

HOUSE BILL NO. 617

INTRODUCED BY J. BALLYEAT, ADAMS, BECK, BOHLINGER, R. BROWN, BRUEGGEMAN, BUTCHER, CLANCY, E. CLARK, CRISMORE, CURTISS, DALE, DAVIES, DEPRATU, DOHERTY, FISHER, G. FORRESTER, FUCHS, GRIMES, HAINES, HARGROVE, KASTEN, KEENAN, LAIBLE, LEWIS, MATTHEWS, MCGEE, K. MILLER, D. MOOD, O'NEIL, PATTISON, A. PETERSON, K. PETERSON, PRICE, RICE, ROME, SLITER, SPRAGUE, STEINBEISSER, TAYLOR, B. THOMAS, F. THOMAS, VICK, WADDILL, WAITSCHIES, WALTERS, J. WELLS, J. WHITAKER, WITT, WOLERY, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF INDIVIDUALS, MEMBERS OF PARTNERSHIPS, AND SHAREHOLDERS OF SUBCHAPTER S. CORPORATIONS, INCLUDING TRUSTS AND ESTATES; ALLOWING INDIVIDUAL TAXPAYERS TO ELECT AN ALTERNATIVE METHOD OF DETERMINING TAX LIABILITY; PROVIDING THAT THE ELECTION IS IRREVOCABLE; ESTABLISHING ALTERNATIVE INCOME TAX RATE TABLES; GENERALLY REDUCING TAX LIABILITY UNDER THE ALTERNATIVE INCOME TAX RATES; PROVIDING ADDITIONAL INCOME TAX RELIEF UNDER THE ALTERNATIVE METHOD IF WAGES AND SALARIES IN MONTANA INCREASE BY A CERTAIN PERCENTAGE; ELIMINATING THE DEDUCTION FOR FEDERAL INCOME TAXES PAID FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; ELIMINATING CERTAIN TAX CREDITS, EXEMPTIONS, AND DEDUCTIONS FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; DISALLOWING THE CARRYBACK AND CARRYFORWARD OF CERTAIN CREDITS FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; ALLOWING MARRIED TAXPAYERS WHO ELECT THE ALTERNATIVE METHOD OF TAXATION AND WHO FILE SEPARATE MONTANA RETURNS TO USE FEDERAL DETERMINATIONS OF TAX LIABILITY IN DETERMINING MONTANA TAX LIABILITY FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-128, 15-30-129, 15-30-135, 15-30-142, 15-30-162, 15-30-164, 15-30-180, 15-30-186, 15-30-189, 15-30-192, 15-30-202, 15-31-131, 15-31-137, 15-31-151, 15-32-115, 15-32-402, 15-32-404, 15-61-202, 15-62-204, 15-63-202, 17-6-316, 80-12-211, AND 90-8-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Montana has the highest marginal income tax rate as well as one of the most accelerated individual income tax systems in the nation; and

WHEREAS, wages in Montana are among the lowest in the nation; and

WHEREAS, numerous economic studies have shown that there is a strong correlation between high tax rates and low wage growth; and

WHEREAS, other economic studies have shown that highly accelerated tax rates inhibit income growth; and

WHEREAS, the adverse relationship between high taxes and low-paying jobs is strong evidence that cutting taxes would be more significant for wage earners than it would be for the wealthy; and

WHEREAS, although Montana is sparsely populated, it has one of the most complicated income tax systems in the nation; and

WHEREAS, the goals of the Montana Legislature include the promotion of economic growth and the creation of better-paying jobs; and

WHEREAS, the Montana Legislature firmly believes that general across-the-board tax reductions for all Montana citizens and simplification of the tax system are much more effective than targeted tax breaks in achieving those goals; and

WHEREAS, the Montana Legislature wants to ensure that taxes do not arbitrarily increase for any taxpayer in the process of simplifying and revitalizing the state's tax structure.

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

NEW SECTION. Section 1. Alternative method for determining tax. (1) An individual, estate, or trust may elect to determine state income tax liability under the provisions of [sections 1 through 4]. Except as otherwise provided in [section 4] and subsections (2) through (4) of this section, taxable income is determined as provided in this chapter. A taxpayer who elects to determine the taxpayer's liability pursuant to this section is not eligible for adjustments or credits that are specifically referred to in this section.

(2) Except as provided in subsections (2)(a) through ~~(2)(f)~~ (2)(H), for a taxpayer who elects to be taxed under the provisions of [sections 1 through 4], adjusted gross income is the taxpayer's adjusted gross income determined under 15-30-111 and includes unemployment compensation. Notwithstanding the provisions of 15-30-111, the following items may not be used to reduce federal adjusted gross income in determining Montana adjusted gross income:

- (a) interest income referred to in 15-30-111(2)(b) earned by a taxpayer 65 years of age or older;
- (b) except as provided in 15-61-202, principal and income in a medical care savings account referred to in 15-30-111(2)(j);

(c) except as provided in 15-63-202, principal and income in a first-time home buyer savings account referred to in 15-30-111(2)(k);

(d) except as provided in 15-62-204, money contributed to a family education savings program account referred to in 15-30-111(2)(l);

(e) except as provided in 15-62-204, principal withdrawn from an account for qualified higher education expenses referred to in 15-30-111(2)(m); ~~and~~

(f) retirement disability benefits referred to in 15-30-111(6);

(G) THE ADDITIONAL AMOUNT FOR EXPENDITURES FOR THE PURCHASE OF RECYCLED MATERIAL UNDER 15-32-610; AND

(H) THE DEDUCTION FOR A LAND SALE TO A BEGINNING FARMER UNDER 80-12-211.

(3) In determining net income under 15-30-121, a taxpayer who elects to be taxed under [sections 1 through 4] may not deduct:

~~(a)~~ federal income tax paid within the tax year;

~~—— (b) the additional amount for expenditures for the purchase of recycled material under 15-32-610; and~~

~~—— (c) the deduction for a land sale to a beginning farmer under 80-12-211.~~

(4) A taxpayer who elects to be taxed under the provisions of [sections 1 through 4] may not claim the following tax credits:

(a) the credit for the expense of caring for certain elderly family members under 15-30-128;

(b) the credit for providing disability insurance for employees under 15-30-129;

(c) the investment credit under 15-30-162, including any carryback or carryforward of the credit;

(d) the credit for alternative fuel motor vehicle conversion under 15-30-164;

(e) the credit for preservation of historic buildings under 15-30-180;

(f) the credit for dependent care assistance under 15-30-186, including any carryforward of the credit;

(g) the credit for a physician practicing in a rural area under 15-30-188 through 15-30-191;

(h) any portion of the credit for geothermal system allowed under 15-32-115;

(i) the commercial investment credit under 15-32-401 through 15-32-406, including any carryforward of the credit as otherwise allowed under 15-32-404;

(j) the credit for investment in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material under 15-32-601 through 15-32-604;

(k) the infrastructure tax credit under the provisions of 17-6-316, including any carryback or carryover of the credit; and

(l) the tax credit for a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company under the provisions of Title 90, chapter 8, part 2, including any carryback or carryover of the credit.

NEW SECTION. Section 2. Election to determine tax liability under alternative method -- effect of election -- rules. (1) On or before the due date, including extensions, of a return for a tax year ending after December 31, 2002, a taxpayer may, on forms that the department prescribes, file an election to be taxed under the provisions of [sections 1 through 4].

(2) In order to make an election under this section, married taxpayers shall make the election jointly.

(3) An election made under this section is a one-time irrevocable election.

(4) The department is authorized to adopt rules that it considers necessary to administer the alternative method of taxation provided in [sections 1 through 4].

NEW SECTION. Section 3. Alternative method rate of tax -- reduction in tax rates under certain conditions. (1) In lieu of the tax rates imposed under 15-30-103, the taxable income, as adjusted in subsection (3), of a taxpayer who elects to determine tax liability under [sections 1 through 4] is taxed for each tax year beginning after December 31, 2002, according to the following schedule:

- (a) on the first \$2,600 of taxable income or any part of that income, 2%;
- (b) on the next \$2,600 of taxable income or any part of that income, 3%;
- (c) on the next \$6,800 of taxable income or any part of that income, 4%;
- (d) on the next \$7,000 of taxable income or any part of that income, 5%;
- (e) on the next \$16,000 of taxable income or any part of that income, 6%;
- (f) on the next \$25,000 of taxable income or any part of that income, 6.7%;
- (g) on the next \$15,000 of taxable income or any part of that income, 7.2%;
- (h) on any taxable income in excess of \$75,000 or any part of that income, 7.7%.

(2) If, in any tax year beginning with tax year 2007, the percentage growth in inflation-adjusted Montana wage and salary income in the last full year for which data is available is at least 8.8% greater than the third year immediately preceding the last full year for which data is available, then taxable income, as adjusted under subsection (3), is taxed according to the following schedule:

- (a) on the first \$2,600 of taxable income or any part of that income, 1.94%;
- (b) on the next \$2,600 of taxable income or any part of that income, 2.91%;

- (c) on the next \$6,800 of taxable income or any part of that income, 3.88%;
- (d) on the next \$7,000 of taxable income or any part of that income, 4.85%;
- (e) on the next \$16,000 of taxable income or any part of that income, 5.82%;
- (f) on the next \$25,000 of taxable income or any part of that income, 6.5%;
- (g) on the next \$15,000 of taxable income or any part of that income, 6.98%;
- (h) on any taxable income in excess of \$75,000 or any part of that income, 7.47%.

(3) By November 1 of each year, the department shall multiply the bracket amounts contained in subsection (1), or the bracket amounts contained in subsection (2) if they are in effect, by the inflation factor as defined in 15-30-101(8)(b) for that tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that tax year and must be used as the basis for imposition of the tax in subsection (1) or (2) of this section.

(4) The department shall calculate the percentage increase in subsection (2) by using the formula $(W/CPI) - 1$, where:

(a) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the third year immediately preceding the most current available year; and

(b) CPI is the consumer price index for the most current available year used in subsection (4)(a) divided by the consumer price index for the third year immediately preceding the most current available year as used in subsection (4)(a).

(c) For purposes of determining the percentage growth in subsection (2), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, United States city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

NEW SECTION. Section 4. Adjustments related to federal filing status in determining tax liability under alternative method. Notwithstanding other provisions of law, the following adjustments are allowed in determining tax liability under [sections 1 through 4]:

(1) In the case of passive and rental income losses, married taxpayers who file a joint federal return and who file separate Montana tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469, as that section may be amended or renumbered. If the allowable passive loss is clearly attributable

to one spouse, then the loss must be shown on that spouse's return; otherwise, the loss must be split equally on the Montana return.

(2) Married taxpayers who file a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(3) Married taxpayers filing a joint federal return who are required to include part of their social security benefits in federal adjusted gross income may use the amount calculated for federal taxable social security benefits when they file separate Montana income tax returns. If the federal taxable amount of social security benefits is clearly attributable to one spouse, then the amount attributable to that spouse must be shown as taxable income for that spouse's return; otherwise, the federal taxable amount of social security benefits must be split equally on the Montana return.

Section 5. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the ~~purpose~~ purposes of this chapter, including the purposes of the alternative method of determining tax liability under [sections 1 through 4], unless otherwise required by the context, the following definitions apply:

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

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

(ii) the tax brackets established in [section 3(1) or (2)], but unadjusted by [section 3(3)], in effect on June 30 of the tax year;

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

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

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

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

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock

dividends.

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

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

(7) (a) ~~"Gross income"~~ Except as provided in subsection (7)(b), "gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954, {26 U.S.C. 61}, or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954, {26 U.S.C. 85}, as amended.

(b) For a taxpayer who elects the alternative method of taxation under [sections 1 through 4], gross income includes unemployment compensation referred to in subsection (7)(a).

(8) (a) ~~"Inflation factor"~~ Except as provided in subsection (8)(b), "inflation factor" means a number determined for each ~~taxable tax~~ year by dividing the consumer price index for June of the ~~taxable tax~~ year by the consumer price index for June 1980.

(b) For the purposes of [section 3], "inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2000.

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

(10) "Knowingly" is as defined in 45-2-101.

(11) "Montana lottery winnings" means income paid either in lump sum or in annual payments to:

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

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

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

(13) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the

method of accounting upon the basis of which the taxable income is computed under this chapter.

(14) "Pension and annuity income" means:

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

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

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

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

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

(15) "Purposely" is as defined in 45-2-101.

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

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

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

(19) ~~(a) "Taxable income" Except as provided in subsection (19)(b), "taxable income"~~ means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(b) For a taxpayer who elects to determine tax liability under [sections 1 through 4], "taxable income" means the adjusted gross income of the taxpayer less the deductions and exemptions provided for in this chapter, computed in accordance with the modifications specified in [sections 1 and 4].

(20) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(21) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 6. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) ~~There shall~~ Except as provided in [section 3], there must be levied, collected, and paid for each ~~taxable tax~~ tax year ~~commencing on or after December 31, 1968~~, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as ~~hereinafter~~ provided in this chapter, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

- (a) on the first \$1,000 of taxable income or any part ~~thereof~~ of that income, 2%;
- (b) on the next \$1,000 of taxable income or any part ~~thereof~~ of that income, 3%;
- (c) on the next \$2,000 of taxable income or any part ~~thereof~~ of that income, 4%;
- (d) on the next \$2,000 of taxable income or any part ~~thereof~~ of that income, 5%;
- (e) on the next \$2,000 of taxable income or any part ~~thereof~~ of that income, 6%;
- (f) on the next \$2,000 of taxable income or any part ~~thereof~~ of that income, 7%;
- (g) on the next \$4,000 of taxable income or any part ~~thereof~~ of that income, 8%;
- (h) on the next \$6,000 of taxable income or any part ~~thereof~~ of that income, 9%;
- (i) on the next \$15,000 of taxable income or any part ~~thereof~~ of that income, 10%;
- (j) on any taxable income in excess of \$35,000 or any part ~~thereof~~ of that income, 11%.

(2) By November 1 of each year, the department shall multiply the bracket ~~amount~~ amounts contained in subsection (1) by the inflation factor for that ~~taxable tax~~ tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that ~~taxable tax~~ tax year and ~~shall~~ must be used as the basis for imposition of the tax in subsection (1) of this section."

Section 7. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident. (1) A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 or [section 3] with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income

earned in Montana.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the ~~taxable tax~~ year does not exceed \$100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the ~~taxable tax~~ year. The tax is in lieu of the tax imposed under 15-30-103 or [section 3]. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 8. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

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

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

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

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

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

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

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

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

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

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

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

(j) except as provided in [section 1], principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in

15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) except as provided in [section 1], principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) except as provided in [section 1], money, not exceeding \$3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) except as provided in [section 1], principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;

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

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

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

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

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

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

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

(6) ~~A~~ Except as provided in [section 1], a taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 9. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) ~~shall~~ must be allowed as deductions in computing taxable income.

(2) (a) An exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978,~~ for the taxpayer.

(b) An additional exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the ~~taxable~~ tax year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after~~

~~December 31, 1978~~, for the taxpayer if ~~he~~ the taxpayer has attained the age of 65 before the close of ~~his taxable~~ the tax year of the taxpayer.

(b) An additional exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978~~, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of ~~such taxable~~ the tax year and, for the calendar year in which the ~~taxable~~ tax year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978~~, for the taxpayer if ~~he~~ the taxpayer is blind at the close of ~~his taxable~~ the tax year of the taxpayer.

(b) An additional exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978~~, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the ~~taxable~~ tax year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind ~~shall~~ must be made as of the close of the ~~taxable~~ tax year of the taxpayer, except that if the spouse dies during ~~such taxable~~ the tax year, ~~such~~ the determination ~~shall~~ must be made as of the time of ~~such~~ death.

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

(5) (a) An exemption of \$800 ~~shall~~ must be allowed for ~~taxable years beginning after December 31, 1978~~, for each dependent:

(i) whose gross income for the calendar year in which the ~~taxable~~ tax year of the taxpayer begins is less than \$800; or

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

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

(B) is a student.

(b) ~~No~~ An exemption ~~shall be~~ is not allowed under this subsection for any dependent who has made a joint return with ~~his~~ the person's spouse for the ~~taxable~~ tax year beginning in the calendar year in which the ~~taxable~~ tax year of the taxpayer begins.

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

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

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

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

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

Section 10. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, {26 U.S.C. 161 and 211}, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) except as provided in [section 1], federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

~~——(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or~~

~~——(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;~~

(h) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159; and

(i) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal

to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency--sec. 12, Ch. 808, L. 1991.)"

Section 11. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is \$665, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of \$1,500, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard deduction is \$1,330, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of \$3,000, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest \$10. The minimum and maximum standard deduction for joint returns and qualified head of household returns must be twice the amount of the minimum and maximum standard deduction for single returns. The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103 or in [section 3]."

Section 12. Section 15-30-128, MCA, is amended to read:

"15-30-128. Credit for expense of caring for certain elderly family members. (1) ~~There~~ Except as provided in [section 1], there is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the ~~taxable tax~~ tax year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married individual for the ~~taxable~~ tax year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services and care in a long-term care facility, as defined in 50-5-101, that is licensed by the department of public health and human services, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member;

and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed \$25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds \$25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each \$2,000 or fraction of \$2,000 by which the adjusted gross income of the taxpayer for the ~~taxable~~ tax year exceeds \$25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by \$1 for each dollar of the adjusted gross income over \$50,000 for a taxpayer whose adjusted gross income exceeds \$50,000;

(b) limited to \$5,000 per qualifying family member in a ~~taxable~~ tax year and to \$10,000 total for two or more family members in a ~~taxable~~ tax year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the

same qualified family member in a ~~taxable tax~~ year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

Section 13. Section 15-30-129, MCA, is amended to read:

"15-30-129. Tax credit for providing disability insurance for employees. ~~There~~ Except as provided in [section 1], there is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. The tax credit must be computed in accordance with the provisions of 15-31-132."

Section 14. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax ~~shall be~~ is imposed upon either the fiduciaries or the beneficiaries of estates and trusts as ~~hereinafter~~ provided in this section, except to the extent ~~such the~~ estates and trusts shall be ~~are~~ held for educational, charitable, or religious purposes; ~~which~~ The tax shall ~~must~~ be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income ~~which that~~ is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary or beneficiary responsible for payment of the tax imposed by this section may elect to determine the tax liability of the estate or trust as provided in [sections 1 through 4].

~~(2)(3)~~ (3) The fiduciary ~~shall be~~ is responsible for making the return of income for the estate or trust for which

he the fiduciary acts, whether the fiduciary or the beneficiaries are taxable responsible for the payment of the tax with reference to the income of such the estate or trust. In cases under subsections (1)(a) and (1)(d) ~~of subsection (4)~~, the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable tax year for which the return is made.

~~(3)~~(4) In cases under subsections (1)(a), (1)(b), and (1)(c) ~~of subsection (4)~~, the tax ~~shall~~ must be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and ~~shall~~ must be paid by the fiduciary. If the taxpayer's net income for the taxable tax year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then ~~his~~ the taxpayer's distributive share of the net income of the estate or trust for any accounting period of such the estate or trust ending within the fiscal or calendar year ~~shall~~ must be computed upon the basis on which such the beneficiary's net income is computed. In ~~such those~~ those cases, a nonresident beneficiary ~~not a resident shall be~~ is taxable with respect to ~~his~~ the beneficiary's income derived through such the estate or trust only to the extent provided in 15-30-131 for ~~individuals other than residents~~ nonresidents.

~~(4)~~(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of ~~his~~ the employer's employees, to which contributions are made by such the employer or employees, or both, for the purpose of distributing to such the employees the earnings and principal of the fund accumulated by the trust in accordance with such the plan, ~~shall are not be~~ taxable under this section; ~~but~~ However, any amount contributed to such the fund by the employer and all earnings of such the fund ~~shall~~ must be included in computing the income of the distributee in the year in which distributed or made available to ~~him~~ the distributee.

~~(5)~~(6) ~~Where~~ If any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, ~~(except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction)~~, or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, ~~such then that~~ that part of the income of the trust ~~shall~~ must be included in computing the net income of the grantor."

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

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$1,500, as adjusted under the provisions of

subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by \$800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

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

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable under 15-30-103 or [section 3] and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

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

(8) Individual income tax forms distributed by the department for each tax year must contain instructions

and tables based on the adjusted base year structure for that tax year."

Section 16. Section 15-30-162, MCA, is amended to read:

"15-30-162. Investment credit. (1) ~~There~~ Except as provided in [section 1], there is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954₁ {26 U.S.C. 38}₁, or as that section may be renumbered or amended. However, rehabilitation costs as set forth under section 46 of the Internal Revenue Code of 1954₁ {26 U.S.C. 46}, or as that section may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954₁ {26 U.S.C. 38}, as amended, if the property meets all of the following qualifications:

- (a) it was placed in service in Montana; and
- (b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the ~~taxable tax~~ tax year is 5% of the amount of credit determined under section 46 of the Internal Revenue Code of 1954₁ {26 U.S.C. 46}₁, or as that section may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the ~~taxable tax~~ tax year may not exceed the taxpayer's tax liability for the ~~taxable tax~~ tax year or \$500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the ~~taxable tax~~ tax year the property was located in Montana and the denominator of which is the number of days during the ~~taxable tax~~ tax year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954₁ {26 U.S.C. 47}₁, or as that section may be renumbered or amended.

(6) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit."

Section 17. Section 15-30-164, MCA, is amended to read:

"15-30-164. Credit for alternative fuel motor vehicle conversion. (1) (a) Except as provided in [section 1] and subsection (1)(b) of this section, an individual, a corporation, a partnership, or a small business corporation as defined in 15-31-201 is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred, but the credit may not exceed:

(a) \$500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) \$1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any combination of them.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method."

Section 18. Section 15-30-180, MCA, is amended to read:

"15-30-180. Credit for preservation of historic buildings. (1) ~~There~~ Except as provided in [section 1], there is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

(3) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit."

Section 19. Section 15-30-186, MCA, is amended to read:

"15-30-186. Credit for dependent care assistance. ~~There~~ (1) Except as provided in [section 1], there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable tax~~ year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

(2) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit."

Section 20. Section 15-30-189, MCA, is amended to read:

"15-30-189. Tax credit for physician practicing in rural area. ~~A~~ Except as provided in [section 1], a licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of \$5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his the physician's practice for at least 9 months of the ~~taxable tax~~ year in which the credit is claimed."

Section 21. Section 15-30-192, MCA, is amended to read:

"15-30-192. Income tax relief -- foreign capital depository assessment distribution. (1) The assessment payments made on June 15 of each year by foreign capital depositories pursuant to 15-31-803 must be redistributed to taxpayers as income tax relief as provided in this section.

(2) Each year, the department shall determine the June 15 collections under 15-31-803, including any late payments of assessments that should have been paid on any preceding June 15, together with penalty and interest on late payments. The amount of the collections divided by the number of individual state income taxpayers who filed income tax returns pursuant to 15-30-103 or [section 3] for the previous tax year equals the amount of income tax relief to which each taxpayer is entitled.

(3) The department shall include on each Montana state individual income tax form the amount of the income tax relief provided under this section. The form must provide that after the taxpayer's determination of taxes, the amount of the income tax relief is subtracted from the amount of taxes owed by the taxpayer. If the amount of taxes due is exceeded by the amount of income tax relief, the department shall pay the excess amount to the taxpayer, but only if the amount to be paid exceeds \$10.

(4) (a) A return filed using the filing status married filing jointly is considered to have been filed by one

taxpayer.

(b) A fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 is not considered a taxpayer unless a return was filed on behalf of the decedent the previous year."

Section 22. Section 15-30-202, MCA, is amended to read:

"15-30-202. Withholding of tax from wages. (1) (a) Each employer, except an independent contractor, making payment of wages for employment as defined in 15-30-256 shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department.

(b) For tax years beginning after December 31, 2002, the department shall revise withholding tax tables to provide for a uniform reduction of 5% 3% in the amount withheld on net taxable earnings.

(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part."

Section 23. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable tax~~ year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, ~~{26 U.S.C. 129(d)(2) through (d)(6)}.~~

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the ~~taxable tax~~ year, but the credit may not exceed \$1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, ~~{26 U.S.C. 21(e)(3) and (e)(4)}.~~

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the ~~taxable tax~~ year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, ~~{26 U.S.C. 129(c)(1) or (c)(2)}.~~

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of

an employee does not qualify for the credit allowed under subsection (1):

- (a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or
- (b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit, (or upon which the credit is based), must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, {26 U.S.C. 129(b)}. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) ~~Any~~ Except as provided in subsection (8)(b), any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) (a) ~~If~~ Except as provided in subsection (8)(b), if the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, {26 U.S.C. 1361}, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(b) A shareholder who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2002, may not carry forward any unused portion of the credit. However, a credit taken by an S. corporation on behalf of its shareholders must be allocated to the shareholder who has elected to determine tax liability under the provisions of [sections 1 through 4] as if the shareholder were eligible for the credit.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code, {26 U.S.C. 129(e)}, apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state."

Section 24. Section 15-31-137, MCA, is amended to read:

"15-31-137. Small business corporation and partnership credit for alternative fuel conversion. (1)

If equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are claimed as a credit under 15-30-164 by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

(2) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under 15-30-164. However, a credit taken by an S. corporation or a partnership on behalf of its shareholders or members must be allocated to the shareholder or partner who has elected to determine tax liability under the provisions of [sections 1 through 4] as if the shareholder or partner were eligible for the credit."

Section 25. Section 15-31-151, MCA, is amended to read:

"15-31-151. Credit for preservation of historic buildings. (1) (a) ~~There~~ Except as provided in subsection (3)(b), there is allowed as a credit against the taxes imposed by ~~15-31-101, 15-31-121, and 15-31-122~~ this chapter a percentage of the credit allowed for qualified rehabilitation expenditures, with respect to any certified historic building located in Montana, as provided in 26 U.S.C. 47 or as that section may be renumbered or amended.

(b) The amount of the credit allowed for a tax year is 25% of the amount of the credit determined under 26 U.S.C. 47(a)(2) or as that section may be renumbered or amended.

(2) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(3) (a) If the credit under this section is claimed by a small business corporation, as defined in 15-31-201,

or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

(b) A shareholder or partner who elects to be taxed under the provisions of [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2002, may not carry forward any unused portion of the credit. However, a credit taken by a small business corporation or a partnership under this section must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 26. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations. (1) ~~A~~ Except as provided in [section 1], a resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, up to \$250 per year for 4 years. The credit may not exceed the taxpayer's income tax liability for the ~~taxable tax~~ tax year in which the credit is claimed.

(2) For the purposes of this section, installation costs include the cost of:

- (a) trenching, well drilling, casing, and downhole heat exchangers;
- (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
- (c) ground source or ground coupled heat pumps;
- (d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and
- (e) design and labor.

(3) ~~(a) The~~ Except as provided in subsection (3)(b), the tax credit allowed under this section is deductible from the taxpayer's income tax liability for the ~~taxable tax~~ tax year in which the installation costs were incurred and for the next 3 ~~taxable tax~~ tax years succeeding the ~~taxable tax~~ tax year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section.

(b) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not deduct any portion of the credit allowed under this section."

Section 27. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial investment credit -- wind-generated electricity. (1) ~~An~~ Except as provided

in [section 1] and subsection (4) of this section, an individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system located in Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

- (a) manufacturing plants located in Montana that produce wind energy generating equipment;
- (b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- (c) the wind energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

- (a) generating equipment;
- (b) safety devices and storage components;
- (c) transmission lines necessary to connect with existing transmission facilities; and
- (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

(4) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 28. Section 15-32-404, MCA, is amended to read:

"15-32-404. Carryover of credit. (1) ~~The~~ Except as provided in subsection (2), the tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the ~~taxable~~ tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the ~~taxable~~ tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding ~~taxable~~ tax year or years until

the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, ~~no~~ a credit may not be carried beyond the seventh ~~taxable tax~~ year succeeding the ~~taxable tax~~ year in which the equipment was placed in service.

(2) For tax years beginning after December 31, 2002, a shareholder or a partner who elects to determine tax liability under [sections 1 through 4] may not carry forward any unused portion of a credit allowed under 15-32-402."

Section 29. Section 15-61-202, MCA, is amended to read:

"15-61-202. Tax exemption -- conditions. (1) (a) Except as provided in [section 1] and this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(b) If an employee or account holder elects to determine the employee's or account holder's tax liability under [sections 1 through 4], the amount of the principal and income in the account before the tax year in which the election is effective may be retained tax-free. Amounts withdrawn from the account for eligible medical expenses are exempt from taxation. Withdrawal of funds from the account for purposes other than medical expenses or long-term care is subject to the provisions of 15-61-203.

(2) An employee or account holder may exclude as an annual contribution in 1 year not more than \$3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not

exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of \$3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

Section 30. Section 15-62-204, MCA, is amended to read:

"15-62-204. Higher education expenses -- exemption from taxable income. (1) ~~A~~ Except as provided in [section 1] and this section, a person may in any year deposit into an individual trust or savings account up to \$3,000 that is deductible for tax purposes under 15-30-111(2)(l) to pay the qualified higher education expenses for the benefit of a designated beneficiary.

(2) If a person elects to determine tax liability under [sections 1 through 4], the amount of the principal and income in the account at the time of the election may be retained tax-free. Amounts withdrawn from the account for eligible qualified higher education expenses are exempt from taxation. A nonqualified withdrawal of funds from the account is subject to the provisions of 15-62-201."

Section 31. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption -- conditions. (1) (a) Except as provided in [section 1] and this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and

all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(b) If an employee or account holder elects to determine the account holder's tax liability under [sections 1 through 4], the amount of the principal and income in the account at the time of the election may be retained tax-free. Amounts withdrawn from the account for eligible costs are exempt from taxation. Withdrawal of funds from the account for purposes other than eligible costs is subject to the provisions of 15-63-203.

(2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to \$3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to \$6,000.

(c) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account.

An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

(9) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

Section 32. Section 17-6-316, MCA, is amended to read:

"17-6-316. Economic development loan -- infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan must be made to a local government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is, except as provided in [section 1], entitled to a credit against taxes due under Title 15, chapter 30 or 31, for the portion of the fees attributable to the use of the infrastructure.

(4) (a) The Except as provided in subsection (4)(b), the total amount of tax credit claimed may not

exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years.

(b) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward or carry back any unused portion of the credit."

Section 33. Section 80-12-211, MCA, is amended to read:

"80-12-211. Income tax deduction for land sale to beginning farmers. ~~A~~ Except as provided in [section 1], a landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in his taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of \$50,000, provided the transaction is approved by the authority for this purpose."

Section 34. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000; or

(b) a qualified Montana small business investment capital company a certified Montana small business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as a qualified Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) (a) The total amount of tax credits authorized for a single qualified capital company or a qualified Montana small business investment capital company may not exceed \$1,500,000, except that a qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the ~~foregoing~~ limitation of this subsection.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to

qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to a qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by a qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to a qualified Montana small business investment capital company in accordance with this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in a qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as a qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as a qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and ~~(9)~~ (10), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied to a qualified small business investment capital company, the maximum tax credit is \$250,000 per taxpayer and the tax credit limitation relating to a capital investment in a qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. ~~The~~ Except as provided in [section 1], the credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation

defined in 15-31-201 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the ~~taxable tax~~ year in which the investment in a qualified Montana capital company or a qualified Montana small business investment capital company is made. If Except as provided in subsection (8), if the amount of the tax credit exceeds the taxpayer's tax liability for the ~~taxable tax~~ year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current ~~taxable tax~~ year plus the amount of credit, if any, carried forward from a previous ~~taxable tax~~ year exceeds the taxpayer's tax liability for the current ~~taxable tax~~ year, the excess must be carried back as a credit to the 3 preceding ~~taxable tax~~ years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding ~~taxable tax~~ years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 ~~taxable tax~~ years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) For tax years beginning after December 31, 2002, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry back or carry forward any unused portion of the credit.

~~(8)(9)~~ The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

~~(9)(10)~~ (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not more than \$250,000 in the case of a qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection ~~(9)(b)~~ (10)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in a qualified Montana small business investment capital company."

NEW SECTION. Section 35. Coordination instruction. (1) If Senate Bill No. 92 and [this act] are both passed and approved and if Senate Bill No. 92 repeals or extends the termination date related to the tax credit for recycling of material and the deduction for the purchase of recycled material then:

(a) [section 2] of Senate Bill No. 92, amending 15-32-602, must read as follows:

"15-32-602. (Temporary) Amount and duration of credit -- how claimed. (1) Except as provided in [section 1 of ~~LC0740~~ HOUSE BILL NO. 617], an individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to ~~15-32-603(3)~~ and subsection (4) of this section, a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3) of this section, for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased. ~~If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992.~~

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first \$250,000 invested;

(b) 15% of the cost of the property on the next \$250,000 invested; and

(c) 5% of the cost of the property on the next \$500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of \$1 million.

~~(Terminates December 31, 2001--sec. 1, Ch. 411, L. 1997.)"~~

(b) [section 3] of Senate Bill No. 92, amending 15-32-603, must read as follows:

"15-32-603. (Temporary) Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material. (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of

this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

~~(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.~~

~~(3) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 2002.~~

~~(4)~~(2) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

~~(5)~~(3) A tax credit otherwise allowable under this section that is not used by the taxpayer in the ~~taxable~~ tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

~~(6)~~(4) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

~~(7)~~(5) (a) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other

respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(b) A shareholder who elects to determine the shareholder's tax liability under the provisions of [sections 1 through 4 of ~~LC0710~~ HOUSE BILL NO. 617] may not claim the credit allowed in this part. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit.

~~(Terminates December 31, 2001--sec. 1, Ch. 411, L. 1997.)"~~

(c) Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. ~~It~~ Except as provided in [section 1 of ~~LC0710~~ HOUSE BILL NO. 617], in addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. ~~(Terminates December 31, 2001--sec. 4, Ch. 542, L. 1995.)"~~

(2) If Senate Bill No. 92 is not passed and approved, then [section 1(3)(b) and (4)(j) of this act] are void.

(3) IF HOUSE BILL NO. 598 AND [THIS ACT] ARE BOTH PASSED AND APPROVED AND IF HOUSE BILL NO. 598 REPEALS 80-12-211, THEN [SECTIONS 1(2)(H) AND 33 OF THIS ACT] ARE VOID.

NEW SECTION. Section 36. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through 4].

NEW SECTION. Section 37. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 38. Effective date. [This act] is effective January 1, 2002.

NEW SECTION. Section 39. Applicability. [This act] applies to tax years beginning after December 31, 2002.

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