

HOUSE BILL NO. 268

INTRODUCED BY G. HERTZ

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE STATUTE OF LIMITATIONS FOR INDIVIDUAL INCOME TAX RETURNS; AMENDING SECTIONS 15-30-2605, 15-30-2606, 15-30-2607, AND 15-30-2609, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 15-30-2605, MCA, is amended to read:

**"15-30-2605. Revision of return by department -- statute of limitations -- examination of records and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.

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

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-2607 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

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

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information,

1 with power to administer oaths to the person or persons."  
2

3 **Section 2.** Section 15-30-2606, MCA, is amended to read:

4 **"15-30-2606. Tolling of statute of limitations.** The running of the statute of limitations provided for  
5 under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of  
6 federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has  
7 instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1  
8 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619, the statute of  
9 limitations does not apply until 5 3 years from the date the federal changes become final or the amended federal  
10 return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the  
11 amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations  
12 does not apply for 2 additional years from the time specified in 15-30-2605."  
13

14 **Section 3.** Section 15-30-2607, MCA, is amended to read:

15 **"15-30-2607. Application for revision -- appeal.** An application for revision may be filed with the  
16 department by a taxpayer within 5 3 years from the last day prescribed for filing the return as provided in  
17 15-30-2605(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the  
18 department has revised a return pursuant to 15-30-2605(3), the taxpayer may revise the same return until the  
19 liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the  
20 department, the taxpayer may appeal to the state tax appeal board."  
21

22 **Section 4.** Section 15-30-2609, MCA, is amended to read:

23 **"15-30-2609. Credits and refunds -- period of limitations.** (1) If the department discovers from the  
24 examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of  
25 income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally  
26 collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due  
27 from the taxpayer and the balance of the excess must be refunded to the taxpayer.

28 (2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration  
29 of the period provided by 15-30-2606 and 15-30-2607, the taxpayer files a claim or the department determines  
30 there has been an overpayment.

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

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

9 (4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided  
10 in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from  
11 the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting  
12 of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of  
13 overpayment is the date on which the return for the tax year was due. Interest does not accrue on an  
14 overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year.  
15 Interest does not accrue during any period for which the processing of a claim for refund is delayed more than  
16 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose  
17 of verifying the amount of the overpayment. Interest is not allowed if:

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

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

21 (iii) the amount of interest is less than \$1.

22 (b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing  
23 in 15-30-2604, including any extension, interest is payable from the date the return was filed.

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

27

28 NEW SECTION. **Section 5. Effective date.** [This act] is effective January 1, 2014.

29

30 NEW SECTION. **Section 6. Applicability.** [This act] applies to tax years beginning after December 31,

1 2013.

2

- END -