

HOUSE BILL NO. 88

INTRODUCED BY B. HOVEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT STANDARDIZING INDIVIDUAL LIABILITY FOR REPORTING AND PAYMENT OF TRUST TAXES; CENTRALIZING INDIVIDUAL LIABILITY FOR CORPORATE DIRECTORS AND OFFICERS, MANAGERS AND MEMBERS OF LIMITED LIABILITY COMPANIES, AND PARTNERS OF LIMITED LIABILITY PARTNERSHIPS FOR TRUST TAXES; PROVIDING UNIFORM PENALTY AND INTEREST PROVISIONS FOR COMPANIES OR RESPONSIBLE INDIVIDUALS WHO FAIL TO FILE RETURNS OR PAY TAXES; AMENDING SECTIONS 15-1-302, 15-30-2501, 15-30-2503, 15-30-2505, 15-30-2506, 15-30-2507, 15-30-2508, 15-30-2536, 15-30-2537, 15-30-2539, 15-30-2540, 15-30-2542, 15-30-2544, 15-30-2545, 15-30-2547, AND 15-53-130, MCA; REPEALING SECTIONS 15-30-2509, 15-30-2546, 15-53-147, AND 15-53-148, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Individual liability for taxes held in trust for state -- definitions.** As used in [sections 2 and 3] and this section, the following definitions apply:

(1) "Employer" has the meaning provided in 15-30-2501.

(2) "Remitter" has the meaning provided in 15-30-2537.

(3) "Responsible individual" means an employer, remitter, or telecommunications services provider who is liable for collecting a trust tax and for remitting the collected amounts to the department, including corporate officers and directors, partners of a partnership, and managers and members of a limited liability company as provided in [section 2].

(4) "Telecommunications services provider" has the meaning provided in 15-53-129.

(5) "Trust tax" means those taxes to be collected by an employer, a remitter, or a telecommunications services provider on behalf of the department and includes employee withholding taxes and mineral royalty withholding taxes described in Title 15, chapter 30, part 25, and retail telecommunications taxes described in Title 15, chapter 53.



1            **NEW SECTION. Section 2. Liability for failure to pay trust taxes.** (1) For the purpose of determining  
 2 liability for the filing of statements and payment of trust taxes, penalties, and interest owed under Title 15, chapter  
 3 30, part 25, or Title 15, chapter 53, part 1, a responsible individual is individually liable for filing statements or  
 4 reports, for payment of the amount equal to the tax, and for the penalty and interest due on the amounts pursuant  
 5 to 15-1-216.

6            (2) The officer or director of a corporation whose responsibility it is to collect, truthfully account for, and  
 7 pay to the state the amounts withheld and who fails to remit the amounts to the state is liable to the state for the  
 8 amounts withheld and for the penalty and interest due on the amounts as a responsible individual.

9            (3) (a) Each officer and director of the corporation is individually liable as a responsible individual, along  
 10 with the corporation, for filing statements to the extent that the officer or director has access to the requisite  
 11 records and for unpaid taxes, penalties, and interest pursuant to 15-1-216 upon a determination that the officer  
 12 or director:

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

14            (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or  
 15 the payment of other corporate obligations and exercised that responsibility in a manner resulting in the  
 16 corporation's failure to file statements required by this part or pay taxes due as required by this part.

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

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

23            (5) ~~(a) Each partner of~~ AN INDIVIDUAL WHO IS A PARTNER IN a partnership is a responsible individual and  
 24 is jointly and severally liable, along with the partnership, for any statements, ~~taxes, penalties, and interest~~ AND  
 25 TAXES due while a partner TO THE EXTENT THAT THE PARTNER HAS ACCESS TO THE REQUISITE RECORDS AND IS JOINTLY  
 26 AND SEVERALLY LIABLE FOR UNPAID TAXES, PENALTIES, AND INTEREST PURSUANT TO 15-1-216 UPON A DETERMINATION  
 27 THAT THE PARTNER:

28            (A) POSSESSED THE RESPONSIBILITY TO FILE STATEMENTS AND PAY TAXES ON BEHALF OF THE PARTNERSHIP;  
 29 AND

30            (B) POSSESSED THE RESPONSIBILITY ON BEHALF OF THE PARTNERSHIP FOR DIRECTING THE FILING OF TAX

1 STATEMENTS OR THE PAYMENT OF OTHER PARTNERSHIP OBLIGATIONS AND EXERCISED THAT RESPONSIBILITY IN A MANNER  
 2 RESULTING IN THE PARTNERSHIP'S FAILURE TO FILE STATEMENTS REQUIRED BY THIS PART OR PAY TAXES DUE AS  
 3 REQUIRED BY THIS PART.

4 ~~(b)(6)~~ (A) Each member of a limited liability company that is treated as a partnership or as a corporation  
 5 for income tax purposes is a responsible individual and is jointly and severally liable, along with the limited liability  
 6 company, for ~~any statements, taxes, penalties, and interest due while a member~~ FILING STATEMENTS TO THE  
 7 EXTENT THAT THE MEMBER HAS ACCESS TO THE REQUISITE RECORDS AND IS JOINTLY AND SEVERALLY LIABLE FOR UNPAID  
 8 TAXES, PENALTIES, AND INTEREST PURSUANT TO 15-1-216 UPON A DETERMINATION THAT THE MEMBER:

9 (i) POSSESSED THE RESPONSIBILITY TO FILE STATEMENTS AND PAY TAXES ON BEHALF OF THE LIMITED LIABILITY  
 10 COMPANY; AND

11 (ii) POSSESSED THE RESPONSIBILITY ON BEHALF OF THE LIMITED LIABILITY COMPANY FOR DIRECTING THE FILING  
 12 OF TAX STATEMENTS OR THE PAYMENT OF OTHER LIMITED LIABILITY COMPANY OBLIGATIONS AND EXERCISED THAT  
 13 RESPONSIBILITY IN A MANNER RESULTING IN THE LIMITED LIABILITY COMPANY'S FAILURE TO FILE STATEMENTS REQUIRED  
 14 BY THIS PART OR PAY TAXES DUE AS REQUIRED BY THIS PART.

15 ~~(e) The (B)~~ PURSUANT TO SUBSECTION (6)(A), THE member of a single-member limited liability company  
 16 that is disregarded for income tax purposes is a responsible individual and is jointly and severally liable, along  
 17 with the limited liability company, ~~for any statements, taxes, penalties, and interest due while a member.~~

18 ~~(d) Each (C)~~ PURSUANT TO SUBSECTION (6)(A), EACH manager of a manager-managed limited liability  
 19 company is a responsible individual and is jointly and severally liable, along with the limited liability company, ~~for~~  
 20 ~~any statements, taxes, penalties, and interest due while a manager.~~

21 (7) IN THE CASE OF A LIMITED LIABILITY COMPANY BANKRUPTCY, THE LIABILITY OF THE RESPONSIBLE INDIVIDUAL  
 22 REMAINS UNAFFECTED BY THE DISCHARGE OF PENALTY AND INTEREST AGAINST THE LIMITED LIABILITY COMPANY. THE  
 23 RESPONSIBLE INDIVIDUAL REMAINS LIABLE FOR ANY STATEMENTS AND FOR THE AMOUNT OF TAXES, PENALTIES, AND  
 24 INTEREST UNPAID BY THE LIMITED LIABILITY COMPANY.

25 ~~(6)(8)~~ The liability of a responsible individual described in subsection (3) or (5) for taxes, penalties, and  
 26 interest is released if and to the extent that the amount required to be deducted and withheld is deposited in a  
 27 separate account that is:

- 28 (a) established in a bank, as defined in 32-1-102, located in Montana;  
 29 (b) designated as a special fund in trust for the state; and  
 30 (c) payable to the department.

1           ~~(7)~~(9) If the responsible individual fails to deduct and withhold the amounts specified in Title 15, chapter  
 2 30, part 25, or Title 15, chapter 53, part 1, and the tax against which the deducted and withheld amounts would  
 3 have been credited is paid, the amounts required to be deducted and withheld may not be collected from the  
 4 responsible individual.

5           ~~(8)~~(10) In addition to the penalties imposed by 15-1-216, the failure of a responsible individual to furnish  
 6 supporting tax statements as required by Title 15, chapter 30, part 25, subjects the responsible individual to a  
 7 penalty of \$5 for each failure, with a minimum of \$50.

8           ~~(9)~~(11) All remedies available to the state for the administration, enforcement, and collection of taxes are  
 9 available and apply to the trust tax required to be deducted and withheld under the provisions Title 15, chapter  
 10 30, part 25, or Title 15, chapter 53, part 1, unless otherwise specifically provided.

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 12           **NEW SECTION. Section 3. Estimation of tax upon failure to file return -- notice.** (1) If a responsible  
 13 individual fails, neglects, or refuses to file a return or fails to pay the tax required under Title 15, chapter 30, part  
 14 25, or Title 15, chapter 53, part 1, within the periods required, the department shall estimate the amount of  
 15 revenue subject to tax under this part during the preceding quarter.

16           (2) The department shall compute the amount of tax due from the responsible individual and mail to the  
 17 responsible individual a letter and tax assessment statement setting forth the amount of delinquent tax, penalty,  
 18 and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

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 20           **Section 4.** Section 15-1-302, MCA, is amended to read:

21           **"15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation by the  
 22 department may be administered by the director of revenue or the director's agent.

23           (2) (a) If a witness fails to obey a summons to appear before the department or refuses to testify or  
 24 answer any material question or to produce records, books, papers, or documents when required to do so, the  
 25 department shall institute proceedings in the district court to compel obedience to a summons or order of the  
 26 board or to punish the witness for neglect or refusal to obey the summons.

27           (b) As required by ~~45-30-2509~~ [sections 1 through 3], the department, in addition to instituting  
 28 proceedings to compel obedience to a summons or order shall, as a part of the proceedings, request the court  
 29 to issue an order requiring the payment of all penalties assessed for the employer's failure to report.

30           (3) A person who testifies falsely in any material matter under consideration by the department is guilty

1 of perjury and shall be punished accordingly.

2 (4) Witnesses attending an investigation by the department must receive the same compensation as  
3 witnesses in the district court. The compensation must be charged to the proper appropriation for the  
4 department."

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6 **Section 5.** Section 15-30-2501, MCA, is amended to read:

7 **"15-30-2501. Definitions.** When used in 15-30-2501 through ~~15-30-2509~~ 15-30-2508, the following  
8 definitions apply:

9 (1) (a) "Employee" means:

10 (i) an individual who performs services for another individual or an organization having the right to control  
11 the employee as to the services to be performed and as to the manner of performance;

12 (ii) an officer, employee, or elected public official of the United States, the state of Montana, or any  
13 political subdivision of the United States or Montana or any agency or instrumentality of the United States, the  
14 state of Montana, or a political subdivision of the United States or Montana;

15 (iii) an officer of a corporation;

16 (iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers,  
17 and other supervisory personnel.

18 (b) The term does not include a sole proprietor performing services for the sole proprietorship.

19 (2) "Employer" means:

20 (a) the person for whom an individual performs or performed any service, of whatever nature, as an  
21 employee of the person or, if the person for whom the individual performs or performed the services does not  
22 have control of the payment of wages for the services, the person having control of the payment of wages;

23 (b) any individual or organization that has or had in its employ one or more individuals performing  
24 services for it within this state, including:

25 (i) a state government and any of its political subdivisions or instrumentalities;

26 (ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability  
27 company, or domestic or foreign corporation;

28 (iii) a receiver, trustee, including a trustee in bankruptcy, or the trustee's successor; or

29 (iv) a legal representative of a deceased person; or

30 (c) any person found to be an employer under Title 39, chapter 51, for unemployment insurance

1 purposes, or under Title 39, chapter 71, for workers' compensation purposes.

2 (3) "Lookback period" means the 12-month period ending the preceding June 30.

3 (4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the  
4 member of a single-member limited liability company that is a disregarded entity if the member is an individual.

5 (5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of  
6 the Internal Revenue Code, 26 U.S.C. 3401.

7 (b) The term does not include:

8 (i) tips and gratuities exempt from taxation under 15-30-2110;

9 (ii) health insurance premiums attributed as income to an employee under federal law that are exempt  
10 from taxation under 15-30-2110;

11 (iii) unemployment compensation, including supplemental unemployment compensation treated as wages  
12 under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as  
13 provided in 15-30-2101; or

14 (iv) any amount paid a sole proprietor."  
15

16 **Section 6.** Section 15-30-2503, MCA, is amended to read:

17 **"15-30-2503. Employer liable for withholding taxes and statements.** (1) Each employer is liable for  
18 the payments required by 15-30-2504, the amounts required to be deducted and withheld under this part, and  
19 the annual statements required by 15-30-2506 and 15-30-2507. The payments required by 15-30-2504 and the  
20 amounts required to be deducted and withheld, plus interest due, are a tax. With respect to the tax, the employer  
21 is the taxpayer.

22 (2) ~~The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the~~  
23 ~~state the amounts withheld from the corporation's employees and who fails to pay the withholdings Pursuant to~~  
24 ~~[sections 1 through 3], each responsible individual is individually liable to the state for the filing of statements, the~~  
25 ~~amounts withheld, the payment of tax, and the penalty and interest due on the amounts pursuant to 15-1-216.~~

26 ~~———— (3) (a) Each officer of the corporation is individually liable along with the corporation for filing statements~~  
27 ~~to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon~~  
28 ~~a determination that the officer:~~

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

30 ~~———— (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or~~

1 the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure  
2 to file statements required by this part or pay taxes due as required by this part.

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

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

9 ~~—— (5) For the purpose of determining liability for the filing of statements and the remittance of taxes,  
10 penalties, and interest owed under this part:~~

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

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

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

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

21 ~~—— (6) If the employer fails to deduct and withhold the amounts specified in 15-30-2502 and the tax against  
22 which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted  
23 and withheld may not be collected from the employer."~~

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25 **Section 7.** Section 15-30-2505, MCA, is amended to read:

26 **"15-30-2505. Amount withheld considered as tax collected.** All amounts deducted and withheld must  
27 be considered as a tax collected under the provisions of 15-30-2501 through ~~45-30-2509~~ 15-30-2508, and an  
28 employee does not have any right of action against the employer in respect to any money deducted and withheld  
29 from the employee's wages and paid to the state in compliance or intended compliance with 15-30-2501 through  
30 ~~45-30-2509~~ 15-30-2508."

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**Section 8.** Section 15-30-2506, MCA, is amended to read:

**"15-30-2506. Annual withholding statement.** Every employer shall, prior to January 31 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from the wages and the amount of the tax deducted and withheld under the provisions of 15-30-2501 through ~~15-30-2509~~ 15-30-2508. The statement must contain additional information and must be in the form that the department prescribes, and a duplicate of the statement must be filed by the employee with the employee's state income tax return."

**Section 9.** Section 15-30-2507, MCA, is amended to read:

**"15-30-2507. Annual statement by employer.** (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in the form and summarizing information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part of the calendar year and showing the total amount of the federal income tax deducted and withheld from the wages and the total amount of the tax deducted and withheld from the wages under the provisions of 15-30-2501 through ~~15-30-2509~~ 15-30-2508.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-2616 relating to the duties of information agents, and additional information return is not required with respect to the wage payments."

**Section 10.** Section 15-30-2508, MCA, is amended to read:

**"15-30-2508. Withheld taxes held in trust for state.** Every employer who deducts and withholds any amounts under the provisions of 15-30-2501 through ~~15-30-2509~~ 15-30-2508 shall hold the amounts in trust for the state of Montana."

**Section 11.** Section 15-30-2536, MCA, is amended to read:

**"15-30-2536. Short title.** Sections 15-30-2536 through 15-30-2545 and 15-30-2547 may be cited as the "Mineral Royalty Backup Withholding Act"."

1           **Section 12.** Section 15-30-2537, MCA, is amended to read:

2           **"15-30-2537. Definitions.** As used in 15-30-2536 through 15-30-2545 and 15-30-2547, the following  
3 definitions apply:

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

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

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

8           (4) "Royalty owner" means a person or entity entitled to receive periodic payments for a nonworking  
9 interest in the production of oil or gas or in the severance of other minerals from the mineral estate."  
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11           **Section 13.** Section 15-30-2539, MCA, is amended to read:

12           **"15-30-2539. Withholding -- no application under certain conditions.** (1) The provisions of  
13 15-30-2536 through 15-30-2545 and 15-30-2547 do not apply to royalty payments made to a royalty owner if the  
14 royalty owner is:

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

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

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

20           (d) a publicly traded partnership;

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

22           (f) the same person or entity as the remitter.

23           (2) (a) The provisions of 15-30-2536 through 15-30-2545 and 15-30-2547 do not apply to a remitter that  
24 produces less than 100,000 barrels of oil and less than 500 million cubic feet of gas annually. The department  
25 shall determine a remitter's annual production of oil and gas based upon a 3-year rolling average of the remitter's  
26 annual production as reported by the remitter to the Montana board of oil and gas conservation.

27           (b) Each producer that is exempted from withholding under subsection (2)(a) shall make an annual return  
28 to report royalty payments that exceed the dollar amounts in subsection (3). The return must be made under rules  
29 adopted by the department and be as nearly identical as possible to federal rules for internal revenue service form  
30 1099 under section 6041, et seq., of the Internal Revenue Code, 26 U.S.C. 6041, et seq.

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

5 (d) A royalty owner that is a publicly traded partnership or an organization that is exempt from taxation  
 6 under 15-31-102 shall report to the remitter and department under oath, on a form prescribed by the department,  
 7 all information necessary to establish that the remitter is not required under 15-30-2538 to withhold royalty  
 8 payments made to the partnership or organization.

9 (3) If the royalty payment made to a royalty owner subject to withholding under the provisions of  
 10 15-30-2536 through 15-30-2545 and 15-30-2547 is less than \$166 for the current withholding period or is less  
 11 than \$2,000 if the payment is annualized, then the department may grant a remitter's request to forego  
 12 withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if  
 13 applicable, the royalty payments for the annual period.

14 (4) The department may, by rule, establish minimum royalty amounts subject to withholding under the  
 15 provisions of 15-30-2536 through 15-30-2545 and 15-30-2547, other than for oil and gas production, if the  
 16 department determines that the withholding against the minimal amount of royalties is inefficient."  
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18 **Section 14.** Section 15-30-2540, MCA, is amended to read:

19 **"15-30-2540. Remitter liable for withholding taxes and statements -- liability mitigation --**  
 20 **sufficiency of mailing address.** (1) Each remitter is liable for the payment required by 15-30-2541, the amount  
 21 required to be deducted and withheld under 15-30-2536 through 15-30-2545 and 15-30-2547, and the annual  
 22 statements required by 15-30-2543 and 15-30-2544. The payments required by 15-30-2541 and the amounts  
 23 required to be deducted and withheld, plus penalty and interest due, are a tax. With respect to the tax, the remitter  
 24 is the taxpayer.

25 (2) ~~The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the~~  
 26 ~~state the amounts withheld from mineral royalty payments and who fails to pay the withholdings is Pursuant to~~  
 27 ~~[sections 1 through 3], each responsible individual is individually liable to the state for the filing of statements, the~~  
 28 ~~amounts withheld, the payment of tax, and the penalty and interest due on the amounts pursuant to 15-1-216.~~

29 ~~----- (3) (a) Subject to subsections (3)(b) and (6), each officer of the corporation is individually liable, along~~  
 30 ~~with the corporation, for filing statements, to the extent that the officer has access to the requisite records, and~~

1 for unpaid taxes, penalties, and interest upon a determination that the officer:

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

3 ~~—— (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or~~

4 ~~the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure~~

5 ~~to file statements required by 15-30-2536 through 15-30-2547 or to pay taxes due as required by 15-30-2536~~

6 ~~through 15-30-2547.~~

7 ~~—— (b) If a corporate remitter violates the provisions of 15-30-2536 through 15-30-2547, the department shall~~

8 ~~first apply the provisions of 15-30-2546 against the corporation. If the corporation fails to remedy the violation,~~

9 ~~then the department shall apply the provisions of 15-30-2546 against each responsible corporate officer as~~

10 ~~determined in subsections (3)(a) and (3)(c) of this section.~~

11 ~~—— (c) In determining which corporate officer is liable, the department is not limited to considering the~~

12 ~~elements set forth in subsection (3)(a) to establish individual liability and may consider any other available~~

13 ~~information.~~

14 ~~—— (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the~~

15 ~~discharge of penalty and interest against the corporation. The individual remains liable for any statements and~~

16 ~~the amount of taxes, penalties, and interest unpaid by the corporation.~~

17 ~~—— (5) Subject to subsection (6), for the purpose of determining liability for the filing of statements and the~~

18 ~~payment of taxes, penalties, and interest owed under 15-30-2536 through 15-30-2547:~~

19 ~~—— (a) each partner of a partnership is jointly and severally liable, along with the partnership, for any~~

20 ~~statements, taxes, penalties, and interest due while a partner;~~

21 ~~—— (b) each member of a limited liability company that is treated as a partnership or as a corporation for~~

22 ~~income tax purposes is jointly and severally liable, along with the limited liability company, for any statements,~~

23 ~~taxes, penalties, and interest due while a member;~~

24 ~~—— (c) the member of a single-member limited liability company that is disregarded for income tax purposes~~

25 ~~is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and~~

26 ~~interest due while a member; and~~

27 ~~—— (d) each manager of a manager-managed limited liability company is jointly and severally liable, along~~

28 ~~with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.~~

29 ~~—— (6) The liability of an individual described in subsection (3) or (5) for taxes, penalties, and interest is~~

30 ~~released if and to the extent that the amount required to be deducted and withheld under 15-30-2536 through~~

1 ~~15-30-2547 is deposited in a separate account that is:~~  
2 ~~—— (a) established in a bank, as defined in 32-1-102, located in Montana;~~  
3 ~~—— (b) designated as a special fund in trust for the state; and~~  
4 ~~—— (c) payable to the department.~~  
5 ~~—— (7) If the remitter fails to deduct and withhold the amounts specified in 15-30-2538 and the tax, against~~  
6 ~~which the deducted and withheld amounts would have been credited, is paid, the amounts required to be~~  
7 ~~deducted and withheld may not be collected from the remitter."~~

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9 **Section 15.** Section 15-30-2542, MCA, is amended to read:

10 **"15-30-2542. Amount of royalty payment withheld considered taxes collected.** The amounts  
11 deducted and withheld from royalty payments are considered taxes collected under the provisions of 15-30-2536  
12 through 15-30-2545 and 15-30-2547. A royalty owner does not have a right of action against the remitter for any  
13 amount deducted and withheld from the royalty owner's royalty and paid to the state in compliance or intended  
14 compliance with 15-30-2536 through 15-30-2545 and 15-30-2547. The amounts deducted and withheld and paid  
15 to the state in compliance or intended compliance with 15-30-2536 through 15-30-2545 and 15-30-2547 are not  
16 subject to the provisions of 82-10-103."

17  
18 **Section 16.** Section 15-30-2544, MCA, is amended to read:

19 **"15-30-2544. Remitter to furnish annual statement to department.** (1) On or before February 28 of  
20 each year, each remitter shall file with the department a royalty and tax statement, on a form provided by the  
21 department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding  
22 calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld  
23 from the royalty payments under the provisions of 15-30-2536 through 15-30-2545 and 15-30-2547 for the same  
24 period.

25 (2) The annual statement filed by a remitter under this section complies with the requirements of  
26 15-30-2616 relating to the duties of information agents. An additional information return is not required with  
27 respect to the royalty payments.

28 (3) The department shall make the forms described in 15-30-2541 and this section available no later than  
29 November 15, 2007."

30

1           **Section 17.** Section 15-30-2545, MCA, is amended to read:

2           **"15-30-2545. Withheld taxes held in trust for state.** Each remitter that deducts and withholds the  
3 amounts under the provisions of 15-30-2536 through 15-30-2545 and 15-30-2547 shall hold the amounts in trust  
4 for the state."

5

6           **Section 18.** Section 15-30-2547, MCA, is amended to read:

7           **"15-30-2547. Rulemaking authority.** The department shall adopt rules that may be necessary to  
8 administer and enforce the provisions of 15-30-2536 through 15-30-2545 and 15-30-2547."

9

10          **Section 19.** Section 15-53-130, MCA, is amended to read:

11          **"15-53-130. (Temporary) Imposition of retail telecommunications excise tax -- rate.** (1) An excise  
12 tax of 3.75% is imposed on the sales price of retail telecommunications services. Subject to 15-53-131 and  
13 15-53-132, the tax is imposed on the purchaser and must be collected by the telecommunications services  
14 provider.

15           (2) Pursuant to [sections 1 through 3], each responsible individual is individually liable to the state for  
16 the filing of statements, the amounts withheld, the payment of tax, and the penalty and interest due on the  
17 amounts pursuant to 15-1-216. (Terminates on occurrence of contingency--sec. 8, Ch. 515, L. 2003.)

18          **15-53-130. (Effective on occurrence of contingency) Imposition of retail telecommunications**  
19 **excise tax -- rate.** (1) An excise tax of 3.75% is imposed on the sales price of retail telecommunications services.  
20 The tax is imposed on the purchaser and must be collected by the telecommunications services provider.

21           (2) Pursuant to [sections 1 through 3], each responsible individual is individually liable to the state for  
22 the filing of statements, the amounts withheld, the payment of tax, and the penalty and interest due on the  
23 amounts pursuant to 15-1-216."

24

25          NEW SECTION. **Section 20. Repealer.** The following sections of the Montana Code Annotated are  
26 repealed:

27 15-30-2509.   Violations by employer -- penalties, interest, and remedies.

28 15-30-2546.   Violations by remitter -- penalties -- interest -- remedies.

29 15-53-147.    Penalty and interest for delinquency -- waiver.

30 15-53-148.    Estimation of tax upon failure to file return -- notice.

