

SENATE BILL NO. 269

INTRODUCED BY D. ANKNEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INDIVIDUAL INCOME TAX AUDIT AND COLLECTION  
5 LAWS; ESTABLISHING AUDIT LIMITATIONS; SUSPENDING PENALTIES AND INTEREST DURING  
6 EXTENDED AUDITS; REVISING DEADLINES FOR CERTAIN REVISIONS TO AN INDIVIDUAL INCOME TAX  
7 RETURN; LOWERING THE TIME PERIOD FOR DEPARTMENT OF REVENUE AUDITS FROM 5 YEARS TO  
8 3 YEARS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, 15-30-2512,  
9 15-30-2605, 15-30-2606, 15-30-2607, AND 15-30-2609, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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13 NEW SECTION. **Section 1. Audit limitations.** (1) Except as provided in subsection (3), an audit may  
14 not cover more than 1 tax year during a 12-month period.

15 (2) Except as provided in subsection (4), an audit must be finalized by the department within 6 months  
16 of the commencement of the audit.

17 (3) The department may audit additional tax years when:

18 (a) it determines that there is an understatement of tax liability in excess of 5% of the net amount  
19 payable;

20 (b) it determines that there is an overstatement of the refund in excess of 5% of the net amount  
21 refundable;

22 (c) the initial audit is based on the taxpayer not filing a return, as provided in 15-30-2605(2); or

23 (d) the initial audit is based on the taxpayer filing a false or fraudulent return, as provided in  
24 15-30-2605(4).

25 (4) Both the department and the taxpayer may consent in writing to extend the timeframe to complete  
26 an audit. The department shall notify the taxpayer of the taxpayer's right to refuse to extend the audit timeframe  
27 when the taxpayer is requested to provide consent. Penalties and interest for the tax year at issue must be  
28 suspended and may not accrue starting from the date of extension until conclusion of the audit.

29  
30 **Section 2.** Section 15-1-216, MCA, is amended to read:



1           **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**  
2 **-- exceptions -- uniform provision for interest on overpayments.** (1) A person who fails to file a required tax  
3 return or other report with the department by the due date, including any extension of time, of the return or report  
4 must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

5           (2) (a) Except as provided in 15-30-2604(3)(c), [section 1], and subsection (2)(b) of this section, a person  
6 who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month  
7 on the unpaid tax. The penalty may not exceed 12% of the tax due.

8           (b) ~~A~~ Except as provided in [section 1], a person who fails to pay a tax when due under chapter 30, part  
9 25, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction  
10 of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

11           (c) Except as provided in 15-30-2604(3)(c) and [section 1], the penalty imposed under subsection (2)(a)  
12 or (2)(b) of this section accrues on the unpaid tax from the original due date of the return regardless of whether  
13 the taxpayer has received an extension of time for filing a return.

14           (3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return  
15 when due or fails to file a return within 60 days after receiving written notice from the department that a return  
16 must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may  
17 bring an action in the name of the state to recover the penalty and any delinquent taxes.

18           (4) (a) Except as provided in 15-30-2604(3)(c) and [section 1], interest on taxes not paid when due must  
19 be assessed by the department. The department shall determine the interest rates established under subsection  
20 (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes  
21 not paid when due for a calendar year are as follows:

22           (i) For individual income taxes not paid when due, including delinquent taxes and deficiency  
23 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the  
24 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code,  
25 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

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

28           (b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date  
29 of the return until the tax is paid. Except as provided in 15-30-2604(3)(c) and [section 1], interest accrues daily  
30 on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an

1 extension of time for filing the return.

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

4 (b) This section does not apply to:

5 (i) property taxes; or

6 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,  
7 chapter 70.

8 (6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in  
9 effect at the time the tax accrued.

10 (7) Except as provided in 15-30-2604 and [section 1], penalty and interest must be calculated and  
11 assessed commencing with the due date of the return.

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

13 (9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or  
14 delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the  
15 interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30,  
16 2020--sec. 18, Ch. 288, L. 2005.)"

17

18 **Section 3.** Section 15-30-2512, MCA, is amended to read:

19 **"15-30-2512. Estimated tax -- payment -- exceptions -- interest.** (1) (a) Each individual subject to tax  
20 under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through  
21 employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as  
22 provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax  
23 payments, at least:

24 (i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

25 (ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax  
26 year was a period of 12 months and if the individual filed a return for the tax year.

27 (b) Payment of estimated taxes under this section is not required if:

28 (i) the combined tax liability of employer withholding and estimated tax for the current year is less than  
29 \$500 after reductions for credits and withholding;

30 (ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12

1 months, and if the individual was a citizen or resident of the United States throughout that tax year;  
 2 (iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that  
 3 the department determines to constitute good cause; or  
 4 (iv) the individual retired in the tax year after having attained the age of 62 or if the individual became  
 5 disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year  
 6 following the tax year in which the individual retired or became disabled.

7 (2) Estimated taxes must be paid in four installments according to one of the following schedules:

8 (a) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on  
 9 January 1, estimated tax payments are due on the following dates:

10 Installment	Date
11 First	April 15
12 Second	June 15
13 Third	September 15
14 Fourth	January 15 of the following tax year

15 (b) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on  
 16 a date other than January 1, estimated tax payments are due on the following dates:

17 Installment	Date
18 First	15th day of the 4th month following the beginning of the tax year
19 Second	15th day of the 6th month following the beginning of the tax year
20 Third	15th day of the 9th month following the beginning of the tax year
21 Fourth	15th day of the month following the close of the tax year

22 (3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual  
 23 payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding  
 24 installment must be proportionally changed so that the balance of the required annual payment is paid in equal  
 25 installments over the remaining period of time.

26 (b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent  
 27 installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the  
 28 taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required.  
 29 For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a)  
 30 or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments,

1 respectively. For estimated taxes required to be paid beginning with the third installment provided for in  
 2 subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

3 (4) (a) If for any required installment the taxpayer determines that the installment payment is less than  
 4 the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income  
 5 installment.

6 (b) For any required installment, the annualized income installment is the applicable percentage  
 7 described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax  
 8 year for the months ending before the due date for the installment less the total amount of any prior required  
 9 installments for the tax year.

10 (c) For the purposes of this subsection (4), the applicable percentage is determined according to the  
 11 following schedule:

12 Required Installment	Applicable Percentage
13 First	22.5%
14 Second	45%
15 Third	67.5%
16 Fourth	90%

17 (d) A reduction in a required installment resulting from the application of an annualized income  
 18 installment must be recaptured by increasing the amount of the next required installment, determined under  
 19 subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount  
 20 of the reduction until the amount has been recaptured.

21 (5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer  
 22 withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount  
 23 of the underpayment as provided in 15-1-216. ~~The~~ Except as provided in [section 1], interest is computed on the  
 24 amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was  
 25 due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which  
 26 the payment was to be made, whichever is earlier.

27 (b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the  
 28 underpayment is the required installment amount less the installment amount paid, if any, on or before the due  
 29 date for the installment.

30 (c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment

1 must be credited against unpaid required installments in the order in which those installments are required to be  
2 paid.

3 (d) For a married taxpayer filing separately on the same form, the interest provided for in subsection  
4 (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on  
5 the taxpayer's return.

6 (e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated  
7 taxes if:

8 (i) the taxpayer pays in full the amount computed on the return as payable; and

9 (ii) the taxpayer files a return on or before the last day of the month following the close of the tax year  
10 referred to in subsection (2)(a) or (2)(b).

11 (6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3%  
12 of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

13 (7) The department shall promulgate rules governing reasonable extensions of time for paying the  
14 estimated tax. An extension may not be for more than 6 months."  
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16 **Section 4.** Section 15-30-2605, MCA, is amended to read:

17 **"15-30-2605. Revision of return by department -- statute of limitations -- examination of records**  
18 **and persons.** (1) ~~Subject to [section 1] if~~, in the opinion of the department, any return of a taxpayer is in any  
19 essential respect incorrect, it may revise the return.

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

23 (3) Except as provided in [section 1] and subsections (2) and (4) of this section, the amount of tax due  
24 under any return may be determined by the department within ~~5~~ 3 years after the return was filed, regardless of  
25 whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-2607 and this  
26 section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered  
27 to be filed on the last day prescribed for filing.

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

1           (5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of  
2 making an estimate of taxable income of any person where information has been obtained, may also examine  
3 or cause to have examined by any agent or representative designated by it for that purpose any books, papers,  
4 or records of memoranda bearing upon the matters required to be included in the return and may require the  
5 attendance of the person rendering the return or any officer or employee of the person or the attendance of any  
6 person having knowledge in the premises and may take testimony and require proof material for its information,  
7 with power to administer oaths to the person or persons."  
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9           **Section 5.** Section 15-30-2606, MCA, is amended to read:

10           **"15-30-2606. Tolling of statute of limitations.** The running of the statute of limitations provided for  
11 under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of  
12 federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has  
13 instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1  
14 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619, the statute of  
15 limitations does not apply until 5 3 years from the date the federal changes become final or the amended federal  
16 return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the  
17 amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations  
18 does not apply for 2 additional years from the time specified in 15-30-2605."  
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20           **Section 6.** Section 15-30-2607, MCA, is amended to read:

21           **"15-30-2607. Application for revision -- appeal.** An application for revision may be filed with the  
22 department by a taxpayer within 5 3 years from the last day prescribed for filing the return as provided in  
23 15-30-2605(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the  
24 department has revised a return pursuant to 15-30-2605(3), the taxpayer may revise the same return until the  
25 liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the  
26 department, the taxpayer may appeal to the state tax appeal board."  
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28           **Section 7.** Section 15-30-2609, MCA, is amended to read:

29           **"15-30-2609. Credits and refunds -- period of limitations.** (1) If the department discovers from the  
30 examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of

1 income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally  
2 collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due  
3 from the taxpayer and the balance of the excess must be refunded to the taxpayer.

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

7 (b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be  
8 refunded or credited within the period that expires on the 15th day of the 40th month following the close of the  
9 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  
10 year to which the net operating loss is carried back.

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

15 (4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided  
16 in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from  
17 the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting  
18 of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of  
19 overpayment is the date on which the return for the tax year was due. Interest does not accrue on an  
20 overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year.  
21 Interest does not accrue during any period for which the processing of a claim for refund is delayed more than  
22 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose  
23 of verifying the amount of the overpayment. Interest is not allowed if:

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

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

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

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

30 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax

1 liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to  
2 which interest is allowable."

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4 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an  
5 integral part of Title 15, chapter 30, part 26, and the provisions of Title 15, chapter 30, part 26, apply to [section  
6 1].

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8 **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that matured,  
9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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11 **NEW SECTION. Section 10. Applicability.** [This act] applies to tax years beginning after December  
12 31, 2015.

13 - END -