponsor:	Harrington, Dan	Status:	As Amended in Senate Committee

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Revenue:				
General Fund	$964,850	$1,929,700	$1,929,700	$1,929,700
Net Impact-General Fund Balance	$964,850	$1,929,700	$1,929,700	$1,929,700

Description of Fiscal impact:
This bill increases the statute of limitations for corporation license tax from three years to five years. When the Department of Revenue audits a corporation, it will be able to examine more years' returns in each audit, resulting in an increase in revenue per audit.

FISCAL ANALYSIS

Assumptions:
1. The statute of limitations determines the period that the Department of Revenue may go back in auditing a taxpayer. Under current law, the statute of limitations is five years for the individual income tax and three years for the corporation license tax. This bill would make the statute of limitations five years for the corporation license tax.
2. Under current law, when the Department of Revenue audits a corporate taxpayer, it can audit the last three years' returns and any other years' returns that are being audited by the IRS. With this bill, the department would be able to audit five years' returns plus any other years' returns that are being audited by the IRS.
3. In FY 2002 through FY 2006, on average, the department collected additional revenue or reduced refunds from 23 field audits per year. On average, these audits covered returns from 3.6 years, and audit revenue averaged $83,900 for each year's return being audited.

4. Adding an additional two years of returns to 23 field audits per year would, on average, result in $3,859,400 in additional revenue (23 audits x 2 years x $83,900). With more years being open for audit, the department's audit selection tests are more likely to identify returns that should be audited in detail before those returns are past the statute of limitations. This would increase the average revenue per return. However, there would be less or no additional revenue from audits where more than three years of returns are being audited by the IRS. Also, with individual audits covering more years and no increase in audit staff, the department might average fewer field audits each year, and corporations would have an additional two years to file amended returns and ask for a refund. Thus, the additional revenue is estimated to be half this amount, or $1,929,700.
5. This bill would be effective on passage and approval, affecting audits being conducted from the spring of 2007 forward. Because of the time between the beginning of an audit and when a taxpayer pays any resulting assessment, revenue in FY 2008 is estimated to be half the projected annual amount, or $964,850.
6. The Department of Revenue would not incur any significant additional costs because of this bill.

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	0.00	0.00	0.00	0.00
Expenditures:				
TOTAL Expenditures	$0	$0	$0	$0
Revenues:				
General Fund (01)	$964,850	$1,929,700	$1,929,700	$1,929,700
TOTAL Revenues	$964,850	$1,929,700	$1,929,700	$1,929,700
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$964,850	$1,929,700	$1,929,700	$1,929,700

Effect on County or Other Local Revenues or Expenditures:

1. None.

Long-Range Impacts:

1. The revenue increase from this bill would continue after FY 2011.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 174

INTRODUCED BY J. ELLIOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REVENUE LAWS; DEFINING "PERSON" TO INCLUDE DISREGARDED ENTITIES; REVISING INFORMATION SHARING AMONG STATE AGENCIES; CLARIFYING PAYMENT OF INTEREST ON LATE-FILED RETURNS; ~~CLARIFYING THE TAXATION OF SHAREHOLDERS OF S. CORPORATIONS THAT ARE TRUSTS; CONFORMING THE TREATMENT AND TAXATION OF ELECTING SMALL BUSINESS TRUSTS TO FEDERAL LAW; IMPOSING AN EXCISE TAX ON S. CORPORATIONS ON CERTAIN ALLOCATIONS OR OWNERSHIP OF S. CORPORATION STOCK OR EQUITY PROHIBITED BY FEDERAL LAW;~~ PROVIDING PENALTIES FOR FRAUDULENT TAX REPORTING AND SUBSTANTIAL UNDERREPORTING OF TAX LIABILITY; ~~PROVIDING PENALTIES FOR INACCURATE TAX REPORTING;~~ CLARIFYING QUALIFICATIONS FOR DEPENDENTS WITH REGARD TO INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE FEDERAL DEDUCTION FOR COMPUTATION OF TAXABLE INCOME OF ESTATES AND TRUSTS; EXTENDING THE TIME PERIOD TO REQUEST REFUNDS FOR OVERPAYMENT OF INDIVIDUAL INCOME TAXES; CLARIFYING THE ALLOWED EXTENSION OF TIME FOR FILING AN INDIVIDUAL INCOME TAX RETURN; REQUIRING INFORMATION AGENTS TO REPORT PROCEEDS FROM CERTAIN REAL ESTATE TRANSACTIONS; REMOVING THE REQUIREMENT FOR COAL MINE OPERATORS TO REPORT TONS OF COAL SOLD; CLARIFYING THE REQUIREMENT FOR FILING OF DUPLICATE UNITED STATES ESTATE TAX RETURNS WITH THE DEPARTMENT OF REVENUE; DIRECTING CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-1-102, 15-1-201, 15-1-216, ~~15-30-101,~~ 15-30-112, ~~15-30-135,~~ 15-30-136, ~~15-30-137,~~ 15-30-144, 15-30-149, 15-30-301, 15-30-303, 15-31-511, 15-35-104, 15-36-313, 15-39-105, 15-39-107, ~~17-7-502,~~ 16-11-149, AND 72-3-1006, MCA; ~~REPEALING SECTION 15-1-113, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 15-1-102, MCA, is amended to read:

"15-1-102. Person defined. As used in this title, ~~(~~except chapters 30 and 31~~)~~, unless the context

indicates otherwise, the term "person" means an individual, corporation, ~~(~~domestic or foreign~~)~~, partnership, disregarded entity as defined in 15-30-101, association, joint-stock company, or syndicate."

Section 2. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

(c) The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

(d) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department ~~shall~~ may collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department ~~shall~~ may examine the records of all municipal corporations for purposes considered necessary or helpful.

(4) (a) Unless otherwise provided by law and except as provided in subsection (4)(b), upon written request of the department, state agencies shall provide to the department relevant taxpayer information in their possession.

(b) Unless otherwise provided by law, confidential criminal justice information, as defined in 44-5-103,

in the possession of a state agency that may be evidence of fraud pursuant to 15-1-216 must be provided to the appropriate department personnel.

(5) Unless otherwise provided by law, the department may exchange updated taxpayer name and address information with other state agencies."

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 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.

(2) (a) (i) Except as provided in ~~subsection~~ SUBSECTIONS (2)(A)(II) AND (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of ~~1.2%~~ ~~1%~~ 0.5% a month ~~or fraction of a month~~ on the unpaid tax. The penalty may not exceed ~~12%~~ ~~10%~~ 12% of the tax due.

(II) A PENALTY UNDER THIS SUBSECTION (2)(A) MAY NOT BE IMPOSED ON A TAXPAYER SUBJECT TO TAXATION UNDER 15-30-103 IF, SUBJECT TO THE CONDITIONS OF 15-30-241(1)(A)(I), THE TAXPAYER PAYS, WHEN DUE, AT LEAST 90% OF THE TAX FOR THE CURRENT YEAR.

(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. The penalty may not exceed 15% of the tax due.

(C) THE PENALTIES PROVIDED IN SUBSECTIONS (2)(A) AND (2)(B) ON DELINQUENT TAXES AND ON DEFICIENCY ASSESSMENTS ARE COMPUTED FROM THE ORIGINAL DUE DATE OF THE RETURN UNTIL THE TAX IS PAID. THE PENALTY 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.

~~(c)~~(D) (i) There is a penalty for substantial understatement of income tax liability under chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the greater of 10% of the tax required to be shown on the return for the tax year or ~~$1,500~~ $2,500.

(ii) There is a penalty for substantial understatement of tax liability under those taxes and matters subject to 15-1-211(1)(a), except chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the lesser of 10% of the tax required to be shown on the return for the tax year or $500,000.

(iii) Except as provided in ~~(2)(c)(iv)~~ SUBSECTION (2)(D)(IV), the penalty for substantial underpayment of tax

liability must be assessed at 20% of the portion of the underpayment to which this section applies.

(iv) The penalty for substantial underpayment of tax liability due to fraud, as defined in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, must be assessed at 75% of the portion of the underpayment to which this section applies.

~~(c)~~(d) ~~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.~~

~~(3) A person who fails to accurately report any required return or report information for taxes and matters set forth in 15-1-211(1)(a) must be assessed an inaccurate report penalty of $50 for each incidence of inaccuracy on each return or report. If the inaccurate report is corrected within 6 months of the due date of the original return or report, the department may waive the inaccurate report penalty pursuant to 15-1-206.~~

~~(3)~~~~(4)~~(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, or fraudulently, as described in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, 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 greater of $1,000 or 15% of the tax liability a month. The penalty may not exceed 75% of the tax liability. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

~~(5)~~(4) (a) An individual who purposely or knowingly files, renders, or signs a false or fraudulent return or PURPOSELY OR KNOWINGLY supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than $20,000, imprisoned for not more than 5 years, or both.

(b) A corporation, partnership, or other entity, an officer or employee of a corporation, or a member or employee of a partnership or other entity that purposely or knowingly files, renders, or signs a false or fraudulent return or PURPOSELY OR KNOWINGLY supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned for not more than 5 years, or both.

~~(4)~~~~(6)~~(5) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection ~~(4)(a)(i)~~ ~~(6)(a)(i)~~ (5)(A)(I) for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ ~~(6)(a)~~ (5)(A). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) 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. 6621, for the fourth quarter of the preceding year ~~or 8%, whichever is greater~~.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% A YEAR.

(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.

~~(5)~~(7)(6) (a) Except as provided in subsection ~~(5)(b)~~ ~~(7)(b)~~ (6)(B), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and 85-2-276].

(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.

~~(6)(8)~~(7) 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)(9)~~(8) Penalty and interest must be calculated and assessed commencing with the due date of the return.

~~(8)(10)~~(9) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)(11)~~(10) 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)~~ ~~(6)(a)(i)~~ (5)(A)(I). (Bracketed language in subsection ~~(5)(a)~~ ~~(7)(a)~~ (6)(A) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

~~**Section 4.** Section 15-30-101, MCA, is amended to read:~~

~~"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:~~

~~(1) "Base year structure" means the following elements of the income tax structure:~~

~~(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of~~

~~the taxable tax year;~~

~~(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable tax year;~~

~~(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable tax year.~~

~~(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.~~

~~(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:~~

~~(a) that is treated as an association for federal income tax purposes;~~

~~(b) for which a valid election under section 1362 of the Internal Revenue Code, (26 U.S.C. 1362), is not in effect; and~~

~~(c) that is not a disregarded entity.~~

~~(4) "Department" means the department of revenue.~~

~~(5) "Disregarded entity" means a business entity:~~

~~(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or~~

~~(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, (26 U.S.C. 1361(b)(3)).~~

~~(6) "Dividend" means:~~

~~(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and~~

~~(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.~~

~~(7) "Electing small business trust" has the meaning provided in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361.~~

~~(7)~~(8) ~~"Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.~~

~~(8)~~(9) ~~"Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.~~

~~(9)(10) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.~~

~~(10)(11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, (26 U.S.C. 61), or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, (26 U.S.C. 85) as amended.~~

~~(11)(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.~~

~~(12)(13) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.~~

~~(13)(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.~~

~~(14)(15) "Knowingly" is as defined in 45-2-101.~~

~~(15)(16) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.~~

~~(16)(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.~~

~~(17)(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:~~

~~(a) a resident taxpayer on a lottery ticket; or~~

~~(b) a nonresident taxpayer on a lottery ticket purchased in Montana.~~

~~(18)(19) (a) "Montana source income" means:~~

~~(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;~~

~~(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;~~

~~(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;~~

~~(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;~~

~~(v) dividends received or accrued while a resident of the state;~~

~~(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;~~

~~(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;~~

~~(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;~~

~~(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.~~

~~(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;~~

~~(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;~~

~~(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:~~

~~(A) derived from a trade, business, occupation, or profession carried on in the state;~~

~~(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or~~

~~(C) taken into account while a resident of the state;~~

~~(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:~~

~~(A) derived from a trade, business, occupation, or profession carried on in the state;~~

~~(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or~~

~~(C) taken into account while a resident of the state;~~

~~(xiv) social security benefits received or accrued while a resident of the state;~~

~~(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and~~

~~(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.~~

~~(b) The term does not include:~~

~~(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or~~

~~(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.~~

~~(19)~~(20) ~~"Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.~~

~~(20)~~(21) ~~"Nonresident" means a natural person who is not a resident.~~

~~(21)~~(22) ~~"Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~(22)~~(23) ~~"Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.~~

~~(23)~~(24) ~~"Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.~~

~~(24)~~(25) ~~"Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.~~

~~(25)~~(26) ~~"Pension and annuity income" means:~~

~~(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;~~

~~(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;~~

~~(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;~~

~~(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, (26 U.S.C. 401 through 408), to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or~~

~~(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.~~

~~(26)~~(27) ~~"Purposely" is as defined in 45-2-101.~~

~~(27)~~(28) ~~"Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~(28)~~(29) ~~"Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable~~ tax ~~year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.~~

~~(29)~~(30) ~~"S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, (26 U.S.C. 1362), is in effect.~~

~~(30)~~(31) ~~"Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.~~

~~(31)~~(32) ~~"Tax year" means the taxpayer's taxable~~ tax ~~year for federal income tax purposes.~~

~~(32)~~(33) ~~"Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.~~

~~(33)~~(34) ~~"Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C.~~

~~corporation."~~

Section 4. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) must be allowed as deductions in computing taxable income.

(2) (a) An exemption of $1,900 is allowed for all taxpayers.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $1,900 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than ~~$800~~ the exemption amount provided in subsection (2)(a); or

(ii) who is a qualifying child ~~of the taxpayer and who:~~

~~(A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the taxpayer begins~~ as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152.; ~~or~~

~~(B) is~~ including a student as defined in that section.

(b) An exemption is not allowed under this subsection (5) for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

~~(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.~~

~~(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the tax year of the taxpayer begins:~~

~~(i) is a full-time student at an educational institution; or~~

~~(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.~~

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that tax year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

~~**Section 6. Section 15-30-135, MCA, is amended to read:**~~

~~**"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts.** (1) A tax shall be~~ is ~~imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided~~ in this section, ~~except to the extent such~~ unless the ~~estates and trusts shall be~~ are ~~held for educational, charitable, or religious purposes, which. If an estate or trust held for educational, charitable, or religious purposes has unrelated business taxable income as defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512, or as otherwise provided for federal income tax purposes, the tax is imposed with respect to the unrelated business taxable income. The tax shall~~ must ~~be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:~~

~~(a) income received by estates of deceased persons during the period of administration or settlement of the estate;~~

~~(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;~~

~~(c) income held for future distribution under the terms of the will or trust; and~~

~~(d) income which that is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.~~

~~(2) The fiduciary shall be is responsible for making the return of income for the estate or trust for which he the fiduciary acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of such the estate or trust. In cases under subsections (a) and (d) of subsection (1) (1)(a) and (1)(d), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable tax year for which the return is made.~~

~~(3) In cases under subsections (a), (b), and (c) of subsection (1) (1)(a), (1)(b), and (1)(c), the tax shall be is imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall must be paid by the fiduciary. If the taxpayer's net income for the taxable tax year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his the taxpayer's distributive share of the net income of the estate or trust for any accounting period of such the estate or trust ending within the fiscal or calendar year shall must be computed upon the basis on which such the beneficiary's net income is computed. In such those cases, a beneficiary who is not a resident shall be is taxable with respect to his the beneficiary's income derived through such the estate or trust only to the extent provided in 15-30-131 for individuals other than residents.~~

~~(4) The Except as provided in 15-30-137(4), the fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his the employer's employees, to which contributions are made by such the employer or employees, or both, for the purpose of distributing to such the employees the earnings and principal of the fund accumulated by the trust in accordance with such the plan, shall is not be taxable under this section, but any amount contributed to such the fund by the employer and all earnings of such the fund shall must be included in computing the income of the distributee in the year in which distributed or made available to him the distributee.~~

~~(5) Where If any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, (except policies of insurance~~

~~irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction), or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such that part of the income of the trust shall must be included in computing the net income of the grantor.~~

~~(6) If there is an allocation or any synthetic equity described in section 4979A of the Internal Revenue Code, 26 U.S.C. 4979A, a tax equal to 50% of the amount involved is imposed on and must be paid by the person on whom the tax is imposed as provided in section 4979A(c) of the Internal Revenue Code, 26 U.S.C. 4979A(c)."~~

Section 5. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts -- exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;

(b) taxes paid or accrued within the tax year, including but not limited to up to $5,000 of federal income

tax paid, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code, 26 U.S.C. 642(c);

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

~~**Section 8. Section 15-30-137, MCA, is amended to read:**~~

~~**"15-30-137. Determination of tax of estates and trusts.** (1) The Except as provided in subsections (2) and (4), the amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.~~

~~(2) A tax on the taxable income of an electing small business trust, determined as provided in subsection (3), is imposed on the fiduciary at the highest rate provided in 15-30-103 and must be paid by the fiduciary.~~

~~(3) (a) In determining the taxable income of an electing small business trust, the portion of the trust that consists of stock in one or more S corporations must be treated as a separate trust and the amount of tax imposed on the separate trust must be determined with the modifications described in subsection (3)(b).~~

~~(b) In determining the gross, net, and taxable income of an electing small business trust:~~

~~(i) the exemption amount is zero;~~

~~(ii) the only items of income, loss, deduction, or credit that may be taken into account are:~~

~~(A) the items required to be taken into account under section 1366 of the Internal Revenue Code, 26 U.S.C. 1366;~~

~~(B) gain or loss from the sale, transfer, or other disposition of the stock of the S. corporation; and~~

~~(C) administrative expenses allocated to the items described in subsection (3)(b)(ii)(A) and (3)(b)(ii)(B) for federal income tax purposes.~~

~~(4) (a) Except as provided in subsection (4)(b), if a trust or organization described in section 1361(c)(2)(A)(iv) or 1361(c)(6) of the Internal Revenue Code, 26 U.S.C. 1361(c)(2)(A)(iv) or 1361(c)(6), holds stock in an S. corporation:~~

~~(i) the interest in the S. corporation is treated as an unrelated trade or business;~~

~~(ii) all items of income, loss, or deduction taken into account under section 1366(a) of the Internal Revenue Code, 26 U.S.C. 1366(a), and any gain or loss on the sale, transfer, or other disposition of the stock in the S. corporation are included in computing the unrelated business taxable income of the trust or organization;~~

~~(iii) the unrelated business taxable income of the trust or organization is taxed at the rate provided in 15-31-121; and~~

~~(iv) the basis of any stock acquired by purchase as defined in section 1361(e)(1)(C) of the Internal Revenue Code, 26 U.S.C. 1361(e)(1)(C), must be reduced by the amount of any dividends received by the trust or organization with respect to the stock.~~

~~(b) The provisions of subsection (4)(a) do not apply to employer securities within the meaning of section 409(l) of the Internal Revenue Code, 26 U.S.C. 409(l), held by an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code, 26 U.S.C. 4975(e)(7).~~"

Section 6. Section 15-30-144, MCA, is amended to read:

"**15-30-144. Time for filing -- extensions of time.** (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be annexed to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must

be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

(2) ~~An automatic 4-month extension of time for filing a return is allowed, provided that:~~

~~(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.~~

~~(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~ A taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216. The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

~~(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b). The extension of time for filing a return is not an extension of time for the payment of taxes.~~"

Section 7. 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 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~~:~~:

(i) 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; or

(ii) the claim for a credit or refund is made within 1 year of the DETERMINATION OF THE 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

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) ~~(a)~~ Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. ~~Interest Except as provided in subsection (4)(b), interest~~ 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 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~~ tax 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)(i)~~(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)(iii)~~(B) the overpayment results from the carryback of a net operating loss; or

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

~~(b) Subject to the provisions of subsection (4)(a)(i), in the case of a return filed after the time prescribed for filing in 15-30-144, including any extension, interest is payable from the date the return was filed.~~

(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 8. Section 15-30-301, MCA, is amended to read:

"15-30-301. Information agents' duties. (1) ~~Every~~ Each information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the ~~taxable~~ tax year upon which ~~no~~ withholding tax has not been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal

Revenue Code, 26 U.S.C. 6049, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, 26 U.S.C. 401(c)(3);

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that are required to be reported under rules or regulations of the United States department of the treasury.

(2) The return must be made under ~~the regulations~~ rules adopted by the department and in the form and manner prescribed by the department. For ease of reporting, the form must be as nearly identical to the comparable federal form as possible."

Section 9. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice:

(i) all information necessary to identify those persons qualifying for the additional exemption for blindness

pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(ii) all information necessary for the investigation and prevention of medicaid fraud, for the purposes of enabling the department of justice to administer 53-2-501; and

(iii) all information necessary for investigation and prevention of crimes and fraud, for the purposes of enabling the department of justice to administer 44-2-115;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;

(i) to the commissioner of insurance's office information necessary for the administration of Title 33; ~~chapter 12~~;

(j) to the office of securities commissioner information necessary for the administration of Title 30, chapter 10."

Section 10. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to knowingly divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an

investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); ~~and~~

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1);

(c) provide to the commissioner of insurance's office information necessary for the administration of Title 33, ~~chapter 12~~; and

(d) provide to the office of securities commissioner information necessary for the administration of Title 30, chapter 10.

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction."

Section 11. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement ~~shall~~ must indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such~~ any other information ~~as~~ that the department may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ must be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator is an individual or by an

officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ the operator's mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~."

Section 12. Section 15-36-313, MCA, is amended to read:

"15-36-313. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file penalty and interest. (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall~~, immediately after the time has expired,~~ ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to 15-1-206."

Section 13. Section 15-39-105, MCA, is amended to read:

"15-39-105. Penalties and interest for violation. (1) ~~(a)~~ A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

~~(b)~~(2) A person who fails to file the statement required by 15-39-102 ~~and~~ OR to pay the tax before the due date must be assessed ~~a penalty~~ PENALTIES and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

~~(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216(1)(d) 15-1-216(4).~~"

Section 14. Section 15-39-107, MCA, is amended to read:

"15-39-107. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as

provided in 15-1-216. The interest must be computed from the date on which the statement 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)~~ 15-1-216(2) must be added to the amount of the deficiency."

SECTION 15. SECTION 16-11-149, MCA, IS AMENDED TO READ:

"16-11-149. Hearings before ~~state tax appeal board~~ department. A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the ~~state tax appeal board~~ department, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The ~~board~~ department shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the ~~board~~ department may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated. A final order by the department may be appealed to the state tax appeal board."

~~**Section 18.** Section 17-7-502, MCA, is amended to read:~~

~~**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.~~

~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:~~

~~(a) The law containing the statutory authority must be listed in subsection (3).~~

~~(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.~~

~~(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121;~~

~~15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.~~

~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"~~

Section 16. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate. (1) In probate proceedings under this code requiring the filing of a duplicate United States estate tax return with the department of revenue pursuant to 72-16-906, a final distribution to successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes.

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

~~NEW SECTION. **Section 20. Repealer.** Section 15-1-113, MCA, is repealed.~~

NEW SECTION. **Section 17. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 18. Applicability.** (1) Except as provided in ~~subsection~~ SUBSECTIONS (2) AND (3), [this act] applies to tax periods beginning after December 31, 2007.

(2) [Section ~~3(5)~~ 3(4)]~~, amending subsection (5) of 15-1-216,~~ applies to returns or reports filed after June 30, 2007.

(3) [SECTIONS 2, 9, AND 10] APPLY ON [THE EFFECTIVE DATE OF THIS ACT].

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0174	**Title:**	Revise laws on revenue administration
Primary Sponsor:	Elliott, Jim	**Status:**	As Amended in Senate Committee

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$222,644	$211,224	$216,505	$221,917
Revenue:				
General Fund	$958,336	($2,884,292)	($2,969,445)	($3,058,111)
Net Impact-General Fund Balance:	$735,692	($3,095,516)	($3,185,950)	($3,280,028)

Description of fiscal impact: This bill decreases the late filing penalty which reduces revenues to the state general fund. This decrease is offset slightly through the discovery of underreported taxes, increased voluntary compliance with the tax laws, and increased penalties for underreporting.

FISCAL ANALYSIS

Assumptions:

1. Section one of this bill will amend 15-1-102, MCA, to add "disregarded entity as defined in 15-30-101" to the definition of a person.
2. Section two of this bill will amend 15-1-201, MCA, to state that the Department of Revenue *may* collect certain information from municipal corporations. The current law states that the Department of Revenue *shall* collect certain information from municipal corporations. The purpose of this change is to reduce unnecessary reporting by municipal corporations and still allow the collection of information that is necessary for the performance of the Department of Revenue's statutory duties. This section of the bill would require other Montana state agencies to provide the Department of Revenue with relevant taxpayer information upon request, unless this is otherwise prohibited by law. This section of the bill would require

other Montana state agencies to provide confidential criminal justice information that may be evidence of fraud to appropriate Department of Revenue personnel, unless this is otherwise prohibited by law. This section would allow the Department of Revenue to exchange updated taxpayer name and address information with other state agencies, unless this is otherwise prohibited by law.

3. Section three of this bill will amend 15-1-216, MCA, (uniform penalty and interest) to reflect federal law. The late payment penalty for all taxes except trust taxes would be changed from 1.2% per month (12% maximum) to 0.5% per month (12% maximum). This penalty would not be imposed on an individual income taxpayer if the taxpayer pays at least 90% of the tax for the current year when due.
4. Section three subsection (2)(d)(i) will add a penalty for substantial understatement of individual income tax liability on the tax return. For subsection (2)(d)(i) substantial understatement of individual income tax liability is an amount higher than $2,500. New subsections (2)(d)(ii) through (2)(d)(iv) would add a penalty for substantial understatement of any tax or matter under 15-1-211(1)(a) other than individual income taxes, if the underpayment exceeds the lesser of 10% of the correct amount required on the return or $500,000. The penalty would be 20% of the underpayment, except in cases of fraud. The penalty for underpayment due to fraud, as defined in the IRS code, would be 75% of the underpayment.
5. Section three subsection (3) is amended to add "fraudulently" to persons who "purposely or knowingly" fail to file a return when due. The penalty for failure to file a return would be the greater of $1,000 or 15 percent a month, with a maximum of 75% of the tax liability. Under current law the penalty is not less than $1,000 and not more than $10,000.
6. Section three subsection (4)(a) will make it a felony for an individual to knowingly file, render, or sign a false or fraudulent return, or to supply false or fraudulent information with respect to return or report or investigation. The penalty upon conviction would be a fine of up to $20,000, imprisonment of up to 5 years, or both.
7. Section three subsection (4)(b) will make it a felony for a corporation, a partnership or other entity, an officer or employee of a corporation, a member or employee of a partnership or other entity to knowingly file, render, or sign a false or fraudulent return, or to supply false or fraudulent information with respect to return or report or investigation. The penalty upon conviction would be a fine of up to $50,000, imprisonment of up to 5 years, or both.
8. Section four of this bill would amend 15-30-112, MCA, (exemptions for the individual income tax) to make the definition of a qualifying child consistent with the IRS code.
9. Section five of this bill would amend 15-30-136, MCA, to limit the deduction for federal income taxes paid for estates and trusts to no more than $5,000. This is the same limit that individuals are allowed to deduct for the state individual income tax.
10. Section six of this bill would amend 15-30-144, MCA. Subsection (2) would be amended to allow an individual income taxpayer an automatic extension of up to 6 months after the filing date to file a return. The Department could allow a further extension with good cause. Under current law, a taxpayer is allowed an automatic extension of 4 months, and an additional automatic extension for 2 months.
11. Section seven of this bill would amend 15-30-149, MCA, to clarify the treatment of credits and refunds resulting from overpayment of individual income taxes.
12. Section eight of this bill would amend 15-30-301, MCA. New subsection (1)(d) would add "proceeds from real estate transactions that are required to be reported under rules or regulations of the United States department of the treasury" to the list of items that an information agent must report to the Department of Revenue when no withholding tax has been deducted.
13. Section nine of this bill would amend 15-30-303, MCA. New subsections (8)(a)(ii) and (8)(a)(iii) would require the Department of Revenue to furnish to the Department of Justice "all information necessary for the investigation and prevention of Medicaid fraud" and "all information necessary for investigation and prevention of crimes and fraud". New subsection (8)(i) would require the Department of Revenue to furnish to the Insurance Commissioner's Office "information necessary for the administration of Title 33, chapter 12" (insurer investments). New subsection (8)(j) would require the Department of Revenue to

furnish to the Office of Securities Commissioner "information necessary for the administration of Title 30, chapter 10" (securities regulation).

14. Section 10 of this bill would amend 15-31-511, MCA. Subsection (1) would make it unlawful to knowingly disclose or make known confidential corporation license tax information. Under current law, it is unlawful to disclose or make known confidential corporation license tax information, knowingly or unknowingly. New subsection (4)(c) would require the Department of Revenue to furnish to the Insurance Commissioner's Office "information necessary for the administration of Title 33, chapter 12" (insurer investments). New subsection (4)(d) would require the Department of Revenue to furnish to the Office of Securities Commissioner "information necessary for the administration of Title 30, chapter 10" (securities regulation).
15. Section 11 of this bill would amend 15-35-104, MCA, (reporting required for the coal severance tax) to eliminate the requirement that a coal mine operator must report the tons of coal sold to each purchaser for each quarter.
16. Section 12 of this bill would amend 15-36-313, MCA, (estimation of oil and gas production tax in the absence of a report) to eliminate the phrase "immediately after the time has expired". This is a routine cleanup of the language of the statute. The phrase has no substantive meaning.
17. Section 12 of this bill would amend 15-39-105, MCA, to make a reference to another statute consistent with changes in numbering resulting from another section of this bill.
18. Section 14 of this bill would amend 15-39-107, MCA, to make a reference to another statute consistent with changes in numbering resulting from another section of this bill.
19. Section 15 of this bill would amend 16-11-149, MCA, to move cigarette tax appeals from the State Tax Appeal Board to the Department of Revenue. A final ruling by the department may be appealed to the State Tax Appeal Board
20. Section 16 of this bill would amend 72-3-1006, MCA, to clarify the meaning of the statute.
21. Section 17 of this bill would make this bill effective on passage and approval.
22. Section 18 of this bill would make section 3(4) (false or fraudulent return penalties) applicable to returns or reports filed after June 30, 2007. Sections 2, 9 and 10 (sharing of information with other state agencies) would be applicable on the effective date (passage and approval). The remaining sections would be applicable to tax periods beginning after December 31, 2007.

IMPACT ON DEPARTMENT OF REVENUE EXPENDITURES:

23. The Department of Revenue would establish a tax fraud unit to administer the requirements of this bill. The tax fraud unit would consist of three FTE: one attorney, one paralegal, and one auditor. The unit would pursue criminal tax fraud and assist county attorneys in prosecuting the cases developed by the unit.

IMPACT ON REVENUE COLLECTIONS:

24. Reducing the late payment penalty from 1.2% per month to 0.5% per month would significantly reduce penalty and interest revenues. In the fiscal note for SB 514, the Department of Revenue has estimated that reducing the late payment penalty from 1.2% per month to 0.5% per month would decrease penalty and interest revenues by $4,125,000 in FY 2007. For purposes of this fiscal note this amount is assumed to increase at 3% per year.
25. Over the last five fiscal years penalty and interest collected from both individual income tax and corporate license tax has averaged $8.4 million dollars per fiscal year. For the purposes of this fiscal note it is assumed that 2% of the $8.4 million were the results of penalties for underreporting or $168,000 in underreporting penalties. Under proposed law penalties for underreporting increase by 200%. By increasing the penalties for underreporting income tax, revenue will increase by $336,000 in FY 2007. This amount is assumed to increase at 3% per year.
26. Requiring information agents to report additional information (section eight) is expected to help the Department of Revenue ensure that the proper amount of tax is withheld from non-resident sellers of

property for the capital gains from the sale of Montana property. This function complements the withholding process found in SB 220.

27. The other provisions of this bill would also increase future tax collections through the discovery of tax underpayments, and through increased voluntary compliance. If the bill becomes law, the Department of Revenue and other state agencies can start the information sharing process immediately. This bill would affect many of the taxes administered by the Department of Revenue. For purposes of this fiscal analysis, only the effect on individual income tax and corporation license and income tax collections will be considered. Even for these two taxes, it is difficult to accurately predict the increase in collections. However, with additional, conservative assumptions, an estimate of the impact on future revenues can be made. It is assumed that increased voluntary compliance and the discovery of tax underpayments will result in an increase of 0.1% (one tenth of a percent) increase in income tax collections. The collections will be made up of taxes from all open previous tax years, as well as the present tax year. The projected collections for the income taxes (individual and corporate) in HJR 2 are $922.597 million for FY 2006, $954.904 million for FY 2007, $958.336 million for FY 2008, and $1,018.378 million for FY 2009. Applying the three-year average increase from FY 2006 to FY 2009 increase to subsequent years results in projected collections of $1,050.305 million for FY 2010 and $1,082.232 million for FY2011. If this bill becomes law, the estimated increase in collections during FY 2008 would be $958,336 (0.001 x $958.336 million). The estimated increase in collections during FY 2009 would be $1,018,378 (0.001 x $1,018.378 million). The estimated increase in collections during FY 2010 would be $1,050,305 (0.001 x $1,050.305 million). The estimated increase in collections during FY 2011 would be $1,082,232 (0.001 x $1,082.232 million).
28. With the exceptions of sections 2, 9, and 10, this bill is effective for tax periods beginning after December 31, 2007. The revenue impacts from this bill due to increased discovery and compliance will start in FY 2008 and continue in later years. The other revenue impacts from increased underreporting penalties and reduced late reporting penalties are assumed to affect revenues in FY 2009 and later years.
29. The estimated revenue impacts are summarized in the table below.

SB 174 as Amended
Summary of Revenue Impacts

	FY 2008	FY 2009	FY 2010	FY 2011
Increased Income Tax Revenue due to Discovery and Increased Compliance	$958,336	$1,018,378	$1,050,305	$1,082,232
Increased Income Tax Revenue due to Increased Underreporting Penalty	$0	$346,080	$356,462	$367,156
Decreased Revenues due to Reduction of Late Reporting Penalty from 1.2% to 0.5%	$0	($4,248,750)	($4,376,213)	($4,507,499)
Net Impact to General Fund	**$958,336**	**($2,884,292)**	**($2,969,446)**	**($3,058,111)**

Fiscal Note Request – As Amended *(continued)*

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
FTE	3.00	3.00	3.00	3.00
Expenditures:				
Personal Services	$196,718	$196,929	$201,852	$206,899
Operating Expenses	$14,151	$14,295	$14,652	$15,019
Equipment	$11,775	$0	$0	$0
TOTAL Expenditures	$222,644	$211,224	$216,505	$221,917
Funding of Expenditures:				
General Fund (01)	$222,644	$211,224	$216,505	$221,917
TOTAL Funding of Exp.	$222,644	$211,224	$216,505	$221,917
General Fund (01)	$958,336	($2,884,292)	($2,969,445)	($3,058,111)
TOTAL Revenues	$958,336	($2,884,292)	($2,969,445)	($3,058,111)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$735,692	($3,095,516)	($3,185,950)	($3,280,028)

Sponsor's Initials *Date* *Budget Director's Initials* *Date*