

## 1 SENATE BILL NO. 128

2 INTRODUCED BY G. BRANAE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO STATE TAXATION; ALLOWING  
6 A TAXPAYER TO APPLY FOR RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER THE INDIVIDUAL  
7 INCOME TAX; AUTHORIZING THE DEPARTMENT TO ADOPT RULES ON RELIEF FROM JOINT AND  
8 SEVERAL LIABILITY; REVISING CERTAIN PROVISIONS RELATING TO THE INDIVIDUAL INCOME TAX  
9 EXEMPTION FOR A QUALIFYING CHILD; LIMITING THE FEDERAL TAX DEDUCTION FOR COMPUTATION  
10 OF TAXABLE INCOME OF ESTATES AND TRUSTS; REVISING THE EXTENSION OF TIME ALLOWED FOR  
11 FILING AN INDIVIDUAL INCOME TAX RETURN; CLARIFYING THE TOLLING OF STATUTE OF LIMITATIONS  
12 UNDER THE INDIVIDUAL INCOME TAX; CLARIFYING THE PAYMENT OF INTEREST TO INDIVIDUAL  
13 INCOME TAXPAYERS ON LATE-FILED RETURNS; REMOVING THE REQUIREMENT THAT COAL MINE  
14 OPERATORS REPORT TONS OF COAL SOLD TO PURCHASERS; CLARIFYING THE PROCEDURE TO  
15 COMPUTE OIL AND NATURAL GAS TAX IN ABSENCE OF A STATEMENT; CLARIFYING PENALTY  
16 PROVISIONS FOR THE BENTONITE TAX AND THE WHOLESALE ENERGY TRANSACTION TAX;  
17 DIRECTING CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS  
18 15-30-112, 15-30-136, 15-30-142, 15-30-144, 15-30-146, 15-30-149, 15-35-104, 15-36-313, 15-39-105,  
19 15-72-112, 16-11-105, 16-11-149, AND 72-3-1006, MCA; AND PROVIDING EFFECTIVE DATES AND  
20 APPLICABILITY DATES."

21

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

23

24 NEW SECTION. **Section 1. Relief from joint and several liability on joint return -- limitations --**  
25 **rules.** (1) A taxpayer who has obtained relief from joint and several liability under section 6015 of the Internal  
26 Revenue Code, 26 U.S.C. 6015, may apply to the department for relief from joint and several liability of the tax  
27 imposed by Title 15, chapter 30. The taxpayer must have filed a Montana joint return for each of the tax years  
28 for which relief is sought under this section.

29 (2) In applying for relief under this section, the taxpayer shall provide the department with the following:

30 (a) the tax years for which relief is sought;

- 1 (b) complete copies of all correspondence sent to and received from the internal revenue service;  
 2 (c) any court order stating that the taxpayer's spouse or former spouse is responsible for paying the  
 3 Montana individual income tax liability; and  
 4 (d) other information demonstrating that it would be unfair to hold the taxpayer responsible for the tax,  
 5 penalty, and interest.

6 (3) If the department determines, after consideration of the facts and circumstances presented by the  
 7 taxpayer, that it would be unfair to hold the taxpayer responsible for some or all of the tax, penalty, and interest,  
 8 the department may grant the taxpayer relief from joint and several liability. The relief from joint and several  
 9 liability granted by the department:

10 (a) must be based on the same circumstances for which relief was granted the taxpayer by the internal  
 11 revenue service; and

12 (b) may not exceed the relief granted by the internal revenue service.

13 (4) The department shall adopt rules to implement and administer this section, including but not limited  
 14 to establishing procedures for applying for relief allowed under this section.

15

16 **Section 2.** Section 15-30-112, MCA, is amended to read:

17 **"15-30-112. Exemptions -- inflation adjustment.** (1) ~~Except as provided in Subject to subsection (6),~~  
 18 ~~in the case of an individual; is allowed as deductions in computing taxable income~~ the exemptions provided by  
 19 subsections (2) through (5) ~~must be allowed as deductions in computing taxable income.~~

20 (2) (a) An exemption of \$1,900 is allowed for all taxpayers.

21 (b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is  
 22 made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does  
 23 not have gross income and is not the dependent of another taxpayer.

24 (3) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer has attained the age  
 25 of 65 before the close of the taxpayer's tax year.

26 (b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is  
 27 made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the  
 28 calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent  
 29 of another taxpayer.

30 (4) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer is blind at the close

1 of the taxpayer's tax year.

2 (b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is  
3 made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer  
4 begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this  
5 subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year  
6 of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time  
7 of death.

8 (c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does  
9 not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is  
10 accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends  
11 an angle no greater than 20 degrees.

12 (5) (a) An exemption of \$1,900 is allowed for each dependent:

13 (i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than  
14 ~~\$800~~ or equal to the exemption amount provided in subsection (2)(a); or

15 (ii) who is a qualifying child of the taxpayer and who:

16 ~~—— (A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the~~  
17 ~~taxpayer begins; or~~

18 ~~—— (B) is as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152, as enacted prior to January~~  
19 ~~1, 2009, including a student as defined in that section.~~

20 (b) An exemption is not allowed under this subsection for a dependent who has made a joint return with  
21 the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer  
22 begins.

23 ~~(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson,~~  
24 ~~daughter, or stepdaughter of the taxpayer.~~

25 ~~—— (d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of~~  
26 ~~5 calendar months during the calendar year in which the tax year of the taxpayer begins:~~

27 ~~—— (i) is a full-time student at an educational institution; or~~

28 ~~—— (ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited~~  
29 ~~agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection~~

30 ~~(5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular~~

1 ~~faculty and curriculum and normally has a regularly organized body of students in attendance at the place where~~  
 2 ~~its educational activities are carried on.~~

3 (6) The department, by November 1 of each year, shall multiply all the exemptions provided in this  
 4 section by the inflation factor for that tax year and round the product to the nearest \$10. The resulting adjusted  
 5 exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

6  
 7 **Section 3.** Section 15-30-136, MCA, is amended to read:

8 **"15-30-136. Computation of income of estates or trusts -- exemption.** (1) Except as otherwise  
 9 provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in  
 10 the tax year, including but not limited to the following items:

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

15 (i) the United States government or the state of Montana;  
 16 (ii) a school district in the state; or  
 17 (iii) a county, municipality, district, or other political subdivision of the state;  
 18 (c) income from partnerships and other fiduciaries;  
 19 (d) gross rents and royalties;  
 20 (e) gain from sale or exchange of property, including those gains that are excluded from gross income  
 21 for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);  
 22 (f) gross profit from trade or business; and  
 23 (g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a  
 24 reduction of Montana income tax liability.

25 (2) In computing net income, there are allowed as deductions:  
 26 (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal  
 27 Revenue Code, 26 U.S.C. 163;  
 28 (b) taxes paid or accrued within the tax year, including but not limited to federal income ~~tax~~ taxes to the  
 29 extent allowed a single taxpayer under 15-30-121(1)(b), but excluding Montana income ~~tax~~ taxes;  
 30 (c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes

1 according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;

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

4 (e) administrative expenses claimed for federal income tax purposes, according to sections 212 and  
5 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);

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

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

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

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

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

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

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

17

18 **Section 4.** Section 15-30-142, MCA, is amended to read:

19 **"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits -- inflation**

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

28 (2) In accordance with instructions set forth by the department, each taxpayer who is married and living  
29 with a husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with the  
30 husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is

1 made, the tax must be computed on the aggregate taxable income and, subject to [section 1], the liability with  
 2 respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file  
 3 separate returns after the time for filing the return of either has expired unless the department consents.

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

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

13 (5) If the department determines that the amount of tax due is greater than the amount of tax computed  
 14 by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the  
 15 additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

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

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

22

23 **Section 5.** Section 15-30-144, MCA, is amended to read:

24 **"15-30-144. Time for filing -- extensions of time.** (1) A return must be made to the department on or  
 25 before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on  
 26 the basis of the calendar year, then the return must be made on or before the 15th day of April following the close  
 27 of the calendar year. Each return must set forth those facts that the department considers necessary for the  
 28 proper enforcement of this chapter. There must be ~~annexed~~ attached to the return the affidavit or affirmation of  
 29 the persons making the return to the effect that the statements contained in the return are true. Blank forms of  
 30 return must be furnished by the department upon application, but failure to secure the form does not relieve any

1 taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under  
2 this chapter shall pay a minimum tax of \$1.

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

4 ~~———(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service~~  
5 ~~for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year.~~  
6 ~~The extension of time for filing a return is not an extension of time for the payment of taxes.~~

7 ~~———(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax~~  
8 ~~payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~

9 ~~———(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the~~  
10 ~~taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the~~  
11 ~~taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of~~  
12 ~~subsection (2)(b).~~

13 (2) (a) Subject to subsections (2)(b) and (2)(c), a taxpayer is allowed an automatic extension of time for  
14 filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

15 (b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments,  
16 withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax  
17 liability or 100% of the previous year's tax liability.

18 (c) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection  
19 (2)(b) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in  
20 15-1-216.

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

23 (4) The extension of time for filing a return is not an extension of time for the payment of taxes."  
24

25 **Section 6.** Section 15-30-146, MCA, is amended to read:

26 **"15-30-146. Tolling of statute of limitations.** The running of the statute of limitations provided for under  
27 15-30-145 shall must be suspended during any period that the federal statute of limitations for collection of federal  
28 income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted  
29 an action ~~which~~ that has the effect of suspending the running of the federal statute of limitations and for 1  
30 additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended Montana

1 return as required by 15-30-304, the statute of limitations ~~shall~~ does not apply until 5 years from the date the  
 2 federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income  
 3 an amount properly includable ~~therein which~~ as gross income and the amount is in excess of 25% of the amount  
 4 of adjusted gross income stated in the return, the statute of limitations ~~shall~~ does not apply for 2 additional years  
 5 from the time specified in 15-30-145."

6

7 **Section 7.** Section 15-30-149, MCA, is amended to read:

8 **"15-30-149. Credits and refunds -- period of limitations.** (1) If the department discovers from the  
 9 examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of  
 10 income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally  
 11 collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due  
 12 from the taxpayer and the balance of the excess must be refunded to the taxpayer.

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

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

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

24 (4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided  
 25 in 15-1-216. ~~Interest~~ Except as provided in subsection (4)(b), interest is payable from the due date of the return  
 26 or from the date of the overpayment, whichever date is later, to the date the department approves refunding or  
 27 crediting of the overpayment. With respect to tax paid by withholding or by ~~estimate~~ estimated tax payments, the  
 28 date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an  
 29 overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding ~~taxable~~  
 30 tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more

1 than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the  
2 purpose of verifying the amount of the overpayment. Interest is not allowed if:

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

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

6 ~~(c)~~(iii) the amount of interest is less than \$1.

7 (b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing  
8 in 15-30-144, including any extension, interest is payable from the date the return was filed.

9 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax  
10 liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to  
11 which interest is allowable."  
12

13 **Section 8.** Section 15-35-104, MCA, is amended to read:

14 **"15-35-104. Quarterly statement and payment of tax.** Each coal mine operator shall compute the  
15 severance tax due on ~~each quarter-year's worth of~~ production for each calendar quarter on forms prescribed by  
16 the department. The statement ~~shall indicate~~ must show the tonnage produced, the average Btu value of the  
17 production, the contract sales price received for the production, and ~~such other information as that~~ the department  
18 may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the~~  
19 ~~quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ must be delivered to the department not  
20 later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator  
21 is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating  
22 more than one coal mine in this state may include all of his the person's mines in one statement. The department  
23 may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown  
24 ~~therefor.~~"  
25

26 **Section 9.** Section 15-36-313, MCA, is amended to read:

27 **"15-36-313. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file**  
28 **penalty and interest.** (1) If the operator fails to file any statement required by 15-36-311 within the time required,  
29 the department shall, ~~immediately after the time has expired~~, ascertain the number of barrels of oil or cubic feet  
30 of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The

1 department also shall determine the average value of the barrels of oil produced and sold during each month or  
2 the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due  
3 from the person for the quarter.

4 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail  
5 to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The  
6 taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that  
7 if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to  
8 15-1-206."

9

10 **Section 10.** Section 15-39-105, MCA, is amended to read:

11 **"15-39-105. Penalties and interest for violation.** (1) (a) A person who fails to file a statement as  
12 required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the  
13 penalty as provided in 15-1-206.

14 (b) A person who fails to file the statement required by 15-39-102 and to pay the tax on or before the due  
15 date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty  
16 pursuant to 15-1-206.

17 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as  
18 provided in 15-1-216~~(2)~~."

19

20 **Section 11.** Section 15-72-112, MCA, is amended to read:

21 **"15-72-112. Penalties and interest for violation.** (1) (a) A person who fails to file a return as required  
22 by 15-72-110 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as  
23 provided in 15-1-206.

24 (b) A person who fails to file the return required by 15-72-110 and to pay the tax on or before the due  
25 date must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty  
26 pursuant to 15-1-206.

27 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as  
28 provided in 15-1-216."

29

30 **Section 12.** Section 16-11-105, MCA, is amended to read:

1           **"16-11-105. Rulemaking authority of department of justice.** The department of justice may adopt  
 2 rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, and 16-11-147, ~~and 16-11-149.~~"

3

4           **Section 13.** Section 16-11-149, MCA, is amended to read:

5           **"16-11-149. Hearings before ~~state tax appeal board~~ department.** (1) A person aggrieved by any  
 6 action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a  
 7 revocation of a license pursuant to 16-11-144, may apply to the ~~state tax appeal board~~ department, in writing, for  
 8 a hearing or rehearing within 30 days after the action of the department or its authorized agents.

9           (2) The ~~board~~ department shall promptly consider the application, set the application for hearing, and  
 10 notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the  
 11 county of the applicant. After the hearing or rehearing, the ~~board~~ department may make any further or other order  
 12 on the grounds that it may consider proper and lawful and shall furnish a copy to the applicant.

13           (3) The department, on its own initiative, may order a contested case hearing on any matter concerned  
 14 with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days'  
 15 notice in writing to the person or persons to be investigated.

16           (4) A person may appeal a final order of the department to the state tax appeal board as provided in  
 17 15-2-302."

18

19           **Section 14.** Section 72-3-1006, MCA, is amended to read:

20           **"72-3-1006. Certificate.** (1) In probate proceedings under this code requiring the filing of a duplicate  
 21 United States estate tax return with the department of revenue pursuant to 72-16-906, a final distribution to  
 22 successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or  
 23 72-3-1004, unless there has been filed with the clerk:

24           (a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate  
 25 has been paid or that no tax is payable; or

26           (b) an agreement with the department of revenue for extension of time for payment of estate taxes.

27           (2) This section does not prohibit a partial distribution that may become necessary in the course of  
 28 administration."

29

30           NEW SECTION. **Section 15. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 15, chapter 30, part 3, and the provisions of Title 15, chapter 30, part 3, apply to [section 1].

2

3 NEW SECTION. **Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is

4 effective October 1, 2009.

5 (2) [Sections 1, 4, and 17(2) and this section] are effective on passage and approval.

6

7 NEW SECTION. **Section 17. Applicability -- retroactive applicability.** (1) Except as provided in

8 subsection (2), [this act] applies to tax periods beginning after December 31, 2009.

9 (2) [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after

10 December 31, 2002.

11

- END -