

HOUSE BILL NO. 749

INTRODUCED BY PETERSON, BALES, R. BROWN, DEVLIN, FORRESTER, FUCHS, GILLAN, GLASER,
LAKE, LAMBERT, MENDENHALL, A. OLSON, ROSS, STORY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TAXES; IMPOSING A STATEWIDE GENERAL RETAIL SALES TAX AND USE TAX ON THE SALE OF CONSUMER GOODS AND SERVICES; PROVIDING FOR THE ADMINISTRATION OF THE SALES TAX AND USE TAX; PROVIDING THAT SALES OF CERTAIN GOODS AND SERVICES AND OTHER TRANSACTIONS ARE EXEMPT FROM THE SALES TAX AND USE TAX; PROVIDING A VENDOR ALLOWANCE FOR THE ADMINISTRATIVE COSTS OF COLLECTING SALES TAX AND USE TAX ON THE STATE'S BEHALF; DIRECTING THE DEPARTMENT OF REVENUE TO PURSUE BECOMING A SIGNATORY TO THE STREAMLINED SALES AND USE TAX AGREEMENT; PROVIDING PENALTIES FOR CERTAIN ACTS OR OMISSIONS; PROVIDING FOR THE ALLOCATION AND APPROPRIATION OF SALES TAX AND USE TAX REVENUE; PROVIDING PROPERTY TAX RELIEF AND INCOME TAX RELIEF FOR MONTANA INDIVIDUALS AND BUSINESSES; REVISING THE PROCEDURE FOR CALCULATING LOCAL GOVERNMENT LEVY LIMITS; INCREASING THE PERSONAL EXEMPTION FOR INDIVIDUAL INCOME TAXES; ELIMINATING DEDUCTIBILITY OF FEDERAL INCOME TAX PAID FROM INDIVIDUAL INCOME TAXES; ESTABLISHING A SINGLE, FLAT RATE FOR INDIVIDUAL INCOME TAX PURPOSES; EXCLUDING 50 PERCENT OF CAPITAL GAIN INCOME FROM INDIVIDUAL INCOME TAXATION AND FROM CORPORATION LICENSE TAXATION; PROVIDING FULL STATE FUNDING FOR ELEMENTARY AND HIGH SCHOOL BASE FUNDING PROGRAMS BY INCREASING TO 80 PERCENT THE DIRECT STATE AID SHARE OF FUNDING FOR THE ELEMENTARY AND HIGH SCHOOL BASE FUNDING PROGRAMS; INCREASING DIRECT STATE AID OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT; ELIMINATING GUARANTEED TAX BASE FOR THE BASE FUNDING PROGRAM AS A RESULT OF FULL STATE FUNDING FOR THE PROGRAM; ALLOWING THE QUALIFIED ELECTORS OF MONTANA TO APPROVE OR REJECT THE SALES TAX AND USE TAX LAWS BY PROVIDING A CONTINGENT TERMINATION OF THIS ACT; AMENDING SECTIONS 15-1-501, 15-10-420, 15-16-101, 15-24-304, 15-16-101, 15-30-101, 15-30-103, 15-30-111, 15-30-112, 15-30-121, 15-30-137, 15-30-1112, 15-30-1113, 15-31-114, 15-62-208, 17-7-301, 17-7-502, 20-3-106, 20-3-324, 20-5-323, 20-6-702, 20-7-102, 20-9-104, 20-9-141, 20-9-306, 20-9-307, 20-9-308, 20-9-343, 20-9-344, 20-9-347, 20-9-351, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-501, 20-9-515, 20-10-144, 23-2-512, 23-2-616, 23-2-817, 61-3-303, 67-3-201, AND 67-3-204, MCA; REPEALING SECTION 244, CHAPTER 574, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE

DATE, ~~AND~~ APPLICABILITY DATES, AND A CONTINGENT TERMINATION DATE."

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

NEW SECTION. Section 1. Definitions. For purposes of [sections 1 through ~~52~~ 53], unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement provided for under [sections ~~53~~ 54 through ~~60~~ 61].

(2) (a) "Agriculture" means:

(i) the raising, growth, or production for commercial purposes of:

(A) food, feed, and fiber commodities;

(B) livestock and poultry;

(C) bees;

(D) fruits and vegetables; and

(E) sod, ornamental, nursery, and horticultural crops; and

(ii) the raising of domestic animals or wildlife in domestication or a captive environment.

(b) Whenever the term agricultural is used, it is within the context of agriculture as defined in this section.

(3) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 1/2 of 1% or more of alcohol by volume.

(4) (a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.

(b) The term does not include any preparation that contains flour and that requires refrigeration.

(5) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(6) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(7) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(8) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(9) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(10) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(a) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in subsections (10)(a)(i) through (10)(a)(v);

(b) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(c) is required to be labeled as a dietary supplement, identifiable by the "supplemental facts" box found on the label and as required pursuant to 21 CFR 101.36.

(11) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(a) recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary and any supplement to them;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(c) intended to affect the structure or any function of the body.

(12) (a) "Durable medical equipment" means equipment, including repair and replacement parts for equipment, that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(b) The term does not include mobility-enhancing equipment.

(13) "Electronic" means technology that relates to having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect economic benefit.

(15) (a) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for taste or nutritional value.

(b) The term does not include alcoholic beverages, candy, dietary supplements, soft drinks, or tobacco.

(16) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(17) "Grooming and hygiene products" means soap and other cleaning solutions for the human body, feminine hygiene products, shampoo, toothpaste, mouthwash, antiperspirants, deodorants, suntan lotion, and sunscreen, regardless of whether the items meet the definition of over-the-counter drugs.

(18) (a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of lease or rental in this subsection (18) must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

(d) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments; or

(iii) the provision of tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed.

For the purpose of this subsection (18)(d)(iii), an operator shall do more than maintain, inspect, or set up the tangible personal property.

(19) "Maintaining an office or other place of business" means:

(a) a person having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or place of business; or

(b) an agent operating within this state under the authority of the person or its subsidiary, whether the place of business or agent is located within the state permanently or temporarily or whether or not the person or its subsidiary is authorized to do business within this state.

(20) (a) "Manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business.

(b) The term does not include construction or mining.

(21) (a) "Mobility-enhancing equipment" means equipment, including repair and replacement parts, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or in a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(b) The term does not include durable medical equipment.

(22) (a) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66.

(b) An over-the-counter drug label includes:

(i) a drug facts panel; or

(ii) a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(c) The term does not include grooming and hygiene products.

(23) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(24) (a) "Prepared food" means:

(i) food sold in a heated state or heated by the seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(b) The term does not include food that is only cut, repackaged, or pasteurized by the seller or eggs, fish, meat, poultry, or foods containing any of these raw animal foods if cooking of the animal foods by the consumer is recommended by the food and drug administration in chapter 3, part 401.11, of its Food Code to prevent food-borne illnesses.

(25) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner as authorized by the laws of Montana.

(26) (a) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of computer software programs does not cause the combination to be other than prewritten computer software.

(b) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the purchaser. If a person modifies or enhances computer software that the person has not written or created, the person is considered to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion of computer software that is modified or enhanced to any degree, if the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(27) (a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct physical deformity or malfunction; or
- (iii) support a weak or deformed portion of the body.

(b) The term does not include any treatment or enhancement undertaken for cosmetic purposes only.

(28) "Property" means personal property as defined in 15-1-101.

(29) "Purchase price" applies to the measure subject to sales tax or use tax and has the same meaning as sales price.

(30) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is

furnished.

(31) "Registration" or "seller's registration" means the numbered seller's registration described in [section ~~32~~ 33].

(32) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(33) "Sale", "selling", or "buying" means:

- (a) the transfer of property for consideration; or
- (b) the performance or receipt of a service for consideration.

(34) (a) "Sales price" applies to the measure subject to sales tax or use tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) the seller's cost of the property sold;
- (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) delivery charges;
- (v) installation charges; or
- (vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) The term does not include:

- (i) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
 - (ii) interest, financing charges, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
 - (iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
 - (iv) trade-in value of tangible personal property when the trade-in and purchase occur in one transaction.
- (35) "Sales tax" and "use tax" mean the applicable tax imposed by [section 2].

(36) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

(37) "Service" means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge that involve predominantly the performance of a service as distinguished from selling property. In determining what is a service, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(38) (a) "Soft drink" means a nonalcoholic beverage that contains natural or artificial sweeteners. For the purposes of [sections 1 through ~~52~~ 53], the term includes:

(i) bottled water, mineral water, and other nonalcoholic beverages typically sold in cans, bottles, or similar packaging or through a fountain-type dispenser; and

(ii) the beverages or mixtures commonly referred to as milkshakes or malteds.

(b) Except as provided in subsection (38)(a)(ii), the term does not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

(39) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.

(40) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(41) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.

(42) (a) "Value" means the total amount of property or the reasonable value of other consideration paid for the use of the property, exclusive of any type of time-price differential.

(b) In a transaction in which the amount of money or other consideration paid does not represent the value of the property or service purchased, the use tax must be imposed on the reasonable value of the property purchased.

NEW SECTION. Section 2. Imposition and rate of sales tax and use tax -- exceptions. (1) A sales tax of 4% is imposed on the sales price of all sales of services and tangible personal property. The sales tax is imposed on the purchaser and, except when the purchaser has a direct payment permit as provided in [section 8], the sales tax must be collected by the seller and paid to the department by the seller. The seller holds all sales taxes collected in trust for the state.

(2) For the privilege of using property within this state, there is imposed on the person using property

a use tax equal to 4% of the value of the property that was:

- (a) manufactured by the person using the property within this state;
- (b) acquired outside this state as the result of a transaction that would have been subject to the sales tax had the transaction occurred within this state;
- (c) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or
- (d) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (2)(b) or (2)(c) but which transaction, because of the purchaser's subsequent use of the property, is subject to the sales tax or use tax.

(3) (a) For the privilege of using services within this state, there is imposed on the person using services a use tax equal to 4% of the value of the services at the time at which they were rendered.

(b) Services are taxable under this section if the services were initially not subject to the sales tax or use tax but because of the buyer's subsequent use of the services in this state are subject to the sales tax or use tax.

(4) For purposes of this section, the value of property must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is latest.

(5) The sale of property or services exempt or nontaxable under [sections 1 through 52 53] is exempt from the tax imposed in subsections (1) through (3).

NEW SECTION. Section 3. Presumption of taxability -- rounding rules. (1) In order to prevent evasion of the sales tax or use tax and to aid in the administration of the sales tax and use tax, it is presumed that:

- (a) all sales by a person engaging in business are subject to the sales tax or use tax; and
- (b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use within this state.

(2) The department shall adopt rules providing for the payment of the sales tax or use tax that comply with the rounding rules adopted by the agreement.

NEW SECTION. Section 4. Credit -- out-of-state taxes. If a sales tax, use tax, or similar tax has been levied by another state or a political subdivision of another state on property or a service that was purchased outside this state but that will be used or consumed within this state and the tax was paid by the current user, the

amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

NEW SECTION. Section 5. Separate statement of sales tax or use tax -- no advertising to absorb or refund sales tax or use tax. (1) If a person collects a sales tax or use tax in excess of the tax imposed by [section 2], both the tax and the excess tax must be remitted to the department.

(2) The sales tax or use tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the sales tax or use tax imposed by [sections 1 through 52 53] will be absorbed or refunded.

NEW SECTION. Section 6. Liability of user for payment of use tax. (1) A person within this state who uses property or a service is liable to the state for payment of the use tax if the use tax is payable on the value of the property or service but has not been paid.

(2) The liability imposed by this section on the purchaser is discharged if the purchaser has paid the use tax to the seller for payment to the department.

NEW SECTION. Section 7. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) Except when the purchaser has a direct payment permit as provided in [section 8], a person engaging in the business of selling property or services subject to taxation under [sections 1 through 52 53] shall collect the sales tax or use tax from the purchaser and pay the sales tax or use tax collected to the department.

(2) (a) A person that solicits or exploits the consumer market within this state by regularly and systematically performing an activity within this state and whose sales are not subject to the sales tax shall collect the use tax from the purchaser and pay the use tax collected to the department.

(b) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following within this state:

(i) maintaining an office or other place of business that solicits orders through employees or independent contractors;

(ii) canvassing;

(iii) demonstrating;

- (iv) collecting money;
- (v) warehousing or storing merchandise;
- (vi) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers;
- (vii) to the extent permitted by federal law, soliciting orders for property by means of telecommunications or a television shopping system or by providing telecommunications services that use toll or toll-free numbers and that are intended to be broadcast by cable, satellite, or other means to consumers within this state;
- (viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for property or services by means of advertising disseminated primarily to consumers located within this state;
- (ix) soliciting orders for property or services by mail through the distribution of catalogs, periodicals, advertising flyers, or other advertising;
- (x) soliciting orders, pursuant to a contract with a cable or satellite television operator located within this state, for tangible personal property or services by means of advertising transmitted or distributed over a cable or satellite television system within this state; or
- (xi) participating in an act that benefits from banking, financing, debt collection, telecommunications, or marketing activities occurring within this state or that benefits from the location within this state of authorized installation, servicing, or repair facilities.

(3) Multistate registration pursuant to the agreement may not be used as a factor to determine whether the person is conducting an activity within the state subjecting the person to the sales tax or use tax.

(4) A person engaging in business within this state shall, before making any sales, register as a seller, as provided in [section ~~32~~ 33] and, at the time of making a sale, whether within or outside of the state, collect the sales tax or use tax imposed by [section 2] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax or use tax paid.

(5) (a) The department may authorize the collection of the sales tax or use tax imposed by [section 2] by any seller who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law or who has registered:

- (i) as provided in [section ~~32~~ 33]; or
- (ii) under the multistate central registration system established under the agreement.

(b) A person authorized under subsection (5)(a) shall collect the use tax upon all property that, to the person's knowledge, is for use within this state and subject to taxation under [sections 1 through ~~52~~ 53].

(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any

person under [sections 1 through ~~52~~ 53] constitute a debt owed to this state by the person required to collect the sales tax or use tax.

(7) A person selling property to residents of this state, when the property is delivered to a location within this state, shall, upon request by the department, provide to the department a list of all sales. The list must include the name and address of each purchaser and the amount of each sale. The department may pay to any person furnishing a list of sales or purchasers the reasonable costs of reproducing the list.

(8) A person engaging in business within this state shall provide to the department:

(a) the names and addresses of all of the person's agents operating within this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(9) If any application of this section is held invalid, the application to other situations or persons is not affected.

NEW SECTION. Section 8. Direct payment of sales tax or use tax -- direct payment permits. (1)

The department may issue direct payment permits to any person liable for the payment of more than \$500 a year in sales taxes or use taxes. A person who desires to make direct payment shall apply to the department, on forms approved by the department. By applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to pay the sales tax due and use tax due under [sections 1 through ~~52~~ 53] made by the applicant as a direct payment permitholder. A direct payment permit may be revoked by the department at any time upon 90 days' written notice to the permittee. A direct payment permitholder may be audited by the department.

(2) A direct payment permitholder shall pay the sales tax and use tax authorized under [sections 1 through ~~52~~ 53] directly to the department. The permitholder must receive an exemption certificate, as provided in [section 9], using the direct payment permit as a basis for the exemption.

NEW SECTION. Section 9. Exemption certificate -- form -- rules. (1) The department shall provide by rule for a uniform exemption certificate. An electronic or digitally usable version of an exemption certificate may also be provided. A purchaser shall provide the exemption certificate number when purchasing goods or services for resale or for other nontaxable transactions.

(2) At a minimum, the exemption certificate must provide:

(a) a unique identification number;

- (b) the nature of the exemption, such as:
 - (i) the purchase of types of property and services for resale;
 - (ii) the purchase of types of property and services for agriculture, mining, or manufacturing;
 - (iii) that the purchaser holds a valid direct payment permit as described in [section 8]; or
 - (iv) that the purchaser is an entity exempt from payment of sales tax or use tax;
- (c) the name and address of the purchaser; and
- (d) if it is a paper certificate, a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for an exemption certificate prior to [90 days following the effective date of this section]. The rules adopted by the department must ensure that each person eligible for an exemption certificate within this state prior to [the applicability date of this section] that has applied in a timely fashion is issued an exemption certificate prior to [the applicability date of this section].

NEW SECTION. Section 10. Exemption certificate -- requirements. (1) A purchaser shall provide an exemption certificate number to the seller at the time that a nontaxable transaction occurs.

(2) A purchaser who presents an exemption certificate number shall provide information on the purchaser's identity and the nature of the purchaser's exemption.

(3) If the seller accepts an exemption certificate number at the time of the sale or lease and obtains proper information on the identity of the purchaser and the nature of the purchaser's exemption, the purchaser is liable for payment of the sales tax or use tax due on sales for which the purchaser incorrectly claimed an exemption. If the incorrect claim was made with the intent to evade the payment of the sales tax or use tax, the purchaser is subject to the penalty provided in [section 35 36].

NEW SECTION. Section 11. Exempt services. (1) The following services, as enumerated in the North American Industry Classification System Manual (NAICS), 1997, prepared by the United States office of management and budget, office of the president, are exempt from taxation:

- (a) health services (NAICS sector 62);
- (b) educational services (NAICS sector 61);
- (c) agriculture, forestry, and fishing and hunting services (NAICS sector 11), except fishing, hunting, and trapping (NAICS subsector 114);
- (d) only to the extent that it must be exempt under federal law, radio and television broadcasting (NAICS group 5131); and

- (e) transportation (NAICS sector 48), except:
 - (i) nonscheduled air transportation (NAICS group 4812);
 - (ii) transit and ground transportation (NAICS subsector 485), other than urban transit systems (48511) and school and employee bus transportation (NAICS group 4854); and
 - (iii) scenic and sightseeing transportation (NAICS subsector 487).
- (2) The following are also specifically exempt from the sales tax and use tax imposed in [section 2]:
 - (a) services rendered by an employee for the employee's employer;
 - (b) commissions earned or service fees paid by an insurance company to an agent, insurance producer, or representative for the sale of an insurance policy;
 - (c) the rental or lease of a motor vehicle having a manufacturer's rated capacity of 1 ton or more;
 - (d) services provided by a corporation to:
 - (i) another corporation that is centrally assessed and that has identical ownership to the corporation providing the service; and
 - (ii) a subsidiary that is wholly owned by the corporation providing the service and that is centrally assessed;
 - (e) retail telecommunications services subject to the retail telecommunications excise tax under Title 15, chapter 53; and
 - (f) gambling that is regulated under Title 23, chapter 5.

NEW SECTION. Section 12. Exemption -- government agencies -- utilities. (1) Except as provided in subsection (2), all sales by, sales to, or uses by the United States, this state, an agency or instrumentality of the United States or of this state, a political subdivision of this state, an Indian tribe, or a foreign government are exempt from the sales tax and use tax.

(2) The sale or use of natural gas, water, electricity, refuse collection, or other utility services is exempt from the sales tax and use tax.

(3) The sale or use of a telecommunication service is exempt to the extent that taxation of the service violates federal law.

NEW SECTION. Section 13. Exemption -- agriculture. (1) Except as provided in subsection (2), sales by, sales to, or uses by a person engaged in agriculture are exempt from the sales tax and use tax.

(2) (a) A purchase by a person engaged in agriculture is exempt from the sales tax or use tax only if the

property or service purchased is used exclusively in or for the person's agricultural operation.

(b) A sale by a person engaged in agriculture is exempt from the sales tax and use tax only if the property or service sold is substantially a nonretail agricultural sale.

NEW SECTION. Section 14. Exemption -- food products. (1) Except as provided in subsection (3), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

(2) The sale of food purchased under the special supplemental food program for women, infants, and children as specified in 42 U.S.C. 1786, as amended, is exempt from the sales tax and use tax.

(3) Except as provided in subsection (4), the sale of prepared food and food sold through vending machines is taxable.

(4) Prepared food offered or delivered as part of a residential living arrangement and consumed by an individual that is party to the arrangement or by patients of a health care facility is exempt from the sales tax and use tax.

NEW SECTION. Section 15. Exemption -- medicine, drugs, and certain devices. The following are exempt from the sales tax and use tax imposed in [section 2]:

- (1) prescription drugs, over-the-counter drugs, insulin, and oxygen; and
- (2) therapeutic and prosthetic devices, durable medical equipment, and mobility-enhancing equipment.

NEW SECTION. Section 16. Exemption -- vehicles. (1) The sale and use of a vehicle described in subsection (2) is exempt from the sales tax and use tax.

(2) The following vehicles are exempt under subsection (1):

(a) a vehicle, EXCEPT A MOTOR HOME, AS DEFINED IN 61-1-130, that exceeds the maximum limit for consideration as a light vehicle, as defined in 61-1-139; and

(b) a vehicle that has a manufacturer's rated capacity of 1 ton or more and is required, under 61-10-201, to pay the fee for a maximum gross loaded weight of 1 ton or more.

(3) THE SALE OF A MOTOR HOME, AS DEFINED IN 61-1-130, IS SUBJECT TO THE SALES TAX AND USE TAX.

NEW SECTION. Section 17. Exemption -- insurance premiums. The premiums paid to an insurance company, a health service corporation, a health maintenance organization, or a fraternal benefit society or to an agent or producer of an insurance company, health service corporation, health maintenance organization, or

fraternal benefit society are exempt from the sales tax and use tax.

NEW SECTION. Section 18. Exemption -- dividends and interest. The following are exempt from the sales tax and use tax imposed in [section 2]:

- (1) interest on money loaned or deposited;
- (2) interest or dividends that accrue from stocks, bonds, or securities; and
- (3) proceeds from the sale of stocks, bonds, or securities.

NEW SECTION. Section 19. Exemption -- isolated or occasional sale or lease of property. (1) The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax.

(2) An occasional sale includes a sale that is occasional but not continuous and that is made for the purpose of fundraising by a nonprofit organization, including but not limited to a youth club, a service club, or a fraternal organization.

NEW SECTION. Section 20. Exemption -- personal effects. The use by an individual of personal or household effects brought into the state for the establishment by the individual of an initial residence within this state and the use of property brought into the state by a nonresident for the nonresident's own nonbusiness use while temporarily within this state are exempt from the use tax.

NEW SECTION. Section 21. Exemption -- agricultural feed, fertilizers, and services. The sale or use of the following when used in the course of an agricultural business is exempt from the sales tax and use tax:

- (1) feed for livestock;
- (2) semen, ova, and embryos used in animal husbandry;
- (3) seeds, roots, and bulbs;
- (4) soil conditioners and fertilizers;
- (5) insecticides, insects used to control weeds or the population of other insects, fungicides, weedicides, and herbicides;
- (6) water for commercial irrigation; and
- (7) agricultural materials, supplies, and services, including repairs, that are used, applied, distributed,

or otherwise employed in the sale or use of property or a service described in subsections (1) through (6).

NEW SECTION. Section 22. Exemption -- agricultural products -- livestock feeding. (1) (a) The sale of livestock, live poultry, unprocessed agricultural products, hides, or pelts by a grower, producer, trapper, or nonprofit marketing association is exempt from the sales tax.

(b) A person engaged in the business of buying and selling wool or mohair or of buying and selling livestock on the person's own account and without the services of a broker, auctioneer, or other agent is considered a producer for the purposes of subsection (1)(a).

(2) Sales from feeding, pasturing, penning, or handling or training livestock prior to sale are exempt from the sales tax.

NEW SECTION. Section 23. Exemption -- minerals -- exceptions. (1) The sale or lease of interests in minerals is exempt from the sales tax and use tax.

(2) Except as provided in subsections (5) and (6), the sale or use of a mineral is exempt from the sales tax and use tax.

(3) (a) Minerals used by the producer of the minerals for purposes of exploring for, producing, or transporting minerals are exempt from the sales tax and use tax.

(b) The exemption provided in subsection (3)(a) does not include the use of refined petroleum products used for exploring for, producing, or transporting minerals.

(4) The sale or use of platinum and palladium, whenever refined and preserved in coins, ingots, bars, rods, rolls, ribbons, wire, or other similar forms, is exempt from the sales tax and use tax.

(5) Minerals used as or integrated into jewelry, used as or integrated into sculpture or another form of art, or used as a decorative embellishment or adornment, either in their own right, in combination with other property, or after being refined, reduced, polished, cut, faceted, or otherwise processed into jewelry, art, or other decorative embellishment are not included in the exemption provided in this section.

(6) Minerals that are used for producing energy or that are used for conversion into energy are subject to the sales tax or use tax unless the energy is produced or converted for resale as a form of energy.

(7) For the purposes of this section, the term "mineral" has the meaning provided in 15-38-103.

NEW SECTION. SECTION 24. EXEMPTION -- SPECIAL FUEL. THE SALE AND USE OF SPECIAL FUEL THAT IS EXEMPT FROM TAXATION UNDER TITLE 15, CHAPTER 70, PART 3, ARE EXEMPT FROM THE SALES TAX AND USE TAX.

NEW SECTION. Section 25. Nontaxability -- agriculture -- construction -- manufacturing -- mining -- certain substances. (1) The sale of property or a service to or the use of property or a service by a purchaser is nontaxable if:

- (a) the purchaser has an exemption certificate;
 - (b) the purchaser is engaged in and uses the property or service in any of the following:
 - (i) agriculture;
 - (ii) the construction industry, as defined in 39-71-116, and the item purchased is incorporated into an improvement to real property that is to be used for commercial purposes or in the construction of public property;
 - (iii) mining. For the purposes of this section, the term "mining" means the carrying on of operations of any kind for the purpose of extracting from the earth any mineral, as defined in 15-38-103, and includes operations of any kind for the extraction of any mineral from any other mineral. The term does not include manufacturing.
 - (iv) manufacturing. For the purposes of this section, the term "manufacturing" has the meaning provided in the North American Industry Classification System Manual (1997) prepared by the United States office of management and budget.
 - (c) (i) the purchaser incorporates the property as an ingredient or component part of the product in the business of mining or manufacturing; or
 - (ii) the purchaser uses the property to extract a mineral and the property is required to be abandoned in place, in accordance with state regulations, when production of the mineral from a mine or wellhead permanently ceases.
- (2) The sale or use of any chemical, reagent, or other substance that is used or consumed in the processing of ores or petroleum in a mill, smelter, refinery, or reduction facility or in acidizing oil wells is nontaxable if the purchaser has an exemption certificate and the purchaser is engaged in and uses the property or service in mining or manufacturing.

NEW SECTION. Section 26. Nontaxability -- sale for resale. (1) The sale of property for resale is nontaxable if:

- (a) the sale is made to a purchaser with an exemption certificate; and
 - (b) the purchaser resells the property either by itself or in combination with other property in the ordinary course of business and the property will ultimately be subject to the sales tax or use tax.
- (2) The sale of a service for resale is nontaxable if:

- (a) the sale is made to a purchaser with an exemption certificate;
- (b) the purchaser resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and
- (c) the subsequent sale is in the ordinary course of business and is subject to the sales tax or use tax.

NEW SECTION. Section 27. Nontaxability -- sale or lease of real property, improvements, mobile homes, and manufactured homes -- exception. (1) Except as provided in subsections (2) and (3), the sale or lease of real property, improvements, a mobile home, or a manufactured home is nontaxable.

(2) (a) The lease or rental of a house, mobile home, manufactured home, condominium, townhouse, cabin, apartment, or other space leased or rented as a dwelling is taxable if the construction of the space was nontaxable under [section ~~24(1)(b)(ii)~~ 25(1)(B)(II)].

(b) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented space described in subsection (2)(a) is nontaxable.

(c) The department must presume that the lease or rental of space described in subsection (2)(a) is taxable unless sufficient evidence is provided to the satisfaction of the department that the lease or rental is nontaxable.

(3) (a) Except as provided in subsection (3)(b), 50% of the value is nontaxable for the sale or use of:

- (i) a mobile home, as defined in 15-1-101; and
- (ii) a manufactured home, as defined in 15-1-101.

(b) (i) The nontaxability of the portion of value provided under this subsection (3) applies only to the initial sale or use in this state of a mobile home or a manufactured home.

(ii) A mobile home or a manufactured home for which a certificate of ownership was issued under Title 61, chapter 3, part 2, before [the applicability date of this section] is nontaxable.

(iii) A manufactured home that was assessed under Title 15, chapter 6, as an improvement before [the applicability date of this section] is nontaxable.

(4) For the purposes of this section, the department of revenue and the department of justice may adopt rules for determining when the sale of a mobile home or a manufactured home is an initial sale and subject to the sales tax or use tax.

NEW SECTION. Section 28. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. (1) A transaction in interstate commerce is nontaxable to the extent that

the imposition of the sales tax or use tax would be unlawful under the United States constitution.

(2) Transmitting messages or conversations by radio is nontaxable when the transmissions originate from a point outside this state and are received at a point within this state.

(3) The sale of radio or television broadcast time for airing an advertisement is nontaxable if:

- (a) the advertising message is supplied by or on behalf of a national or regional seller;
- (b) the advertiser does not have its principal place of business within this state; or
- (c) the advertiser is not incorporated under the laws of this state.

NEW SECTION. Section 29. Nontaxability -- sale of certain services to out-of-state purchaser.

(1) Except as provided in subsection (3), sales of a service are not taxable if the sale is made to a purchaser that delivers to the seller either an exemption certificate or other evidence acceptable to the department that the transaction and the person that delivers the exemption certificate or other evidence acceptable to the department meet the conditions set out in subsection (2).

(2) Sales of a service are not taxable if the purchaser of the service, any of the purchaser's employees, or any person in privity with the purchaser:

- (a) does not make initial use of the product or the service within this state;
- (b) does not take delivery of the product or the service within this state; or
- (c) concurrent with the performance of the service, does not have a regular place of work within this state or spend more than brief and occasional periods of time within this state and:
 - (i) does not have any communication within this state related in any way to the subject matter, performance, or administration of the service with the person performing the service; or
 - (ii) does not personally perform work within this state related to the subject matter of the service.

(3) Services that initially were nontaxable under this section but that no longer meet the criteria in subsection (2) are nontaxable only for the period prior to the disqualification and are, after disqualification, taxable.

NEW SECTION. Section 30. Nontaxability -- sale of tangible personal property for sale, rental, or leasing. The sale of property, other than furniture or appliances that are purchased for use as described in [section ~~26(2)(b)~~ 27(2)(B)], is nontaxable if:

- (1) the sale is made to a purchaser that has an exemption certificate;
- (2) the purchaser is engaged in a business deriving more than 50% of its receipts from selling, renting,

or leasing property of the type leased; and

(3) the purchaser does not use the property in any manner, other than holding it for sale, rental, or lease or selling, renting, or leasing it, either by itself or in combination with other property, in the ordinary course of business.

NEW SECTION. Section 31. Nontaxability -- lease for subsequent lease. The lease of property, other than furniture or appliances that are purchased for use as described in [section ~~26(2)(b)~~ 27(2)(B)], is nontaxable if:

(1) the lease is made to a lessee who has an exemption certificate; and

(2) the lessee does not use the property in any manner, other than for subsequent lease in the ordinary course of business.

NEW SECTION. Section 32. Nontaxability -- use tax -- use of property for leasing. The value of leased property is not considered in computing the use tax due if the person holding the property for lease:

(1) is engaged in a business that derives a substantial portion of its receipts from selling, renting, or leasing property of the type leased;

(2) does not use the property in any manner, other than holding it for sale, rental, or lease or selling, renting, or leasing it, either by itself or in combination with other tangible personal property, in the ordinary course of business; and

(3) does not use the property in a manner incidental to the performance of a service that is taxable under [section 2].

NEW SECTION. Section 33. Seller's registration -- rules. (1) A person that wishes to engage in business within this state shall register as a seller before engaging in business within this state.

(2) Registration may be directly with the department or through the multistate central registration system as provided in the agreement. Sellers registered through the multistate central registration system agree to collect and remit sales taxes and use taxes for taxable Montana sales and comply with audit and compliance provisions established through the agreement.

(3) The department shall register each applicant eligible to engage in business within this state and provide a separate, numbered seller's registration for each location in which the applicant is maintaining an office or other place of business. A registration is valid until revoked or suspended but is not assignable. A registration

is valid only for the person in whose name it is issued and for the transaction of business at the place designated. Except as provided in [section ~~33(1)(e)~~ 34(1)(C)], the registration must be conspicuously displayed at all times at the place for which it is issued.

(4) On or before [60 days after the applicability date of this section], the department shall adopt rules to provide procedures for application and for registering sellers engaging in business within this state prior to [the applicability date of section 2]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of section 2] has the opportunity to be registered prior to [the applicability date of section 2].

NEW SECTION. Section 34. Seller's registration application -- requirements -- place of business -- form. (1) (a) A person that wishes to engage in business within this state shall file with the department an application for a seller's registration. If the person has more than one location in which the person is maintaining an office or other place of business, an application may include multiple locations.

(b) A vending machine operator who has more than one vending machine location is considered to have only one place of business for purposes of this section.

(c) An applicant who does not maintain an office or other place of business and who moves from place to place is considered to have only one place of business and shall attach proof of registration to the applicant's cart, stand, vehicle, or other merchandising device.

(2) Each person or class of persons required to file a return under [sections 1 through ~~52~~ 53], other than persons with direct payment permits and certified service providers, is required to file an application for a seller's registration.

(3) Each application for registration may be either an electronic or a paper form as prescribed by the department. The application must meet the requirements of the multistate central registration system under the agreement even if the applicant intends to make local retail sales only in Montana. The form must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department requires. The application must be made by the owner if the owner is a natural person, by a member or partner if the owner is an association or partnership, or by an authorized person if the owner is a corporation.

NEW SECTION. Section 35. Revocation or suspension of seller's registration -- appeal. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend a seller's

registration held by a person that fails to comply with the provisions of [sections 1 through ~~52~~ 53].

(2) A proposed revocation or suspension is subject to the uniform dispute review procedure established in 15-1-211.

(3) If a registration is revoked, the department may not allow a new registration except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 1 through ~~52~~ 53]. The department may require security in addition to that authorized by [section ~~37~~ 38 or ~~42~~ 43] in an amount reasonably necessary to ensure compliance with [sections 1 through ~~52~~ 53] as a condition for registration of the applicant.

(4) A person aggrieved by the department's final decision to revoke or suspend a seller's registration may appeal the department's decision to the state tax appeal board within 30 days after the date on which the department issued its final decision.

(5) A decision of the state tax appeal board may be appealed to the district court.

NEW SECTION. Section 36. Improper use of subject of purchase obtained with exemption certificate -- penalty. (1) (a) If a purchaser that uses an exemption certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 1 through ~~52~~ 53], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price must be used to determine the amount of sales tax or use tax due.

(b) (i) If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged.

(ii) Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) (a) A person that uses an exemption certificate for purchase of property or services that will be used for other than the claimed exempt use is subject to a penalty, payable to the department. The penalty for each transaction in which an improper use of an exemption certificate has occurred is the greater of:

(i) \$100; or

(ii) 20% of the sales price of the property or service.

(b) If a person repeatedly commits the offense described in subsection (2)(a), the department may refer the matter to the county attorney for prosecution under 45-7-203 or as otherwise considered appropriate.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty.

NEW SECTION. Section 37. Commingling exemption certificate goods. If a purchaser uses an exemption certificate when purchasing fungible goods and commingles these goods with fungible goods that were not purchased with an exemption certificate but that are of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the exemption certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the exemption certificate.

NEW SECTION. Section 38. Liability for payment of tax -- security for retailer without place of business -- penalty. (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A seller that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with [sections 1 through ~~52~~ 53] and may be required to furnish adequate security, as provided in [section ~~42~~ 43], to ensure collection and payment of the taxes. The seller's registration provided for in [section ~~32~~ 33] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a person doing business within this state who is not registered as a seller may not sell, solicit orders for, or deliver any property or services within Montana. If a person, agent, canvasser, or employee violates the provisions of [sections 1 through ~~52~~ 53], the person, agent, canvasser, or employee is subject to a \$250 fine for each separate transaction or event determined to be in violation.

NEW SECTION. Section 39. Application for permission to report on accrual basis. (1) A person that is a registered seller may apply to the department for permission to report and pay the sales tax or use tax on an accrual basis.

(2) The application must be made on a form, prescribed by the department, that contains all information required by the department.

(3) A person may not report or pay the sales tax or use tax on an accrual basis unless the person has received written permission from the department.

NEW SECTION. Section 40. Returns -- payment -- authority of department. (1) Each person engaged in business within this state or using property or services within this state that are subject to tax under [sections 1 through ~~52~~ 53] shall file a return. Sellers that are registered under the agreement and that use either

a certified automated system or a certified service provider are subject to the reporting and payment provisions of subsection (2). All other sellers are subject to the reporting and payment provisions of subsection (3).

(2) (a) On or before the 20th day of each month, a return, in a form adopted by the department in conformance with the agreement, with a remittance of the tax owed for the preceding month, must be filed with the department. The filing and the remittance may be done electronically.

(b) The seller and any agent of the seller, for the purposes of reporting or paying the sales tax or use tax, are subject to the audit and accountability provisions of the agreement.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

- (i) a seller required to collect the tax;
- (ii) a purchaser with a direct payment permit; and
- (iii) a person that:

(A) purchases any item or service the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax to the department.

(b) A return must be filed with and payment must be received by the department on or before the 20th day of each month for taxes owed for sales occurring during the preceding month. A seller that has a tax liability that averages less than \$100 a month may report and pay the tax on a quarterly basis and shall file the return with payment made to the department before the 20th day of the month after the end of the quarter.

(c) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(d) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

(4) (a) A person required to report and to collect and pay to the department the tax collected by the person under [sections 1 through ~~52~~ 53] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through ~~52~~ 53] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department. The department shall comply with the provisions of the agreement in determining reports and records management requirements in reference to sellers that are registered under the agreement.

(b) For the purpose of determining compliance with the provisions of [sections 1 through ~~52~~ 53], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda

are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
- (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
- (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (iv) take testimony on matters material to the determination; and
- (v) administer oaths or affirmations.

NEW SECTION. Section 41. Credit for bad debts -- taxes paid if account collected. (1) (a) Sales tax or use tax paid by a person filing a return under [section ~~39~~ 40] on sales found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax. A bad debt must be deducted on the return for the period during which the bad debt is written off as uncollectible in the seller's books and records and must be eligible to be deducted for federal income tax purposes, whether or not the seller is actually required to file federal income tax returns.

- (b) A bad debt deduction may not include:
 - (i) a finance charge or interest, either on the sale itself or that is attributed to the late payment of the purchase price;
 - (ii) the sales tax or use tax imposed in [section 2];
 - (iii) any uncollectible amount on property that remains in the possession of the seller until the full purchase price is paid;
 - (iv) any expense incurred in attempting to collect any debt; or
 - (v) repossessed property.

(2) If a bad debt that has been deducted is subsequently collected, the sales tax or use tax must be paid and reported on the return filed for the period in which the collection is made. If the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within 5 years of the date of the return on which the bad debt could first be collected.

(3) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on the bad debt are applied first proportionally to the taxable price of the property or service and the tax on the property or service and second to interest, service charges, and any other charges.

(4) If filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance.

(5) If the books and records of the seller claiming the bad debt allowance support an allocation of the bad debts among several states, the bad debts may be allocated among those states.

NEW SECTION. Section 42. Vendor allowance. (1) In lieu of the vendor allowance provided in subsection (3), a certified service provider must receive a monetary allowance determined as provided in the agreement, and the seller using the certified service provider may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax proceeds collected by the seller using the certified service provider.

(2) In addition to the vendor allowance provided in subsection (3), a registered seller using a certified automated system must receive a percentage of the tax determined to be payable to the state. The percentage must be determined as provided in the agreement.

(3) (a) A person filing a return under [section ~~39~~ 40] may claim a monthly vendor allowance for each permitted location in the amount of 1.5% of the tax determined to be payable to the state or \$50 a month, whichever is less.

(b) A person filing a quarterly return may claim 5% of the tax determined to be payable to the state or \$150 a quarter, whichever is less.

(c) The allowance may be deducted on the return.

NEW SECTION. Section 43. Security -- limitations -- bond. (1) The department may require a person registered under [section ~~32~~ 33] to deposit with the department security in a form and amount that the department determines is appropriate. The security deposit may not be more than twice the estimated average liability for the period for which a return is required to be filed or \$10,000, whichever is less.

(2) In lieu of security, the department may require a person registered under [section ~~32~~ 33] to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(3) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under [sections 1 through ~~52~~ 53].

NEW SECTION. Section 44. Examination of return -- adjustments -- delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section ~~39~~ 40] constitutes the tax to be paid.

(2) (a) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment are mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211.

(b) If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must state the amounts of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

NEW SECTION. Section 45. Penalties and interest for violation. The provisions of 15-1-216 apply to returns, reports, and failure to pay the tax required under [sections 1 through ~~52~~ 53].

NEW SECTION. Section 46. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through ~~52~~ 53].

(b) If a tax imposed by [sections 1 through ~~52~~ 53] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before

funds are available for offset.

NEW SECTION. Section 47. Limitations. (1) Except in the case of a person that purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 52 53], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date that the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which consent was given.

(3) The limitations prescribed for giving notice of a proposed assessment of additional tax under subsection (1) do not apply if:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitations; or

(ii) until 1 year after any changes in the person's federal tax have become final or any amended federal return is filed as a result of a suspension of the federal statute, whichever occurs later; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return, as required by 15-30-146 or 15-31-506, until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

NEW SECTION. Section 48. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 52 53] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes in 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

- (i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or
- (ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 49. Administration -- rules. (1) The department shall:

- (a) administer and enforce the provisions of [sections 1 through ~~52~~ 53];
 - (b) cause to be prepared and distributed forms and information that are necessary to administer the provisions of [sections 1 through ~~52~~ 53]; and
 - (c) adopt rules that are necessary or appropriate to administer and enforce the provisions of [sections 1 through ~~52~~ 53].
- (2) (a) In administering the provisions of [sections 1 through ~~52~~ 53], the department shall, when applicable and not in conflict with Montana law, follow the provisions of the agreement.
- (b) The department shall report to the revenue and transportation interim committee, as provided in 5-5-227, on:
- (i) the operation of the agreement and the benefits and costs to the state of its participation in the agreement; and
 - (ii) changes to the agreement that require changes in Montana law for compliance with the agreement.

NEW SECTION. Section 50. Revocation of corporate license -- hearing authorized -- appeal. (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 1 through ~~52~~ 53] fails to comply with any of the provisions of [sections 1 through ~~52~~ 53] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

(2) The secretary of state shall, upon receipt of the certification, revoke the certificate authorizing the corporation to do business within this state and may issue a new certificate only when the corporation has obtained from the department an order finding that the corporation has complied with its obligations under [sections 1 through ~~52~~ 53].

(3) An order authorized in this section may not be made until the corporation is given an opportunity to be heard before the department as provided in Title 2, chapter 4.

(4) A final decision of the department may be appealed to the state tax appeal board.

NEW SECTION. Section 51. Taxpayer quitting business -- liability of successor. (1) (a) All taxes

payable under [sections 1 through ~~52~~ 53] are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business, or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 30 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business, or disposes of the stock of goods.

(2) Except as provided in subsection (4), a person that becomes a successor is liable for the full amount of the tax and shall withhold from the sales price payable to the predecessor taxpayer a sum sufficient to pay any tax due until the predecessor taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

(3) If a tax is due but has not been paid as provided in subsection (1)(b), the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment upon the sales price, and if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

(4) (a) A successor is not liable for any tax due from the person from whom the successor acquired a business or stock of goods if:

(i) the successor gives written notice to the department of the acquisition; and

(ii) an assessment is not issued by the department against the predecessor taxpayer of the business within 6 months of receipt of the notice of acquisition from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor. If a copy of the assessment is not mailed to the successor, the successor is not liable for the tax due.

NEW SECTION. Section 52. Tax as debt. (1) The tax imposed by [sections 1 through ~~52~~ 53] and related interest and penalties become a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(2) The debt of the personal representative of the estate of a decedent or a fiduciary is limited to the person's official or fiduciary capacity. However, if the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the taxes, interest, and penalties, the person is personally liable for any deficiency.

(3) (a) This section applies to those corporate officers, directors, or shareholders required by the department to personally guarantee the payment of the taxes for their corporations.

(b) In addition to the liability imposed by subsection (3)(a), the officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 1 through ~~52~~ 53]

and who fails to pay the tax is liable to the state for the amounts imposed by [sections 1 through ~~52~~ 53] plus the penalty and interest due, if any, on the amounts.

NEW SECTION. Section 53. Information -- confidentiality -- agreements with another state. (1)

(a) Except as provided in subsections (2) and (3), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under [sections 1 through ~~52~~ 53] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 for violating the confidentiality of individual income tax information.

(2) (a) In addition to the agreement, the department may enter into other agreements with the taxing officials of other states for the interpretation and administration of the laws of the other officials' states that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of [sections 1 through ~~52~~ 53], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information, provided that the statutes are similar to the confidentiality provisions of this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through ~~52~~ 53], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

NEW SECTION. Section 54. Uniform sales and use tax administration. [Sections ~~53~~ 54 through ~~60~~ 61] may be cited as the "Uniform Sales and Use Tax Administration Act".

NEW SECTION. Section 55. Definitions. As used in [sections ~~53~~ 54 through ~~60~~ 61], the following definitions apply:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) "Sales tax" means the tax levied under [section 2].

(6) "Seller" means a person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under [section 2].

NEW SECTION. Section 56. Authority to enter agreement. (1) The department is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

(2) The department is further authorized to take other actions reasonably required to implement the provisions of [sections ~~53~~ 54 through ~~60~~ 61]. Other actions authorized by this section include but are not limited to the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(3) The department or the department's designee is authorized to represent this state before the other states that are signatories to the agreement.

NEW SECTION. Section 57. Relationship to state law. A provision of the agreement, in whole or in part, does not invalidate or amend any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement within this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

NEW SECTION. Section 58. Agreement requirements. The department may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(1) The agreement must set restrictions to achieve over time more uniform rates in Montana through the following:

- (a) limiting the number of state rates;
- (b) limiting the application of maximums on the amount of state tax that is due on a transaction;
- (c) limiting the application of thresholds on the application of state tax.

(2) The agreement must establish uniform standards for the following:

- (a) the sourcing of transactions to taxing jurisdictions;
- (b) the administration of exempt sales;
- (c) the allowances that a seller may take for bad debts;
- (d) sales tax and use tax returns and remittances.

(3) The agreement must require states to develop and adopt uniform definitions of sales tax and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(4) The agreement must provide for an electronic multistate central registration system that allows a seller to register to collect and remit sales taxes and use taxes for all signatory states.

(5) The agreement must provide that registration with the central registration system and the collection of sales taxes and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(6) The agreement must provide for reduction of the burdens of complying with local sales taxes and use taxes through the following:

- (a) restricting variances between the state and local tax bases;
- (b) requiring states to administer any sales taxes and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

- (c) restricting the frequency of changes in the local sales tax and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales taxes and use taxes;

- (d) providing notice of changes in local sales tax and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(7) The agreement must outline any monetary allowances that are to be provided by the states to sellers

or certified service providers.

(8) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(9) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(10) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

NEW SECTION. Section 59. Cooperating sovereigns. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales taxes and use taxes under the adopted law of each member state.

NEW SECTION. Section 60. Limited binding and beneficial effect. (1) The agreement binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1), no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) The law of this state or the application of the law of this state may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

NEW SECTION. Section 61. Seller and third-party liability. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales taxes and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax due each member state on all sales transactions that the certified service provider processes for the seller, except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales tax or

use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items that the seller sells or unless the seller committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

NEW SECTION. Section 62. Sales tax and use tax account -- allocation -- statutory appropriation.

(1) There is a sales tax and use tax account in the state special revenue fund.

(2) All money collected under [sections 1 through ~~52~~ 53] must be paid by the department into the account.

(3) There must be retained in the account the amounts necessary under [sections 1 through ~~52~~ 53] to repay overpayments, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay any other refunds otherwise required.

(4) For fiscal year 2005 and for each subsequent fiscal year, there is statutorily appropriated, as provided in 17-7-502, from the sales tax and use tax account the amount necessary, as certified by the superintendent of public instruction, to fully fund direct state aid for 80% of the basic entitlement, as defined in 20-9-306, and 80% of the total per-ANB entitlement, as defined in 20-9-306, for the general fund budgets of elementary schools and high schools and 40% of the special education allowable cost payments, as described in 20-9-321, for elementary schools and high schools. The amount appropriated in this subsection is for distribution as provided for in 20-9-344 and 20-9-347, as applicable.

(5) After retaining the amount necessary for the purposes of subsection (3) and allowing for the appropriation made in subsection (4), all remaining revenue in the sales tax and use tax account is available for

appropriation by the legislature.

(6) (a) At the end of each fiscal year, the state treasurer shall retain in the sales tax and use tax account the amount of funds necessary:

(i) for the purposes described in subsection (3); and

(ii) to ensure that adequate funds are available for the purposes described in subsection (4) until adequate sales tax and use tax collections are deposited in the account during the next fiscal year.

(b) Subsequent to retaining in the account the amount described in subsection (6)(a), the state treasurer shall transfer any remaining funds to the state general fund.

NEW SECTION. Section 63. School equalization credit for individual. (1) (a) A taxpayer is entitled to a credit against the taxes imposed in 15-30-103.

(b) The amount of the credit is equal to the amount of property tax reported to the taxpayer under 15-16-101(2)(a)(vii) for the levies imposed in 15-10-107, 20-9-331, 20-9-333, and 20-9-360, MULTIPLIED BY THE RATIO THAT THE TAXPAYER'S MONTANA SOURCE INCOME BEARS TO THE TAXPAYER'S TOTAL INCOME FROM ALL SOURCES.

(c) If the amount of the credit determined under this subsection (1) is more than the amount of tax owed under 15-30-103, the excess must be refunded to the taxpayer.

(2) A return filed using the filing status married filing jointly is considered to have been filed by one taxpayer.

(3) 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.

NEW SECTION. Section 64. State equalization credit -- penalty for violation. (1) A person who falsely or fraudulently claims the credit allowed in [section ~~62~~ 63] must pay as a penalty an amount equal to three times the amount of the credit claimed.

(2) The penalty imposed in this section is in addition to any other penalty imposed under this chapter and must be paid to the department for deposit in the state general fund.

NEW SECTION. Section 65. School equalization credit for business. (1) (a) A taxpayer is entitled to a credit against the taxes imposed under this chapter.

(b) The amount of the credit is equal to the amount of property tax reported to the taxpayer under 15-16-101(2)(a)(vii) for the levies imposed in 15-10-107, 20-9-331, 20-9-333, and 20-9-360, MULTIPLIED BY THE

RATIO THAT THE TAXPAYER'S MONTANA SOURCE INCOME, AS DEFINED IN 15-30-101, BEARS TO THE TAXPAYER'S TOTAL INCOME FROM ALL SOURCES.

(c) If the amount of the credit determined under this subsection (1) is more than the amount of tax owed under this chapter, the excess must be refunded to the taxpayer.

(2) If the credit under this section is claimed by a small business corporation, as defined in 15-30-1101, 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.

NEW SECTION. Section 66. State equalization credit -- penalty for violation. (1) A person who falsely or fraudulently claims the credit allowed in [section ~~64~~ 65] must pay as a penalty an amount equal to three times the amount of the credit claimed.

(2) The penalty imposed in this section is in addition to any other penalty imposed under this chapter and must be paid to the department for deposit in the state general fund.

Section 67. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; ~~and~~
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803; and
- (j) any sales tax and use tax collections transferred to the general fund under [section ~~64~~ 62].

(2) The department shall also deposit to the credit of the state general fund all money received from the

collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 68. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a the subsequent tax year only.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;

- (c) transfer of property into a taxing unit;
- (d) subdivision of real property; and
- (e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

- (i) a judgment levy under 2-9-316 or 7-7-2202;
- (ii) a levy to repay taxes paid under protest as provided in 15-1-402; or
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 69. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice -- manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) the value of each mill in that county;

(iv) itemized city services and special improvement district assessments collected by the county;

(v) the number of the school district in which the property is located; ~~and~~

(vi) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax; and

(vii) the amount of the total tax due that is levied pursuant to 15-10-107, 20-9-331, 20-9-333, and 20-9-360. The amount reported under this subsection (2)(a)(vii) is the amount of the school equalization credit that may be claimed under [section 62 63 or 64 65].

(b) If the property is the subject of a tax sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iv) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 70. Section 15-24-304, MCA, is amended to read:

"15-24-304. Prorated fee in lieu of tax -- aircraft. (1) A person who acquires an aircraft required to be registered under ~~subsections (2) through (6)~~ of 67-3-201 (2) through (6) after March 1 in any year shall register the aircraft within 30 days of acquiring it.

(2) The fee in lieu of tax must be prorated for aircraft registered for a period less than 1 year in the same manner as personal property taxes are prorated in 15-24-303.

(3) A person failing to register an aircraft within 30 days following acquisition of the aircraft or bringing the aircraft into the state for commercial purposes is subject to the penalty provided in 67-3-202.

(4) A person owning a migratory aircraft shall register as prescribed in 67-3-201(5), ~~and pay~~ including paying the fee in lieu of tax and the sales tax or use tax imposed in [section 2], if applicable."

Section 71. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

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

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

~~(e)~~(b) 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 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) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (~~26 U.S.C. 1362~~)₁ is not in effect; and

(c) that is not a disregarded entity.

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

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (~~26 U.S.C. 1361(b)(3)~~).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "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.

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

(9) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (~~26 U.S.C. 61~~)₁ 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 (~~26 U.S.C. 85~~)₁ as amended.

(10) "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 1980.

(11) "Information agents" includes all individuals and entities 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.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

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

(14) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(15) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(16) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(17) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or

accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not

Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

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

(19) "Nonresident" means a natural person who is not a resident.

(20) "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.

(21) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(22) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(23) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(24) "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.

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

(26) "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.

(27) "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 tax~~ 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.

(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code ~~{26 U.S.C. 1362}~~, is in effect.

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

(30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

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

(32) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Section 72. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. ~~(1) There shall be levied, collected, and paid for~~ For each ~~taxable tax~~ year commencing ~~on or after~~ December 31, ~~1968~~ 2003, ~~upon a tax of 5.75% is imposed on~~ the taxable income of every taxpayer subject to ~~this tax the provisions of this chapter, after making allowance for exemptions and deductions as hereinafter provided, 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, 2%;~~
- ~~—— (b) on the next \$1,000 of taxable income or any part thereof, 3%;~~
- ~~—— (c) on the next \$2,000 of taxable income or any part thereof, 4%;~~
- ~~—— (d) on the next \$2,000 of taxable income or any part thereof, 5%;~~
- ~~—— (e) on the next \$2,000 of taxable income or any part thereof, 6%;~~

~~—— (f) on the next \$2,000 of taxable income or any part thereof, 7%;~~
~~—— (g) on the next \$4,000 of taxable income or any part thereof, 8%;~~
~~—— (h) on the next \$6,000 of taxable income or any part thereof, 9%;~~
~~—— (i) on the next \$15,000 of taxable income or any part thereof, 10%;~~
~~—— (j) on any taxable income in excess of \$35,000 or any part thereof, 11%.~~
~~—— (2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section."~~

SECTION 73. SECTION 15-30-111, MCA, IS AMENDED TO READ:

"15-30-111. (Temporary) 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) 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) 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) 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) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) 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;

(n) 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;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; ~~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.

(q) 50% of the total net capital gain determined for federal income tax purposes under 26 U.S.C. 1(h).

(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, 26 U.S.C. 38 and 51(a), ~~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 taxpayer receiving retirement disability benefits who has not attained 65 years of age 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.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)

15-30-111. (Effective on occurrence of contingency) 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) 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) 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) 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) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) 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;

(n) 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;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(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.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(r) 50% of the total net capital gain determined for federal income tax purposes under 26 U.S.C. 1(h).

(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, 26 U.S.C. 38 and 51(a), ~~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 taxpayer receiving retirement disability benefits who has not attained 65 years of age 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.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 74. 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 be~~ are allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~\$800 shall be~~ \$5,740 is allowed for ~~taxable tax~~ taxable tax years beginning after December 31, ~~1978~~ 2003, for the taxpayer.

(b) An additional exemption of ~~\$800 shall be~~ \$5,740 is allowed for ~~taxable tax~~ taxable tax years beginning after December 31, ~~1978~~ 2003, 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~~ 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 be~~ is allowed for ~~taxable tax~~ years beginning after December 31, ~~1978~~ 2003, for the taxpayer if ~~he~~ the taxpayer has attained the age of 65 before the close of ~~his taxable the taxpayer's tax~~ year.

(b) An additional exemption of \$800 ~~shall be~~ is allowed for ~~taxable tax~~ years beginning after December 31, ~~1978~~ 2003, 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 be~~ is allowed for ~~taxable tax~~ years beginning after December 31, ~~1978~~ 2003, for the taxpayer if ~~he~~ the taxpayer is blind at the close of ~~his taxable the taxpayer's tax~~ year.

(b) An additional exemption of \$800 ~~shall be~~ is allowed for ~~taxable tax~~ years beginning after December 31, ~~1978~~ 2003, 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 be~~ \$5,740 is allowed for ~~taxable tax~~ years beginning after December 31, ~~1978~~ 2003, 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~~ \$5,740; 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 ~~his~~ 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 dependent'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 that~~ 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."

Section 75. 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)~~ (1)(f)(i);

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

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

~~—(e)(b) expenses of household and dependent care services as outlined in subsections ~~(1)(e)(i)~~ (1)(b)(i) through ~~(1)(e)(iii)~~ (1)(b)(iii) and (2) and subject to the limitations and rules as set out in subsections ~~(1)(e)(iv)~~ (1)(b)(iv) through ~~(1)(e)(vi)~~ (1)(b)(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)(e)(i)~~ (1)(b)(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)(e)(i)~~ (1)(b)(i) through ~~(1)(e)(iii)~~ (1)(b)(iii), subject to the following limitations:
 - (A) a deduction is allowed under subsection ~~(1)(e)(i)~~ (1)(b)(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)(e)(i)~~ (1)(b)(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)(e)(i)(A)~~ (1)(b)(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)(e)~~ (1)(b):
 - (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)~~ (1)(b)(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)(c)~~ 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)(d)~~ 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)(e)~~ contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

~~(g)(f)~~ 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)(g)~~ light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; ~~and~~ AND

~~(i)(h)~~ per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201; ~~and~~

~~_____ (i) 50% of the total net capital gain determined under 26 U.S.C. 1(h) and claimed by the taxpayer for~~

federal income tax purposes.

(2) (a) Subject to the conditions of subsection ~~(1)(e)~~ (1)(b), 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)~~ (1)(b)(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)."

Section 76. Section 15-30-137, MCA, is amended to read:

"15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the ~~rates~~ rate contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

Section 77. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the ~~rates~~ rate specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144.

(6) The composite tax is in lieu of the tax imposed under 15-30-103 and 15-30-105.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 78. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. Consent or withholding. (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall, on or before the due date, including extensions, for the information return:

(a) file a composite return with respect to the individual nonresident;

(b) file an agreement of the individual nonresident to:

(i) file a return in accordance with the provisions of 15-30-142;

(ii) timely pay all taxes imposed with respect to income of the pass-through entity; and

(iii) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(c) remit an amount equal to the ~~highest marginal~~ tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(c) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(3) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(c) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made."

Section 79. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the ~~taxable~~ tax year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the ~~taxable~~ tax year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the ~~taxable~~ tax period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance

for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201; and

(i) 50% of the total net capital gain determined under 26 U.S.C. 1(h) and claimed by the taxpayer for federal income tax purposes.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

Section 80. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account

owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

Section 81. Section 17-7-301, MCA, is amended to read:

"17-7-301. Authorization to expend during first year of biennium from appropriation for second year -- proposed supplemental appropriation defined -- limit on second-year expenditures. (1) An agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, ~~due to~~ because of an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall,

after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of ~~guaranteed tax base aid~~; transportation aid; or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice is required to provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the approving authority shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The agency may expend the amount authorized by the approving authority only for the purposes specified in the authorization.

(5) The approving authority shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the approving authority and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority

is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan."

Section 82. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; ~~[section 61 62]~~; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's

unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 83. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools -- powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;
- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;
- (8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;
- (9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) prescribe the method of identification and signals to be used by school safety patrols in accordance

with the provisions of 20-1-408;

(28) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(29) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(30) administer the distribution of guaranteed tax base aid for retirement and facilities in accordance with 20-9-366 through 20-9-369; and

(31) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 84. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, ~~BASE budget levy~~, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or

guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution; and

(27) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 85. Section 20-5-323, MCA, is amended to read:

"20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in 20-9-306~~(10)~~(9), received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 25 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 86. Section 20-6-702, MCA, is amended to read:

"20-6-702. Funding for K-12 school districts. (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) ~~the~~ The calculation of ANB for purposes of determining the total per-ANB entitlements must be in

accordance with the provisions of 20-9-311;

(b) ~~the~~ The basic county tax for elementary equalization and revenue for the elementary BASE funding program for the district must be determined in accordance with the provisions of 20-9-331, and the basic county tax for high school equalization and revenue for the high school BASE funding program for the district must be determined in accordance with 20-9-333, ~~and~~

~~— (c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district's guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.~~

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324, except that the actual expenditures used for calculations in 20-5-323 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts."

Section 87. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of every school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may only be granted to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education

accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306~~(10)(e)(i)~~(9)(c)(i)."

Section 88. Section 20-9-104, MCA, is amended to read:

"20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy; or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less."

Section 89. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the

following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

~~—— (i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and~~

~~—— (ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353; including and any additional funding for a general fund budget that exceeds the maximum general fund budget.~~

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund; ~~excluding any guaranteed tax base aid;~~

(iii) anticipated oil and natural gas production taxes; and

(iv) pursuant to subsection ~~(4)(3)~~, anticipated revenue from coal gross proceeds under 15-23-703; ~~and~~

~~—— (v) school district block grants distributed under section 244, Chapter 574, Laws of 2001.~~

(c) ~~Notwithstanding the provisions of subsection (2), subtract~~ Subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district; ~~up to the BASE budget amount, to determine the general fund BASE budget levy requirement.~~

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

~~(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:~~

~~—— (a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and~~

~~—— (b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.~~

~~(3)(2) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.~~

~~(4)(3) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."~~

Section 90. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

~~—— (a) direct state aid for 44.7% 80% of the basic entitlement and 44.7% 80% of the total per-ANB entitlement for the general fund budget of a district and 40% of the special education allowable cost payment; and~~

~~—— (b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.~~

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

~~(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.~~

~~(5)~~(4) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

~~(6)~~(5) "Basic entitlement" means:

- (a) \$213,819 for each high school district;
- (b) \$19,244 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and
- (c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:
 - (i) \$19,244 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus
 - (ii) \$213,819 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

~~(7)~~(6) "Direct state aid" means ~~44.7%~~ 80% of the basic entitlement, ~~and 44.7%~~ 80% of the total per-ANB entitlement, ~~and 40% of the special education allowable cost payment~~ for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(7) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

- (a) 175% of special education allowable cost payments; or
- (b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(8) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(9) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

- (a) for a high school district or a K-12 district high school program, a maximum rate of \$5,205 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;
- (b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of \$3,906 for the first ANB is decreased at the

rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of \$3,906 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$5,205 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 91. Section 20-9-307, MCA, is amended to read:

"20-9-307. BASE funding program -- district general fund budget -- funding sources. (1) A basic system of free quality public elementary schools and high schools must be established and maintained throughout the state of Montana to provide equality of educational opportunity to all school-age children.

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of the cost of the basic school system through BASE aid to support the BASE funding program in the manner established in this title.

(3) The budgetary vehicle for achieving the financing system established in subsection (2) is the general fund budget of the school district. The purpose of the district general fund budget is to finance those instructional, administrative, facility maintenance, and other operational costs of a district not financed by other funds established for special purposes in this title.

(4) The BASE funding program for the districts in the state is financed by a combination of the following sources:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343, ~~including guaranteed tax base aid for eligible districts as provided in 20-9-366 through 20-9-369;~~

(c) appropriations for special education;

(d) a district levy, as provided in 20-9-303, for support of a school not approved as an isolated school under the provisions of 20-9-302; and

(e) district levies or other revenue, as provided by 20-9-308 and 20-9-353."

Section 92. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, ~~including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;~~

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321; and

(e) nonlevy revenue, as provided in 20-9-141; ~~and~~

(f) ~~a BASE budget levy on the taxable value of all property within the district.~~

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 93. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) ~~distribution to the public schools for guaranteed tax base aid;~~ BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of ~~guaranteed tax base aid;~~ BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) From July 1, 2001, through June 30, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

(4) Beginning July 1, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) (i) subject to subsection (4)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 94. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education ~~shall~~:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) ~~have the power to~~ may require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), 10% of the BASE aid payment must be distributed according to the following schedule:

~~—— (a) monthly from August to October through May of the school fiscal year, 10% of the direct state aid to each district;~~

~~—— (b) from December to April of the school fiscal year, 10% of the direct state aid to each district;~~

~~—— (c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;~~

~~—— (d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and~~

~~—— (e) in June of the school fiscal year, the remaining payment to each district of direct state aid.~~

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

Section 95. Section 20-9-347, MCA, is amended to read:

"20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program -- exceptions. (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be ~~raised for~~ available through the elementary and high school county equalization funds, as provided in 20-9-331 and 20-9-333; and

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's

warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of schools with a report of payments for special education allowable costs to districts of the county."

Section 96. Section 20-9-351, MCA, is amended to read:

"20-9-351. Funding of deficiency in BASE aid. If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide ~~the guaranteed tax base aid required under 20-9-366 through 20-9-369~~ and BASE aid support determined under 20-9-347, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium."

Section 97. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

~~(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid:~~

~~(b)~~(2) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

~~(3) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either~~

~~the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.~~

(b)(3) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school facility entitlement and retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 98. Section 20-9-367, MCA, is amended to read:

"20-9-367. Eligibility to receive guaranteed tax base retirement aid or state advance or reimbursement for school facilities. ~~(1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.~~

~~(2)(1)~~ If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

~~(3)(2)~~ For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund."

Section 99. Section 20-9-368, MCA, is amended to read:

"20-9-368. Amount of guaranteed tax base aid for retirement. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the

retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

~~(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:~~

~~—— (a) multiply the sum of the district's BASE budget amount less direct state aid by the corresponding statewide guaranteed tax base ratio;~~

~~—— (b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and~~

~~—— (c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.~~

~~(4)(3)~~ Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 100. Section 20-9-369, MCA, is amended to read:

"20-9-369. Duties of superintendent of public instruction and department of revenue. (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

~~(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;~~

~~(b)(a)~~ providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the ~~guaranteed tax base aid~~ and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

~~(c)(b)~~ requiring each county and district that qualifies and applies for ~~guaranteed tax base aid~~ state advances and reimbursements for school facilities to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

~~(d)(c)~~ keeping a record of the complete data concerning appropriations available for ~~guaranteed tax base~~

~~aid state advances and reimbursements for school facilities~~ and the entitlements for the aid of the counties and districts that qualify;

~~(e)~~(d) distributing the ~~guaranteed tax base aid~~ state advances and reimbursements for school facilities entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

~~(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment."~~

Section 101. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal

year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county

superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid for retirement that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district."

Section 102. Section 20-9-515, MCA, is amended to read:

"20-9-515. Litigation reserve fund. (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's general fund ~~BASE~~ over-BASE budget levy requirement computed pursuant to 20-9-141."

Section 103. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

~~(i) school district block grants distributed under section 244, Chapter 574, Laws of 2001;~~

~~(j)~~(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(k)~~(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 104. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identification number. (1) The owner of ~~each~~ a motorboat, sailboat, or personal watercraft

requiring numbering by this state shall file an application for a number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of \$3.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form and the information required under subsection (2)(a), (2)(b), or (2)(c), as applicable, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) (a) The ~~Before the application for certification or recertification may be accepted by the county treasurer, the~~ applicant, upon the filing of the application, shall:

(i) pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification ~~before the application for certification or recertification may be accepted by the county treasurer;~~ and

(ii) except as provided in subsection (2)(b) or (2)(c), provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of a motorboat, sailboat, or personal watercraft that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (2)(a)(ii) or proof of nontaxability under subsection (2)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52 53].

(d) The department and the department of justice may adopt rules to provide for certification under this section.

(3) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the

department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continue in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) ~~In the event of a transfer of~~ Whenever ownership transfers, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed

on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) (a) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(b) Sales tax and use tax collected under subsection (2) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 64 62].

(11) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 105. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals -- application and issuance -- use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice ~~for this purpose, which.~~ The forms may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

- (a) the name and address of the owner;
- (b) the certificate of ownership number;
- (c) the make of the snowmobile;
- (d) the model name of the snowmobile;
- (e) the year of manufacture;

- (f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and
- (g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of \$6.50, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) (a) The county treasurer may not accept any application under this section until the applicant has:
(i) paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202; and

(ii) except as provided in subsection (5)(b) or (5)(c), provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of a snowmobile that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (5)(a)(ii) or proof of nontaxability under subsection (5)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52 53].

(d) The department and the department of justice may adopt rules to provide for registration under this section.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) (a) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state

general fund.

(b) Sales tax and use tax collected under subsection (5) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 64 62]."

Section 106. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee -- application and issuance -- disposition. (1) Each off-highway vehicle is subject to an annual registration fee of \$2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

- (a) the name and home mailing address of the owner;
- (b) the certificate of ownership number;
- (c) the name of the manufacturer of the off-highway vehicle;
- (d) the model number or name;
- (e) the year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax; and
- (g) ~~such any~~ other information as required by the department of justice ~~may require~~.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered.

(5) (a) Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which and, except as provided in subsection (5)(b) or (5)(c), upon verification by the applicant that the sales tax or use tax imposed in [section 2] has been paid, the county treasurer shall sign the application and issue a registration receipt.

(b) The owner of an off-highway vehicle that was acquired by the applicant prior to [the applicability date of section 2], is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (5)(a) or proof of nontaxability under subsection (5)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52]

53].

(d) The registration receipt must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(e) The department and the department of justice may adopt rules to provide for registration under this section.

(5)(6) (a) All registration fees collected must be forwarded to the department of justice and deposited in the state general fund.

(b) Sales tax and use tax collected under subsection (5) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 64 62]."

Section 107. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Each The owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate \$1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

(f) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

(3) ~~(a)~~ The application may not be accepted by the county treasurer unless:

~~(i) the payments required by subsection (2) accompany the application; and~~

~~(ii) except as provided in subsection (3)(b) or (3)(c), verification is received from the applicant that the sales tax or use tax imposed in [section 2] has been paid.~~

~~(b) The owner of a motor vehicle that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.~~

~~(c) If the applicant is unable to provide the verification required under subsection (3)(a)(ii) or proof of nontaxability under subsection (3)(b), the applicant shall:~~

~~(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or~~

~~(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52 53].~~

~~(d) The department may adopt rules to assist the county treasurer in implementing this section.~~

~~(e) Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:~~

~~(a)(i) the current year; and~~

~~(b)(ii) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.~~

(4) The department may make full and complete investigation of the status of the vehicle. An applicant

for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.

(5) (a) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(b) Sales tax and use tax collected under subsection (3) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 64 62]."

Section 108. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government ~~which~~ that has been registered with the department and the registration with the department is in force.

(2) (a) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department, ~~which must.~~ Whenever registering an aircraft, the department:

(i) shall charge a fee, therefor according to the fee schedule in 67-3-206, for registering the aircraft; and
(ii) except as provided in subsection (2)(b) or (2)(c), must receive verification from the applicant that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of an aircraft that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (2)(a)(ii) or proof of nontaxability under subsection (2)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52 53].

(d) The department and the department of justice may adopt rules to provide for registration under this section.

(e) The registration must be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, ~~the~~ this state, or any political subdivision ~~thereof~~ of the federal government or this state;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in ~~a particular county of the~~ this state. ~~This county must be in~~ the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in ~~the~~ this state, if the owner is not a natural person. ~~However, if~~ If the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within ~~the~~ this state, ~~he~~ the owner may register the aircraft as property within ~~such~~ the other county.

(5) Aircraft not registered in ~~the~~ this state but entering ~~the~~ this state to engage in commercial operations ~~shall~~ must be registered prior to commencing operation.

(6) ~~(a) Owners~~ The owner of an ultralight aircraft for which ~~no~~ an appropriate effective license, certificate, or permit is not or has not been issued by the United States government shall pay the fee required in 67-3-206 and, if due, the tax required to be paid under subsection (6)(b) of this section and file with the department an appropriate registration recognized and approved by the United States government.

(b) The requirements, under subsection (2), for verification that the sales tax or use tax has been paid or that the sales tax or use tax is not required to be paid also apply under this subsection (6).

(7) Sales tax and use tax collected under subsections (2) and (6) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 67-62]."

Section 109. Section 67-3-204, MCA, is amended to read:

"67-3-204. Fee in lieu of tax on registered aircraft -- decal. (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax and, if applicable, the sales tax or use tax, as provided in 67-3-201. ~~No~~ An aircraft subject to a fee in lieu of tax may not be operated in this state unless there is displayed on the aircraft a decal as visual proof that the ~~fee in lieu of tax~~ has required fees and taxes have been paid for the aircraft

and that the aircraft is registered for the current year.

(3) ~~Aircraft~~ An aircraft that meet meets the description of property described in 15-6-145 ~~are is~~ exempt from the fee imposed by subsection (1). ~~Aircraft~~ Except as provided in 67-3-201, an aircraft subject to the fee in lieu of tax ~~are is~~ exempt from all other taxation."

NEW SECTION. Section 110. Repealer. Section 244, Chapter 574, Laws of 2001 is repealed.

NEW SECTION. Section 111. Transition. Beginning on [the applicability date of this section]:

(1) the department of revenue:

(a) may promulgate rules for implementing and administering the sales tax and use tax provided for in [sections 1 through ~~52~~ 53], the income tax relief provided for in [sections ~~62~~ 63 through ~~65~~ 66], and changes in the department's duties resulting from [sections ~~66~~ 67 through ~~108~~ 110] and this section;

(b) may proceed with activities that will result in the state of Montana becoming a signatory of the Uniform Sales and Use Tax Administration Act provided for in [sections ~~53~~ 54 through ~~60~~ 61]; and

(c) shall work collaboratively with municipalities, counties, and school districts in implementing [sections ~~66~~ 67 through ~~108~~ 110] to maximize a smooth transition with respect to the assessment of property taxes, budget preparation and adoption, and other fiscal considerations; and

(2) the department of fish, wildlife, and parks, the department of transportation, and the department of justice, individually or jointly, may promulgate rules to administer the changes to the registration of certain vehicles, boats, snowmobiles, off-highway vehicles, and airplanes.

NEW SECTION. Section 112. Codification instruction. (1) [Sections 1 through ~~60~~ 61] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through ~~60~~ 61].

(2) [Section ~~64~~ 62] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section ~~64~~ 62].

(3) [Sections ~~62~~ 63 and ~~63~~ 64] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections ~~62~~ 63 and ~~63~~ 64].

(4) [Sections ~~64~~ 65 and ~~65~~ 66] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections ~~64~~ 65 and ~~65~~ 66].

NEW SECTION. Section 113. Notification to tribal governments. The secretary of state shall send

a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 114. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 115. Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies on passage and approval.

(2) [Sections ~~53~~ 54 through ~~60~~ 61] apply July 1, 2003.

(3) [Sections 1 through 7, 11 through ~~34~~ 32, ~~34~~ 35 through ~~36~~ 37, ~~39~~ 40 through ~~44~~ 42, ~~43~~ 44 through ~~47~~ 48, ~~49~~ 50 through ~~52~~ 53, and ~~64~~ 62 through ~~108~~ 110] apply January 1, 2004, to tax years and state, local government, and school fiscal years beginning after December 31, 2003.

NEW SECTION. SECTION 116. CONTINGENT TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2009, UNLESS THE LEGISLATURE REFERS A MEASURE TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2008 TO EXTEND THE SALES TAX AND USE TAX LAWS ENACTED BY [THIS ACT] AND THE ELECTORS APPROVE THE MEASURE.

- END -