

HOUSE BILL NO. 765
INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAX STRUCTURE OF MONTANA; ENACTING A 4 PERCENT SALES TAX AND USE TAX; ALLOWING CERTAIN SALES TAX AND USE TAX EXEMPTIONS, INCLUDING UNPREPARED FOOD ITEMS, MEDICAL ITEMS, DRUGS, UTILITIES, SALES AT THRIFT STORES, AND ESTATES SALES; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO THE STREAMLINED SALES AND USE TAX AGREEMENT; IMPLEMENTING APPROPRIATE PROVISIONS OF THE STREAMLINED SALES AND USE TAX AGREEMENT; PROVIDING FOR A REFUNDABLE INCOME TAX CREDIT FOR SALES TAXES AND USE TAXES PAID; REVISING CERTAIN PROPERTY TAX LAWS; DECREASING THE CLASS FOUR PROPERTY TAX RATE FROM 3.46 PERCENT TO 3 PERCENT; REVISING THE PROPERTY TAX EXEMPTIONS FOR CLASS FOUR RESIDENTIAL PROPERTY, RENTAL MULTIFAMILY DWELLINGS, AND COMMERCIAL PROPERTY; PROVIDING A PROPERTY TAX EXEMPTION FOR CLASS THREE AGRICULTURAL LAND; PROVIDING REIMBURSEMENTS TO LOCAL GOVERNMENT TAXING JURISDICTIONS TO OFFSET THE PROPERTY TAX EXEMPTIONS; ELIMINATING THE PHASE-IN PROVISIONS RELATED TO THE REAPPRAISAL OF CERTAIN PROPERTY; RELATING THE STATE INDIVIDUAL INCOME TAX TO ADJUSTED FEDERAL TAXABLE INCOME; ELIMINATING MOST STATE INCOME TAX DEDUCTIONS; INCREASING THE ELDERLY RENTER CREDIT; ALLOWING AN INDIVIDUAL INCOME TAX CREDIT FOR THE REPAYMENT OF CERTAIN STUDENT LOANS; ALLOWING AN INDIVIDUAL INCOME TAX CREDIT TO THE ELDERLY FOR INSULIN AND PRESCRIPTION DRUGS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-1312, 7-13-308, 7-14-1133, 7-14-1636, 7-34-2416, 13-37-218, 15-1-501, 15-6-133, 15-6-134, 15-6-138, 15-6-201, 15-7-102, 15-7-111, 15-8-111, 15-10-420, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-106, 15-30-134, 15-30-135, 15-30-137, 15-30-142, 15-30-166, 15-30-171, 15-30-241, 15-30-303, 15-30-323, 15-30-603, 15-30-605, 15-30-1112, 15-31-131, 15-32-405, 15-32-510, 15-32-601, 15-61-202, 15-61-203, 15-62-207, 15-62-208, 15-63-202, 15-63-203, 16-1-411, 16-2-301, 17-7-502, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 33-27-101, 33-27-102, 33-27-103, 37-4-104, 53-2-211, 67-11-303, 77-1-208, 87-2-102, AND 87-2-105, MCA; REPEALING SECTIONS 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-126, 15-30-127, 15-30-131, 15-30-136, 15-30-156, 15-30-157, 15-30-161, 15-30-162, 15-32-107, 15-32-108, 15-32-301, 15-32-302, 15-32-303, 15-32-609, 15-32-610, 15-32-611, AND 69-3-713, MCA; AND PROVIDING A DELAYED EFFECTIVE

DATE AND APPLICABILITY PROVISIONS."

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

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

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

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

(3) (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.

(4) "Certified automated system" has the meaning provided in [section 55].

(5) "Certified service provider" has the meaning provided in [section 55].

(6) "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.

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

(8) "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.

(9) "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 (9)(a)(i) through (9)(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.

(10) "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.

(11) (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.

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

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

(14) (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 their taste or nutritional value.

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

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

(16) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens, regardless of whether the items meet the

definition of over-the-counter drugs.

(17) (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 (17) 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 (17)(d)(iii), an operator shall do more than maintain, inspect, or set up the tangible personal property.

(18) "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.

(19) (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.

(20) (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.

(21) (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.

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

(23) (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 and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the United States food and drug administration in chapter 3, part 401.11, of its Food Code, so as to prevent food-borne illnesses.

(24) "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.

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

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformity or malfunction; or

(c) support a weak or deformed portion of the body.

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

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

(28) "Registration" or "seller's registration" means a seller's registration as described in [section 33].

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

(30) "Sale", "selling", or "buying" means the transfer of property for consideration.

(31) (a) "Sales price" applies to the measure subject to sales 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, except for the items in subsections (31)(a)(iii) through (31)(a)(vi), if they separately stated on the invoice, billing, or similar document given to the purchaser:

(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, term, 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.

(32) "Sales tax" and "use tax" mean the applicable tax imposed by [section 2].

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

(34) "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.

(35) (a) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

(b) 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.

(36) "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 computer software.

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

(38) "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.

NEW SECTION. Section 2. Imposition and rate of sales tax and use tax -- exceptions. (1) A sales tax of 4% is imposed on 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. The sales tax must be applied to the sales price.

(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 it 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 they were rendered as the result of a transaction that was not initially subject to the sales tax or use tax but, because of the buyer's subsequent use of the services, 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 exempt or nontaxable under [sections 1 through 53] is exempt from the tax imposed in subsections (1) through (3).

NEW SECTION. Section 3. Presumption of taxability -- value -- rounding rules. (1) In order to prevent evasion of the sales tax or use tax and to aid in its administration, 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) In determining the amount of use tax due on the use of property, it is presumed, in the absence of a preponderance of the evidence of another value, that 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. However, in an exchange in which the amount of money paid does not represent the value of the property purchased, the use tax must be imposed on the reasonable value of the property purchased.

(3) 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 that was bought 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 -- no advertising to absorb or refund sales tax. (1) If a person collects a sales tax in excess of the sales tax imposed by [section 2], both the tax and the excess tax must be remitted to the department.

(2) The sales 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 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 is liable to the state for payment of the use tax if the use tax is payable on the value of the property but has not been paid.

(2) The liability imposed by this section 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 53] shall collect the sales tax from the purchaser and pay the sales 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 television 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 by means of advertising disseminated primarily to consumers located within this state and only secondarily to bordering jurisdictions;

(ix) soliciting orders for property by mail through the distribution of catalogs, periodicals, advertising flyers, or other advertising;

(x) soliciting orders, pursuant to a contract with a cable television operator located within this state, for tangible personal property by means of advertising transmitted or distributed over a cable 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 33], and at the time of making a sale, whether within or outside of the state, collect the sales 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 paid.

(5) The department may authorize the collection of the sales tax imposed by [section 2] by any retailer 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 under the centralized registration system established under the agreement, as provided in [section 33]. When authorized, the person 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 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 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 a list of all sales to the department. 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 -- 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. A person 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 any sales tax due under [sections 1 through 53] made by the applicant as a direct payment permit holder. A direct payment permit may be revoked by the department at any time upon 90 days' written notice to the permittee. Any permittee may be audited by the department.

(2) A direct payment permit holder shall pay any sales tax authorized under [sections 1 through 53] directly to the department. The permittee 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 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 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 manufacturing;

(iii) that the purchaser is authorized to make direct payments; or

(iv) that the purchaser is an entity exempt from payment of sales 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 [the applicability 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 or lessee shall provide an exemption certificate number to the seller or lessor at the time that a nontaxable transaction occurs.

(2) A purchaser presenting an exemption certificate number shall provide information on the purchaser's identity and the nature of the purchaser's exemption as prescribed by the department.

(3) If the seller or lessor accepts an exemption certificate 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, then the purchaser is liable for payment of any tax due on sales or leases in which the purchaser incorrectly claimed an exemption. If the incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser is subject to the penalty provided in [section 36].

NEW SECTION. Section 11. Exempt services. (1) The following services enumerated in the North American Industry Classification System Manual (NAICS), 1997, as 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), except all other schools and instruction (NAICS industry 61169);
- (c) agriculture, forestry, and fishing and hunting services (sector 11), except fishing, hunting, and trapping (NAICS subsector 114);
- (d) radio and television broadcasting (NAICS group 5131);
- (e) transportation (NAICS sector 48), except:
 - (i) nonscheduled air transportation (NAICS group 4812);
 - (ii) truck transportation (NAICS subsector 484);
 - (iii) transit and ground transportation (NAICS subsection 485), other than urban transit systems (NAICS industry 48511) and school and employee bus transportation (NAICS group 4854);
 - (iv) pipeline transportation (NAICS subsector 486);

- (v) scenic and sightseeing transportation (NAICS subsection 487);
- (f) farm product warehousing and storage (NAICS industry 49313); and
- (g) security brokerage (NAICS industry 52312).

(2) The following are also specifically exempt from the provisions of [sections 1 through 53]:

- (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 or representative for the sale of a policy;
- (c) services provided by any corporation to another corporation that is centrally assessed and that has identical ownership and services provided by any corporation to a wholly owned subsidiary that is centrally assessed;
- (d) retail telecommunications services subject to the retail telecommunications excise tax under Title 15, chapter 53; and
- (e) gambling that is regulated under Title 23, chapter 5.

NEW SECTION. Section 12. Exemption -- government agencies -- utility services -- exception. (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 of natural gas, home heating fuel, water, electricity, telecommunications services, or other utility services, except for refuse collection, whether or not provided by a government agency, is not subject to the sales tax and use tax.

NEW SECTION. Section 13. Exemption -- food products. (1) Except as provided in subsection (2), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

(2) The sale of prepared food and food sold through vending machines is taxable, but 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 14. Exemption -- medicine, drugs, and certain devices. The following are exempt from the sales tax and use tax:

- (1) prescription drugs, over-the-counter drugs, durable medical equipment, and mobility-enhancing

equipment; and

- (2) insulin, oxygen, and therapeutic and prosthetic devices.

NEW SECTION. Section 15. Exemption -- motor fuel. (1) The sale and use of gasoline, ethanol blended for fuel, and special fuel, including natural gas or propane, upon which tax has been paid or will be paid under Title 15, chapter 70, are exempt from the sales tax and use tax.

(2) 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 16. Exemption -- insurance premiums. The premiums of an insurance company, a health service corporation, a health maintenance organization, or a fraternal benefit society or of a producer of the company, corporation, organization, or society are exempt from the sales tax.

NEW SECTION. Section 17. Exemption -- dividends and interest. The following are exempt from the sales tax:

- (1) interest on money loaned or deposited;
- (2) dividends or interest from stocks, bonds, or securities;
- (3) proceeds from the sale of stocks, bonds, or securities; and
- (4) commissions or fees derived from the business of buying, selling, or promoting any stock, bond, or security.

NEW SECTION. Section 18. Exemption -- thrift stores -- estate sales. (1) The sale of previously owned clothing, appliances, and furniture by a nonprofit organization that is exempt from taxation under section 26 U.S.C. 501(c)(3) is exempt from the sales tax and use tax.

(2) The sale of property that was owned by a deceased person by the estate, personal representative, spouse, or children of the deceased is exempt from the sales and use tax.

NEW SECTION. Section 19. Exemption -- isolated or occasional sale or lease of property. 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. Occasional sales include sales that are occasional but not continuous and that are made for the

purpose of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal organizations.

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 -- feed -- fertilizers. 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; and
- (6) water for commercial irrigation.

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, as defined in 15-38-103, 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, as defined in 15-38-103, is exempt from the sales tax and use tax.

(3) 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, except that the exemption does not include refined petroleum products.

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

(5) Minerals used as or integrated into jewelry, art, or sculpture 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, 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.

NEW SECTION. Section 24. Exemption -- certain chemicals, reagents, and substances. (1) The sale or use by any person of any chemical, reagent, or other substance that is normally used or consumed in the processing of ores or petroleum, in a mill, smelter, refinery, or reduction facility, or in acidizing oil wells is exempt from the sales tax and use tax.

(2) The sale or use of explosives, blasting material, or dynamite is not exempt from the sales tax and use tax.

NEW SECTION. Section 25. Nontaxability -- sale for resale. The sale of property for resale is nontaxable if:

- (1) the sale is made to a purchaser with an exemption certificate; and
- (2) the purchaser resells the property either by itself or in combination with other property or services in the ordinary course of business and the property will ultimately be subject to the sales tax.

NEW SECTION. Section 26. Nontaxability -- sale to miner or manufacturer. (1) The sale of property to a purchaser engaged in the business of mining or manufacturing is nontaxable if:

- (a) the purchaser has an exemption certificate; and
- (b) (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) For the purposes of this section, electrical energy or electricity used or consumed by electrolytic reduction used in the reduction or refinement of ores is considered a component part of the product.

NEW SECTION. Section 27. Nontaxability -- sale or lease of real property or improvements and lease of mobile homes. (1) (a) The sale or lease of real property or improvements is nontaxable.

(b) The lease or rental of a mobile home for a period of 1 month or more is nontaxable.

(2) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented dwelling, house, mobile home, cabin, condominium, or apartment is nontaxable.

NEW SECTION. Section 28. 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) Architectural, engineering, surveying, or graphic design services are nontaxable if the product resulting from the service or the service is used or applied exclusively outside of Montana. For the purposes of this subsection, the provisions of subsection (2) do not apply.

(4) 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 29. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. The following are nontaxable:

(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 is nontaxable if the advertising message is supplied by or on behalf of a national or regional seller or an advertiser that does not have its principal place of business within this state or that is not incorporated under the laws of this state.

NEW SECTION. Section 30. Nontaxability -- sale of tangible personal property for leasing. The sale of property, other than furniture or appliances, 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 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 or lease or selling 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, 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 or leasing property of the type leased;

(2) does not use the property in any manner, other than holding it for sale or lease or selling 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.

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. The registration must be conspicuously displayed at all times at the place for which it is issued.

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

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, truck, or other merchandising device.

(2) Each person or class of persons obligated to file a return under [sections 1 through 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 and must be 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 may require. 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 any seller's registration held by a person that fails to comply with the provisions of [sections 1 through 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 53]. The department may require security in addition to that authorized by [section 43] in an amount reasonably necessary to ensure compliance with [sections 1 through 53] as a condition for registration of the applicant.

(4) A person aggrieved by the department's final decision to revoke a seller's registration, as provided in subsection (1), may appeal the 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) 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 53], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price that the purchaser paid. 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. 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 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:

(a) \$100; or

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

(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 goods -- exemption certificate. If a purchaser uses an exemption certificate with respect to the purchase of 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 53] and may be required to furnish adequate security, as provided in [section 43], to ensure collection and payment of the taxes. The seller's registration provided for in [section 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 retailer doing business within this state who is not registered as a seller may not sell, solicit orders for, or deliver any property or service within Montana. If an agent, canvasser, or employee violates the provisions of [sections 1 through 53], the individual is subject to a \$250 fine for each separate transaction or event.

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 information that the department may require.

(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 within this state that is subject to tax under [sections 1 through 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, as defined in the agreement in [section 55], are subject to the reporting and payment provisions of subsection (2) of this section. 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 items 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.

(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 received by 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 pay to the department a tax under [sections 1 through 53] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 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 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 taxes paid by a person filing a return under [section 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 of 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) finance charges or interest, either on the sale itself or that is attributed to the late payment of the purchase price;
 - (ii) sales taxes or use taxes charged on the sales price;
 - (iii) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
 - (iv) expenses incurred in attempting to collect any debt; and
 - (v) repossessed property.

(2) If the accounts are subsequently collected, the sales 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 a debt or account are applied first proportionally to the taxable price of the property and the tax on the property 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), certified service providers must receive a monetary allowance determined as provided in the agreement, and the sellers using the certified service providers may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax proceeds collected by the sellers using the certified service providers.

(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 40] may claim a monthly vendor allowance for each permitted location in the amount of 2.5% of the tax determined to be payable to the state or \$100 a month, whichever is less.

(b) A person filing a quarterly return may claim 4% of the tax determined to be payable to the state or \$200 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 retailer 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 retailer 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 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 40] constitutes the tax to be paid.

(2) 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. 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 contain a statement of the computation 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 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 53].

(b) If a tax imposed by [sections 1 through 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 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 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 [section 45].

(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 53];
- (b) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 53]; and
- (c) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 53].

(2) In administering the provisions of [sections 1 through 53], the department shall, when applicable and not in conflict with Montana law, follow the provisions of the Streamlined Sales and Use Tax Agreement adopted pursuant to [sections 54 through 61]. The department shall report to the revenue and transportation interim committee, as provided in 5-5-227, on:

- (a) the operation of the Streamlined Sales and Use Tax Agreement and the benefits and costs to the state of its participation; and
- (b) changes to the Streamlined Sales and Use Tax 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 53] fails to comply with any of the provisions of [sections 1 through 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 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 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 10 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 taxpayer a sum sufficient to pay any tax due until the 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 that the successor acquired a business or stock of goods from 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 former operator of the business within 6 months of receipt of the notice from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor, or if an 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 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 53] and who fails to pay the tax is liable to the state for the amounts imposed by [sections 1 through 53] and the penalty and interest due 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 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 their 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 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 that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 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 54 through 61] may be cited as the "Uniform Sales and Use Tax Administration Act".

NEW SECTION. Section 55. Definitions. As used in [sections 54 through 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.

(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 of revenue 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 of revenue 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 of revenue is further authorized to take other actions reasonably required to implement the provisions of [sections 54 through 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 of revenue or the department of revenue'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 of revenue 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 a central, electronic 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) No law of this state, or the application of a law of this state, may 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 it 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 it sells or 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 service 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. Disposition of sales tax and use tax collections. All money collected under the provisions of [sections 1 through 53] must be deposited into the general fund.

NEW SECTION. Section 63. Credit for sales tax and use tax. (1) Except as provided in subsection (2), there is allowed in consideration of sales taxes and use taxes paid a credit, as provided in subsections (3) and (4), against the tax liability for each resident or part-year resident who files an individual Montana income tax return under this chapter. The credit may be claimed even though the taxpayer does not have taxable income under this chapter.

(2) The credit allowed in this section may not be claimed by a resident who:

(a) is confined in a public institution or a private prison for more than 6 months during the tax year for which the credit is claimed;

(b) is not physically present for at least 6 months during the tax year for which the credit is claimed.

(3) The credit allowed under [sections 63 through 66] is equal to:

(a) \$200 for each individual filing separately; and

(b) \$400 for each head of household and married taxpayers filing jointly.

(4) If the amount of the credit allowed in this section exceeds the claimant's tax liability under this chapter

by \$1 or more, the department shall refund the amount. If the amount is less than \$1, the department may not make a refund.

NEW SECTION. Section 64. Credit for sales tax and use tax -- filing date -- extension. (1) Except as provided in subsection (2), a claim for a credit must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, a claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

(2) The department may grant a reasonable extension for filing a claim whenever in its judgment good cause exists.

(3) If an individual who would have a claim under [sections 63 through 66] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

NEW SECTION. Section 65. Examination of credit claims -- adjustments -- delivery of notices and demands. (1) The department may examine a claim for a credit and may make an investigation of the records and accounts of a claimant if the department considers it necessary to determine the accuracy of the claim.

(2) If the department determines that the amount of the credit due is different from the amount reported, the amount of credit computed on the basis of the examination conducted pursuant to subsection (1) is the amount of credit due.

(3) If the credit due is less than the amount claimed as due by the claimant, the excess must be paid to the department within 60 days after notice and demand for payment are mailed to the claimant.

(4) The notice and demand provided for in this section must contain a statement of the computation of the credit and must be:

(a) sent to the claimant at the address given on the claim, if any, or to the claimant's last-known address;

or

(b) served personally upon the claimant.

NEW SECTION. Section 66. Penalties for violation. (1) If a claimant, without purposely or knowingly, as those terms are defined in 45-2-101, violates the provisions of [sections 63 through 66] and receives a credit for which the claimant is not entitled, there must be added a penalty of 10% of the amount of the excess, but the penalty may not be less than \$20. Interest on the amount of the excess is as provided in 15-1-216 and must be added to the penalty until the debt is satisfied.

(2) If a claimant purposely or knowingly violates the provisions of [sections 63 through 66], the claimant is subject to the provisions of subsection (1), and the department may deny future claims by the claimant.

NEW SECTION. Section 67. Student loan tax credit -- definitions. As used in [section 68] and this section, the following definitions apply:

(1) "Montana institution of higher learning" means:

(a) a unit of the Montana university system provided for in 20-25-201;

(b) an accredited tribal college or community college located in Montana;

(c) a community college district as defined in 20-15-101;

(d) a private college or university located in Montana that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

(2) "Student loan" means a student educational loan authorized by Chapter 28, Subchapter IV, Part B, 20 U.S.C. 1071, et seq., Part C, 20 U.S.C. 1087a, et seq., or Part D, 20 U.S.C. 1087aa, et seq.

NEW SECTION. Section 68. Student loan tax credit -- limitations -- rules. (1) A taxpayer who attains an associate or baccalaureate degree from a Montana institution of higher learning and who has at least \$5,000 in student loan debt at the time that the taxpayer attains the degree is allowed a tax credit against taxes imposed by 15-30-103 in the first tax year beginning after the taxpayer attains the degree from a Montana institution of higher learning and for the next 9 successive tax years or until the taxpayer's student loans are repaid, whichever comes first. The credit allowed under this subsection is equal to the amount of the loan repaid in the tax year but may not exceed \$500. The credit may be claimed for the tax year in which the loan is repaid.

(2) A taxpayer who attains a master's or doctoral degree from a Montana institution of higher learning and who has at least \$10,000 in student loan debt at the time that the taxpayer attains the degree is allowed a tax credit against taxes imposed by 15-30-103 in the first tax year beginning after the taxpayer attains the degree from a Montana institution of higher learning and for the next 9 successive tax years or until the taxpayer's student loans are repaid, whichever comes first. The credit allowed under this subsection is equal to the amount of the loan repaid in the tax year but may not exceed \$1,000. The credit may be claimed in the tax year that the student loan is repaid.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability and may not be claimed as a carryback or a carryforward.

(4) The taxpayer is required to provide documentation, on a form provided by the department, of the amount of the loan repaid in any tax year for which a credit is claimed under this section.

(5) The credit allowed under this section may not be claimed in a tax year in which:

(a) the taxpayer has not paid any amount of the student loan in the tax year; or

(b) any portion of the student loan has been paid on behalf of the taxpayer under a loan repayment program provided by a state or federal agency or by a private entity who employs the taxpayer.

(6) A taxpayer who claims a credit under this section for student loans related to a particular degree may not claim the credit for student loans related to any other degree.

(7) A taxpayer who defaults on a student loan for which a credit was claimed in any tax year shall repay to the state the total amount of student loan credits claimed for all tax years.

(8) The department shall adopt rules that are necessary to implement and administer [section 67] and this section. In adopting rules, the department shall, in consultation with the Montana guaranteed student loan program, develop procedures to monitor student loan payments by the taxpayer claiming a credit under [section 67] and this section.

NEW SECTION. Section 69. Elderly tax credit for insulin and prescription drugs. (1) There is a credit against the taxes otherwise due under this chapter for the actual expenses incurred for insulin or prescription drugs or medicine referred to in section 213(b) of the Internal Revenue Code, 26 U.S.C. 213(b), to the extent that the expenses are not compensated by medical insurance or by other sources.

(2) Subject to the conditions of this section, the amount of the credit allowed under subsection (1) is 50% of the amount paid by the taxpayer for insulin or prescription drugs or medicine in the tax year. The amount of the tax credit allowable under subsection (1) may not exceed \$350.

(3) In order to claim the credit under this section, the taxpayer must be 65 years of age or older in the tax year for which the credit is claimed.

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

(a) for a taxpayer filing singly or as a head of household, reduced by \$1 for every \$5 of gross household income over \$22,500; or

(b) for married taxpayers filing separately or married taxpayers filing jointly, reduced by \$1 for every \$5 of gross household income over \$36,000.

(5) If the credit allowed under subsection (1) is claimed, the amount of the deduction allowed or allowable under this chapter for the amount that qualifies for the credit must be reduced by the dollar amount of the credit

allowed.

(6) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter.

(7) For the purposes of this section:

- (a) "gross household income" has the meaning provided in 15-30-171; and
- (b) "income" has the meaning provided in 15-30-171.

Section 70. Section 2-18-1312, MCA, is amended to read:

"2-18-1312. (Effective on occurrence of contingency) Tax exemption. Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in ~~15-30-111~~ and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code."

Section 71. Section 7-13-308, MCA, is amended to read:

"7-13-308. Revenue bonds and obligations. (1) A joint district may borrow money for any purpose provided in this part and issue bonds, including refunding bonds, in a form and upon terms ~~as~~ that it may determine, payable from any revenue of the joint district, including revenue from:

- (a) service charges authorized in 7-13-307;
- (b) grants or contributions from the state or federal government; or
- (c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, bonds issued pursuant to this part by a joint district may be payable

in principal and interest solely from ~~revenues~~ revenue of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by a joint district under this part are issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a)~~.

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part prior to the payment of current costs of operation and maintenance of the solid waste management system."

Section 72. Section 7-14-1133, MCA, is amended to read:

"7-14-1133. Bonds and obligations. (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The bonds may be in the form and upon terms ~~as~~ that it determines, payable out of any revenue of the authority, including revenue derived from:

- (a) any port or transportation and storage facility;
- (b) taxes levied pursuant to 7-14-1131 or 67-10-402;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any ~~then-outstanding~~ then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in ~~such~~ that year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenue of the authority or from particular port, transportation, storage,

or other facilities of the authority. The bonds must state on their face the applicable limitations or restrictions regarding the source from which principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~

(5) (a) For the security of bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

(b) As further security for the bonds, the authority, with the approval of the governing body of the county or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the authority consider advisable. The provisions must be consistent with this part and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged property or collateral in accordance with the proceedings or the provisions of the instrument.

(6) ~~Nothing in this section or~~ The provisions of 7-14-1134 or this section may not be construed to limit the use of port authority revenue, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. The credit of the state, county, or municipal ~~governments~~ government or ~~their~~ its agencies or authorities may not be pledged to provide financial support to the development organizations."

Section 73. Section 7-14-1636, MCA, is amended to read:

"7-14-1636. Bonds and obligations. (1) An authority may borrow money for any of its corporate

purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms ~~as~~ that it determines, payable out of any revenue of the authority, including revenue derived from:

- (a) a railroad;
- (b) taxes levied pursuant to 7-14-1632;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~

(5) For the security of the bonds, the authority may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities."

Section 74. Section 7-34-2416, MCA, is amended to read:

"7-34-2416. Tax-exempt status of bonds. Bonds issued by a county pursuant to the provisions of 7-34-2411 and 7-34-2413 through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~"

Section 75. Section 13-37-218, MCA, is amended to read:

"13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than ~~\$4,000~~ \$2,150 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than ~~\$600~~ \$1,300 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by the inflation factor, as defined in 15-30-101, for the year in which general elections are held. The resulting figure must be rounded off to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

NEW SECTION. Section 76. Reimbursements to taxing jurisdictions -- adjustments to debt limits.

(1) (a) The department shall determine the amount of property tax revenue lost by each local government taxing jurisdiction as the result of the reduced tax rate applied to land described in 15-6-133(1)(a) and to property described in 15-6-134(1)(e) through (1)(h) and as the result of the class three agricultural land property tax exemption provided for in 15-6-201(1)(cc) and the class four property tax exemptions provided for in 15-6-201(1)(z), (1)(aa), and (1)(bb). The determination must be made by July 15, 2005, for fiscal year 2006. The department shall use fiscal year 2005 as the base for the determination of changes of property tax revenue.

(b) The department shall determine the amount of revenue due each local government taxing jurisdiction for fiscal year 2005 from the property tax imposed on class three agricultural land described in 15-6-133(1)(a) and on class four property described in 15-6-134(1)(e) through (1)(h).

(2) The department shall then calculate for each local government taxing jurisdiction for fiscal year 2005, using fiscal year 2005 mill levies, the amount of revenue that would have been due from the property tax imposed on class three property and class four property if the reduced tax rate in 15-6-134(2)(a) and the exemption amounts in 15-6-201(1)(z) and (1)(aa) through (1)(cc) had been in effect for fiscal year 2005.

(3) (a) Each local government taxing jurisdiction that lost property tax revenue in fiscal year 2005, based on the difference between the calculation in subsections (1)(b) and (2), must receive the total amount of the difference in fiscal year 2006 and each succeeding fiscal year.

(b) Payments must be made in two similar installments for each fiscal year by November 30 and May 31. Each local government taxing jurisdiction shall distribute the revenue received among its funds and districts according to current year mill levies.

(4) (a) Except as provided in subsection (5), the amount of loss determined in subsection (3) for each

local government taxing jurisdiction is converted to assessed value of taxable property by dividing the amount of the loss by the applicable mill levy and then by dividing that amount by the applicable property tax rate. The amount must be added to the local government taxing jurisdiction's taxable assessed value to determine its bonding debt limit.

(b) The amount determined under subsection (4)(a) must be added to the assessed value of taxable property of a local government taxing jurisdiction to determine its bonding debt limits.

(5) The amount of loss calculated for each elementary and high school district in subsection (3) is converted to taxable value by dividing the loss by the applicable mill levy. That amount must be added to the school district's taxable value to determine its bonding debt limit under 20-9-406.

(6) (a) For the purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-133(1)(a) and 15-6-134(1)(e) through (1)(h), including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360, the Montana university levy under 20-25-423, or the vocational-technical education levy under 20-25-439.

(c) Each tax increment financing district must receive the benefit of the state mill levy on the incremental taxable value of the district.

(7) A local government taxing jurisdiction that ceases to exist after December 31, 2004, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 2006, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January 1, 2006, is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

(8) The amounts necessary for reimbursing local government taxing jurisdictions, as provided in this section, are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse each local government taxing jurisdiction.

Section 77. 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) sales tax and use tax under [section 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~~ Title 16, chapters 1 through 4 and 6.

(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 78. Section 15-6-133, MCA, is amended to read:

"15-6-133. Class three property -- description -- taxable percentage. (1) Class three property includes:

- (a) subject to 15-6-201(1)(cc), agricultural land as defined in 15-7-202;
- (b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an

owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes, as described in 70-16-301, or commercial purposes, as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land."

Section 79. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property -- description -- taxable percentage. (1) Class four property includes:

(a) subject to 15-6-201(1)(z), ~~and (1)(aa), and (1)(bb)~~ and subsections (1)(f) ~~and (1)(g)~~ through (1)(h) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-201(1)(z), ~~and (1)(aa), and (1)(bb)~~ and subsections (1)(f) ~~and (1)(g)~~ through (1)(h) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for

a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-201(1)(z), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes; and
(ii) appurtenant improvements to the residences, including the parcels of land upon which the residences are located and any leasehold improvements;

~~(ii)(g)~~ (i) rental multifamily dwelling units;
~~(iii)(ii)~~ appurtenant improvements to the ~~residences or~~ dwelling units, including the parcels of land upon which the ~~residences and~~ dwelling units are located and any leasehold improvements; and

~~(iv)(iii)~~ vacant residential lots; and

~~(g)(h)~~ (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) ~~(i)~~ Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, ~~and subsection (2)(a)(ii) of this section;~~ property described in subsections (1)(a), (1)(b), and (1)(e), ~~(1)(f), and (1)(g) through (1)(h)~~ of this section is taxed at ~~3.794%~~ 3% of its taxable market value in ~~tax year 1999~~.

~~(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%.~~

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection ~~(2)(a)(ii)~~ (2)(a) of its market value multiplied by a percentage figure based on income and determined from the following table:

Income	Income	Percentage
Single Person	Married Couple	Multiplier
	Head of Household	
\$0 - \$ 6,000	\$0 - \$8,000	20%
6,001 - 9,200	8,001 - 14,000	50%

9,201 - 15,000

14,001 - 20,000

70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection ~~(2)(a)(i)~~ (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 80. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property -- description -- taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)~~(bb)~~(dd);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and
- (n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency--secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 81. Section 15-6-201, MCA, is amended to read:

"15-6-201. (Temporary) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public

charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) ~~the following percentage~~ 66.5% of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

~~(i) 23% for tax year 2000;~~

~~(ii) 27.5% for tax year 2001; and~~

~~(iii) 31% for tax year 2002 and succeeding tax years;~~

(aa) 51% of the market value of rental multifamily residential property as described in 15-6-134(1)(g);

~~(aa)(bb) the following percentage~~ 29.5% of the market value of commercial property as described in 15-6-134(1)(g)(h):

~~(i) 9% for tax year 2000;~~

~~(ii) 11% for tax year 2001; and~~

~~(iii) 13% for tax year 2002 and succeeding tax years;~~

~~(bb)~~(cc) 18% of the productive capacity value of agricultural land as described in 15-6-133(1)(a);

(dd) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(ee)~~(ee) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(dd)~~(ff) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; and

~~(ee)~~(gg) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property

for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(bb)~~ (1)(dd):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (a) \$20,000 in the case of a single-family residential dwelling;
- (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective on occurrence of contingency) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

- (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;
- (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.
- (d) property that is:
 - (i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
 - (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
 - (iii) not maintained and operated for private or corporate profit;
- (e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;
- (f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;
- (g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;
- (h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
 - (i) truck canopy covers or toppers and campers;
 - (j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;
 - (k) motor homes;
 - (l) all watercraft;
 - (m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;
 - (n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive

of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors,

including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) ~~the following percentage~~ 66.5% of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

~~—— (i) 23% for tax year 2000;~~

~~—— (ii) 27.5% for tax year 2001; and~~

~~—— (iii) 31% for tax year 2002 and succeeding tax years;~~

(aa) 51% of the market value of rental multifamily residential property as described in 15-6-134(1)(g);

~~(aa)(bb) the following percentage~~ 29.5% of the market value of commercial property as described in 15-6-134(1)(g)(h):

~~—— (i) 9% for tax year 2000;~~

~~—— (ii) 11% for tax year 2001; and~~

~~—— (iii) 13% for tax year 2002 and succeeding tax years;~~

(bb)(cc) 18% of the productive capacity value of agricultural land as described in 15-6-133(1)(a);

(dd) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(cc)(ee) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:~~

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(dd)(ff) all agricultural implements and equipment;~~

~~(ee)(gg) all mining machinery, fixtures, equipment, tools, and supplies except those included in class five;~~

~~(ff)(hh) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;~~

~~(gg)(ii) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;~~

~~(hh)~~(jj) special mobile equipment as defined in 61-1-104;

~~(ii)~~(kk) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

~~(jj)~~(ll) x-ray and medical and dental equipment;

~~(kk)~~(mm) citizens' band radios and mobile telephones;

~~(ll)~~(nn) radio and television broadcasting and transmitting equipment;

~~(mm)~~(oo) cable television systems;

~~(nn)~~(pp) coal and ore haulers;

~~(oo)~~(qq) theater projectors and sound equipment; and

~~(pp)~~(rr) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(bb)~~ (1)(dd):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (a) \$20,000 in the case of a single-family residential dwelling;
- (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 82. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners -- appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) ~~except as provided in subsection (1)(b)~~; change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

~~(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate.~~

~~(c)~~(b) The notice must include the following for the taxpayer's informational purposes:

- (i) the total amount of mills levied against the property in the prior year; and
- (ii) a statement that the notice is not a tax bill.

~~(d)~~(c) Any misinformation provided in the information required by subsection ~~(1)(c)~~ (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

- (a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 83. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. ~~The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class.~~

(2) The department shall value ~~and phase in the value of~~ newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class ~~and the values established pursuant to subsection (1).~~ The department shall adopt rules for determining the assessed valuation ~~and phased-in value of~~ new, remodeled, or reclassified property within the same class.

(3) ~~Beginning January 1, 2001, the~~ The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2003, and each succeeding 6 years. The resulting valuation changes ~~must be phased in~~ are in effect for each year until the next reappraisal. ~~If a percentage of change for each year is not established, then the percentage of phase in for each year is 16.66%. The department~~

~~shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county."~~

Section 84. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment -- market value standard -- exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity value of the lands when valued for agricultural purposes minus any portion of the productive capacity value that is exempt from taxation under 15-6-201(1)(cc). All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z) ~~and~~, (1)(aa), and (1)(bb).

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) For the purpose of determining the debt limits of local government taxing jurisdictions, except for K-12 public schools:

(a) the assessed value of class four property must include the amount determined under [section 76];

and

(b) the productive capacity value of agricultural lands must include the amount determined under [section 76]."

Section 85. 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 subsequent tax year.

(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), the amount of property taxes imposed actually assessed:

(a) includes the amount of reimbursement received under [section 76]; and

(b) ~~do~~ does 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 86. 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 year;~~

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

(1) "Adjusted gross income" means adjusted gross income as defined in 26 U.S.C. 62.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the ~~1967~~ 1982-84 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~~) is not in effect; and

(c) that is not a disregarded entity.

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

~~(5)~~(4) "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)~~(5) "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.

(6) "Federal taxable income", when referring to an individual, means taxable income as defined and described in 26 U.S.C. 63 and, when referring to a trust or estate, means taxable income as defined and described in Subtitle A, Chapter 1, Subchapter J, of the Internal Revenue Code.

(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) 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) as amended.~~

(9) "Head of household" means a head of household as defined and described in 26 U.S.C. 2(b).

(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~~ 2005.

(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) "Joint return" means a single return made jointly by a married individual with that individual's spouse.

~~(13)~~(14) "Knowingly" is as defined in 45-2-101.

~~(14)~~(15) "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)~~(16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(16)~~(17) "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.

(18) "Married individual" means a married individual as defined and described in 26 U.S.C. 7703.

~~(17)~~(19) (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) income, gain, loss, deduction, credit, or expense or item of income, gain, loss, deduction, credit, or expense of an estate or trust with nexus with the state;

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

~~(xvi)~~(xvii) 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.

(20) "Montana taxable income" means federal taxable income as determined for federal income tax purposes and adjusted as provided in [section 91].

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

~~(19)~~(21) "Nonresident" means a natural person who is not a resident.

~~(20)~~(22) "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~~ used to compute federal taxable income is computed under this chapter.

~~(24)~~(23) "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)~~(24) "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)~~(25) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(24)~~(26) "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)~~(27) "Purposely" is as defined in 45-2-101.

~~(26)~~(28) "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 used to compute federal taxable income is computed under this chapter.

~~(27)~~(29) "Resident" ~~applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere, when referring to the taxes imposed in this chapter, means an individual who has a residence in the state pursuant to the rules set forth in~~ 1-1-215.

~~(28)~~(30) "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)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(32) "Surviving spouse" means a surviving spouse as defined and described in 26 U.S.C. 2(a).

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

~~(31)~~(33) "Taxable year" or "tax year" means the taxpayer's taxable tax year for federal income tax purposes.

~~(32)~~(34) "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 87. Section 15-30-102, MCA, is amended to read:

"15-30-102. Construction of net income. For the purpose of raising revenue, the ~~net~~ income required to be shown on returns under this chapter and taken as the basis for determining the tax hereunder shall may not be classified or held or construed to be property. All income except what has been expressly exempted under the provisions of the Internal Revenue Code or this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall must be included and considered in determining the ~~net~~ income of taxpayers subject to tax within the ~~provision~~ provisions of this chapter."

Section 88. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) There shall must be levied, collected, and paid for each taxable tax year commencing ~~on or beginning~~ after December 31, ~~1968~~ 2004, upon the taxable income of every taxpayer subject to this tax, ~~after making allowance for exemptions and deductions as hereinafter provided;~~ a tax on the following brackets of Montana 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%.~~

(a) for every married individual who makes a joint return and for every surviving spouse:

(i) on the first \$5,820 of Montana taxable income or any part of that income, 4%;

(ii) on the next \$19,440 of Montana taxable income or any part of that income, 5%;

(iii) on the next \$21,360 of Montana taxable income or any part of that income, 6%;

(iv) on any Montana taxable income in excess of \$46,620 or any part of that income, 6.6%;

(b) for every head of household:

(i) on the first \$4,650 of Montana taxable income or any part of that income, 4%;

(ii) on the next \$15,560 of Montana taxable income or any part of that income, 5%;

(iii) on the next \$17,090 of Montana taxable income or any part of that income, 6%;

(iv) on any Montana taxable income in excess of \$37,300 or any part of that income, 6.6%;

(c) for every individual other than a surviving spouse or head of household who is not a married individual, for every married individual who does not make a joint return, and for every estate or trust not exempt from taxation under the Internal Revenue Code:

(i) on the first \$2,910 of Montana taxable income or any part of that income, 4%;

(ii) on the next \$9,720 of Montana taxable income or any part of that income, 5%;

(iii) on the next \$10,680 of Montana taxable income or any part of that income, 6%;

(iv) on any Montana taxable income in excess of \$23,310 or any part of that income, 6.6%;

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

Section 89. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident. (1) (a) A tax is imposed upon each nonresident equal to the tax computed under 15-30-103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources as determined for federal income tax purposes.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident

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

Section 90. Section 15-30-106, MCA, is amended to read:

"15-30-106. Tax on lump-sum distributions. (1) There is imposed a separate tax on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under ~~section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended~~ 26 U.S.C. 402(e).

(3) All means available for the administration and enforcement of income taxes ~~shall~~ must be applied to the tax on lump-sum distributions."

NEW SECTION. Section 91. Adjustments to federal taxable income to determine Montana taxable income. (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest, except to the extent already included in federal taxable income;

(b) to the extent that it is not included in federal taxable income, a distribution from a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605;

(c) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(d) a nonqualified withdrawal from a family education savings account provided for in Title 15, chapter 62, to the extent that in any tax year beginning before January 1, 2004, it was deducted from income in calculating

Montana individual income taxes or that in any tax year beginning after December 31, 2004, it was subtracted from federal taxable income to determine Montana taxable income;

(e) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence.

(3) To the extent included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest;

(ii) railroad retirement benefits; and

(iii) tribal source income of an enrolled member of an Indian reservation;

(b) up to \$4,700 of pension and annuity income received, reduced by \$2 for every \$1 of federal adjusted gross income over \$60,000 included in either a separate or a joint federal income tax return;

(c) salary received from the armed forces by residents who entered into active duty from Montana and who are serving on active duty in the regular armed forces;

(d) all service charges that are covered by section 3401 or tips or gratuities that are covered by section 3402(k) of the Internal Revenue Code, 26 U.S.C. 3401 or 3402(k), received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(e) unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, 26 U.S.C. 85;

(f) 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;

(g) up to \$3,000 or, if a joint return is filed, up to \$6,000 in excluded annual contributions under Title 15, chapter 63, to a first-time home buyer savings account, interest and other income earned on the funds and retained in the account, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(h) up to \$3,000 or, if a joint return is filed, up to \$6,000 in excluded annual contributions under Title 15, chapter 61, to a medical care savings account, interest and other income earned on the funds and retained in the account, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(i) up to \$3,000 or, if a joint return if filed, up to \$6,000 in excluded annual contributions to a family

education savings individual trust account or savings account established under Title 15, chapter 62;

(j) premium payments made by the taxpayer for the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for insurance policies or certificates for:

(i) medical care, as defined in section 213(d) of the Internal Revenue Code, 26 U.S.C. 213(d); and

(ii) long-term care that provides coverage primarily for any qualified long-term care services, as defined in section 7702B(c) of the Internal Revenue Code, 26 U.S.C. 7702B(c).

Section 92. Section 15-30-134, MCA, is amended to read:

"15-30-134. Determination of status -- effect of marital federal status elections. For purposes of this chapter:

(1) ~~the determination of whether an individual is married shall be made as of the close of his taxable year, except that if his spouse dies during his taxable year, such determination shall be made as of the time of such death~~ marital status, dependent status, status as an association, partnership, or individual, and any other status must be made as provided in the Internal Revenue Code; and

~~(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married~~

(2) any status that a taxpayer claims or elects in a federal income tax return with respect to the taxpayer or another individual or that the taxpayer or other individual is determined to have for federal income tax purposes conclusively determines the status of that individual; and

(3) a joint Montana individual income tax return must be filed for any tax year for which a joint federal income tax return is filed unless one of the individuals is a nonresident."

Section 93. Section 15-30-135, MCA, is amended to read:

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

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

~~— (b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with~~

contingent interests;

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

~~—— (d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct in the same manner and to the same extent as federal income tax is imposed on them under the Internal Revenue Code.~~

(2) The fiduciary ~~shall be~~ is responsible for making the return of income for the estate or trust for which ~~he~~ the fiduciary acts, whether the fiduciary or the beneficiaries are ~~taxable~~ responsible for the payment of the tax with reference to the income of ~~such~~ the estate or trust. ~~In cases under subsections (a) and (d) of subsection (1), the~~ The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the ~~taxable~~ tax year for which the return is made, and, at the request of the department, shall furnish a copy of the federal income tax return for the estate or trust. A beneficiary of an estate or trust shall include a copy of the federal schedule of the beneficiary's share of income, deductions, and credits when filing the Montana individual income tax return.

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

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

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

of the income of the trust shall be included in computing the net income of the grantor."

Section 94. 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~~ is determined from Montana taxable income of an estate or trust ~~in the same manner as the tax on taxable income of individuals;~~ by applying the rates contained in 15-30-103(1)(c). Credits allowed to individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

Section 95. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) ~~For both resident and nonresident taxpayers, each single~~ Each individual, including each nonresident with Montana source income, and each estate or trust shall, if required to file a federal income tax return pursuant to the Internal Revenue Code, ~~file married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by \$800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).~~

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

~~(3)(2)~~ If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

~~(4)(3)~~ All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for

in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

~~(5)~~(4) As soon as practicable after the return is filed, the department shall examine and verify the tax.

~~(6)~~(5) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

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

~~(8)~~(6) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 96. Section 15-30-166, MCA, is amended to read:

"15-30-166. (Temporary) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 30% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$6,600. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates June 30, 2003--sec. 11(1), Ch. 24, Sp. L. August 2002.)

15-30-166. (Applicable July 1, 2003) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during

the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$13,400. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates April 30, 2004--sec. 11(2), Ch. 24, Sp. L. August 2002.)

15-30-166. (Applicable May 1, 2004) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section ~~may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2)~~ must be reduced by 7% of the amount of the contribution deducted in the taxpayer's federal income tax return.

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

Section 97. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax credit for elderly -- definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

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

(4) "Gross household income" means all income received by all individuals of a household while they

are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) (a) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting \$6,300 from gross household income.

(9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means ~~45%~~ 30% of the gross rent."

Section 98. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax -- payment -- exceptions -- interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or
 (ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

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

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

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

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

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

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

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

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

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

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

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

Required Installment	Applicable Percentage
First	22.5%

Second	45%
Third	67.5%
Fourth	90%

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

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

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

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

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

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

- (i) the taxpayer pays in full the amount computed on the return as payable; and
- (ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, ~~as defined in 15-30-104~~ as determined for federal income tax purposes, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the

estimated tax. An extension may not be for more than 6 months."

Section 99. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period

of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

~~(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;~~

~~(b)(a)~~ to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

~~(c)(b)~~ to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

~~(d)(c)~~ to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

~~(e)(d)~~ to the board of regents information required under 20-26-1111;

~~(f)(e)~~ to the legislative fiscal analyst and the office of budget and program planning individual income tax

information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g)(f) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

Section 100. Section 15-30-323, MCA, is amended to read:

"15-30-323. Penalty and interest for deficiency. (1) If the payment required by 15-30-142(6)(5) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment."

Section 101. Section 15-30-603, MCA, is amended to read:

"15-30-603. (Temporary) Montana farm and ranch risk management account -- deposits -- exclusion from income. (1) An individual or a family farm corporation engaged in an eligible agricultural business may create a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, to use as a risk management tool for the individual's or family farm corporation's agricultural business. The number of risk management accounts that may be created is limited to one for each individual or family farm corporation.

(2) Deposits to the account may be excluded from ~~adjusted gross~~ Montana taxable income ~~as provided in 15-30-114~~ in an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business included in federal adjusted gross income or \$20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

- (a) during the tax year; or
 - (b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.
- (3) A deposit not distributed within 5 years is considered to have been distributed to the taxpayer as

provided in 15-30-605.

(4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in the appropriate year. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 102. Section 15-30-605, MCA, is amended to read:

"15-30-605. (Temporary) Montana farm and ranch risk management account -- distributions. (1)

Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

(a) are first attributable to income and then to other deposits; and
 (b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from ~~adjusted gross~~ Montana taxable income for the tax year in which the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the 5-year eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the fifth anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The 5-year eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the fifth anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 103. 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~~ determined as follows:

~~(i) determining the tax that would be imposed, using the rates 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.~~

(a) Each participant's distributive or allocable share of the entity's income, gain, loss, deduction, credit, and expense as determined for federal income tax purposes must be aggregated, and that aggregate amount for each participant must be reduced by the basic standard deduction of an individual who is not married and who is not a surviving spouse or head of household, as determined under 26 U.S.C. 63(c)(2), and by the personal exemption for one individual, as provided under 26 U.S.C. 151(d), to determine each participant's composite return federal taxable income.

(b) The S. corporation or partnership shall determine:

(i) each item of income, gain, loss, deduction, credit, and expense that is Montana source income or otherwise attributable to Montana; and

(ii) each participant's distributive or allocable share of those items listed in subsection (2)(b)(i).

(c) The distributive or allocable share of the items described in subsection (2)(b)(i) must be aggregated for each participant to determine each participant's composite return Montana source income.

(d) A preliminary tax is calculated for each participant on the composite return on federal taxable income determined under subsection (2)(a) in accordance with the table contained in 15-30-103(1)(c), adjusted as provided in 15-30-103(2).

(e) The tax determined under subsection (2)(d) for each participant is multiplied by a fraction, the

numerator of which is the participant's composite return Montana source income and the denominator of which is the participant's composite return federal taxable income, to determine the amount of tax assessed with respect to that participant.

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

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

(2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by the employer during the tax year, but the credit may not exceed \$1,575 of day-care assistance actually provided to or on behalf of the employee.

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

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

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

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

(5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

~~(7) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.~~

~~(7)~~ Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first

allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

~~(9)~~(8) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

~~(10)~~(9) For purposes of the credit allowed under subsection (1) or (3):

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

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

Section 105. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. ~~Property~~ The property tax reduction exemption allowed by 15-6-201~~(3)~~(4) may not be applied to a facility for which a credit is claimed pursuant to this part."

Section 106. Section 15-32-510, MCA, is amended to read:

"15-32-510. Deduction for donation of exploration information. (1) In addition to all other deductions ~~from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1,~~ a taxpayer may deduct documented expenses for the donation of mineral exploration information generated as part of the certified expenditures. The information must be donated to the Montana tech foundation to reside as part of the Montana tech research library, and the documented expenses must be based on the cost of recreating the donated information.

(2) The Montana tech foundation has the right to limit information accepted and deductions granted to that exploration activity data that is needed as part of the Montana tech research library.

(3) A deduction under this section may not exceed 20% of the actual value of the data if a tax credit for the same exploration activity data is taken under this part."

Section 107. Section 15-32-601, MCA, is amended to read:

"15-32-601. (Temporary) Definitions. For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

(3) "Process" includes but is not limited to the treatment of hazardous wastes as defined in 75-10-403.

(4) (a) "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(b) Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

~~(5) "Recycled material" means a substance that is produced from reclaimed material as provided in 15-32-609. (Terminates December 31, 2005--secs. 5, 7, Ch. 398, L. 2001.)"~~

Section 108. Section 15-61-202, MCA, is amended to read:

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

(2) An employee or account holder may exclude as an annual contribution in 1 year not more than

\$3,000. There is no limitation on the amount of funds contributed and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction ~~pursuant to 15-30-124~~ is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct ~~pursuant to 15-30-124~~ or exclude ~~pursuant to 15-30-114~~ an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may exclude from the employee's or account holder's ~~adjusted-gross~~ Montana taxable income in accordance with ~~15-30-114(2)(j)~~ in a subsequent year any part of \$3,000 ~~per~~ for each year not previously excluded.

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

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

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

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

Section 109. Section 15-61-203, MCA, is amended to read:

"15-61-203. Withdrawal of funds from account for purposes other than medical expenses and long-term care. (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection that had been

excluded from taxation pursuant to 15-61-202 must be taxed as ordinary income of the employee or account holder.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care or other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder if it had been excluded from taxation pursuant to 15-61-202.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder or an employee, means the last weekday in December."

Section 110. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to an account in a tax year is entitled to reduce the individual's ~~adjusted gross~~ Montana taxable income, ~~in accordance with 15-30-111(8)~~, by the amount of the contribution, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, the contributor's child, or the contributor's stepchild if the stepchild is a Montana resident."

Section 111. 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(1)(c) on the recapturable withdrawal of amounts that reduced ~~adjusted gross income under 15-30-111(8)~~ Montana taxable income.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced ~~adjusted gross~~ Montana taxable 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~~ Montana taxable income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced ~~adjusted gross~~

Montana taxable income, to the extent of the contributions, and then to contributions that did not reduce ~~adjusted gross~~ Montana taxable 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~~ Montana taxable income unless the contributor can demonstrate that all or a portion of the contributions did not reduce ~~adjusted gross~~ Montana taxable 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 112. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption -- conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the ~~adjusted gross~~ Montana taxable income of the account holder and is exempt from taxation, ~~in accordance with 15-30-111(2)(k)~~, as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may

not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

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

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

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

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

(3) An account holder may not deduct ~~pursuant to 15-30-121~~ or exclude ~~pursuant to 15-30-114~~ an amount representing a loss in the value of an investment contained in an account.

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

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

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

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

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

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

Section 113. Section 15-63-203, MCA, is amended to read:

"15-63-203. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase. (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection that had been excluded from taxation pursuant to 15-63-202 must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder if it was excluded from taxation pursuant to 15-63-202.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder, means the last weekday in December."

Section 114. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider -- penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a

tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 15-1-501, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) ~~The~~ Except as provided in [section 2] and 16-2-301, the tax computed and paid in accordance with this section is the only tax imposed on wine and hard cider by the state or any of its subdivisions, including cities and towns.

(5) The sales tax and use tax collected under [sections 1 through 53] are not considered collected under this section.

(6) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 115. Section 16-2-301, MCA, is amended to read:

"16-2-301. Retail selling price on table wine -- tax on certain table wine. (1) (a) The retail selling price at which table wine is sold at an agency liquor store is as determined by the agent.

(b) The retail selling price at which table wine is sold pursuant to subsection (1)(a) may not include the sales tax or use tax imposed under [section 2]. The sales tax or use tax must be collected as provided in [sections 1 through 53] and must be deposited as provided in [section 62].

(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.

(3) The sales tax and use tax collected under [sections 1 through 53] are not considered collected under this section.

(4) For the purposes of this section, "table wine" does not include hard cider."

Section 116. 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; [section 76]; 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; 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 117. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or

plan's pension trust fund is not:

- (1) subject to execution, garnishment, attachment, or any other process;
- (2) subject to state, county, or municipal taxes except for:
 - (a) a benefit or annuity received in excess of ~~\$3,600 or adjusted by~~ an amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91]; or
 - (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or
- (3) assignable except as specifically provided in this chapter."

Section 118. Section 19-17-407, MCA, is amended to read:

"19-17-407. Exemption from taxation and legal process. (1) The first ~~\$3,600 or the~~ amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91] of benefits received under this part is exempt from state, county, and municipal taxation.

(2) Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to execution, garnishment, attachment, or any other process."

Section 119. Section 19-18-612, MCA, is amended to read:

"19-18-612. Protection of benefits from legal process and taxation -- nonassignability. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum assigned.

(2) The first ~~\$3,600 or the~~ amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91] of benefits received under this part is exempt from state, county, and municipal taxation."

Section 120. Section 19-19-504, MCA, is amended to read:

"19-19-504. Protection of benefits from legal process and taxation. (1) Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are

unassignable except as specifically provided in 19-19-505.

(2) The first \$3,600 or the amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91] of benefits received under this part is exempt from state, county, and municipal taxation."

Section 121. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana, except for:

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91]; or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable, except as specifically provided in this chapter."

Section 122. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings on the contributions are:

(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to ~~15-30-111(2)(c)(ii)~~ [section 91], exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable, except as specifically provided in the contracts."

Section 123. Section 33-27-101, MCA, is amended to read:

"33-27-101. Short title. Sections ~~15-30-107, 15-30-127, 15-31-117, and 15-31-118~~; and 15-31-118; and this chapter

may be cited as the "Independent Liability Fund Act".

Section 124. Section 33-27-102, MCA, is amended to read:

"33-27-102. Purpose. The purpose of ~~15-30-107, 15-30-127,~~ 15-31-117, 15-31-118, and this chapter is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties."

Section 125. Section 33-27-103, MCA, is amended to read:

"33-27-103. Definitions. As used in ~~15-30-107, 15-30-127,~~ 15-31-117, 15-31-118, and this chapter, the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana individual income tax, corporate license tax, or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business."

Section 126. Section 37-4-104, MCA, is amended to read:

"37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative -- restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

- (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;
- (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;
- (c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;
- (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or
- (e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

- (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;
- (b) "disabled" ~~has the same meaning as provided for the term "permanently and totally disabled" in 15-30-114~~ 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; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

- (a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or
- (b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability."

Section 127. Section 53-2-211, MCA, is amended to read:

"53-2-211. Department to share eligibility data. (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the

department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(~~e~~)(b).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance."

Section 128. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds for those purposes, including refunding bonds, in the form and upon the terms that it may determine, payable out of any revenue of the authority, including revenue derived from:

- (a) an airport or air navigation facility or facilities;
- (b) taxes levied pursuant to 67-11-301 or other law for airport purposes;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become

due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any is pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this section, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~

(5) For the security of bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it shall, subject to 15-10-420, levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it shall, subject to 15-10-420, levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the taxes are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may determine. The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. A resolution may not be effective until the question of its approval has been submitted

to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor of the resolution. The special election must be held in conjunction with a regular or primary election. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the municipality may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section, but the municipality or authority may issue bonds under this chapter payable solely from the sources referred to in subsection (1)."

Section 129. Section 77-1-208, MCA, is amended to read:

"77-1-208. Cabin site licenses and leases -- method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 ~~without any adjustments as a result of phasing in values~~. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302, 77-6-303, and 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board."

Section 130. Section 87-2-102, MCA, is amended to read:

"87-2-102. Resident defined. In determining whether a person is a resident for the purpose of issuing resident hunting, fishing, and trapping licenses, the following provisions apply:

(1) (a) A member of the regular armed forces of the United States, a member's dependent, as defined in ~~45-30-113~~ subsection (1)(c), who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(i) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet the residency criteria of subsections (4)(b) through (4)(e); or

(ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

(c) The term "dependent" means any of the following individuals, over half of whose support was received from the member:

(i) a son or daughter of the member or a descendant of either;

(ii) a stepson or stepdaughter of the member;

(iii) a brother, sister, stepbrother, or stepsister of the member;

(iv) the father or mother of the member or an ancestor of either;

(v) a stepfather or stepmother of the member;

(vi) a son or daughter of a brother or sister of the member;

(vii) a brother or sister of the father or mother of the member;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the member;

(ix) an individual who, for the year, has as the individual's principal place of abode the home of the member and who is a member of the member's household; or

(x) an individual who:

(A) is a descendant of a brother or sister of the father or mother of the member;

(B) for the year, received institutional care required by reason of a physical or mental disability; and

(C) before receiving institutional care, was a member of the same household as the member.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 131. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) A hunting license may not be issued to a resident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5).

(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed a hunter safety course in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to

a member's dependents, as defined in ~~15-30-143~~ 87-2-102, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of completion of a hunter safety course approved by the department or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or receives proof of completion of a bowhunter education course from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(5) The department shall provide for a youth hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions to youth in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's youth hunter safety and education course to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

(7) The department may develop an adult hunter education course.

(8) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion or achievement."

NEW SECTION. Section 132. Transition. (1) As used in this section, the following definitions apply:

(a) "Transition adjustment" means the net sum of all positive and negative adjustments to a taxpayer's Montana taxable income related to transition items provided in subsection (3).

(b) "Transition item" means any change arising prior to January 1, 2005, from a difference in federal and

Montana income tax laws in:

- (i) the amount, character, realization, or recognition of income or an item of income, gain, or credit;
- (ii) the amount, character, allowance, or disallowance of loss or an item of loss, deduction, or expense;

or

(iii) the basis of an asset or liability that will not after December 31, 2004, increase or decrease a taxpayer's federal taxable income.

(2) An adjustment to Montana taxable income may not be made to take transition items into account, except that a taxpayer may elect to make a transition adjustment to Montana taxable income to take a transition item into account as provided in this section.

(3) On or before the due date, including extensions, of a return for the tax year ending after December 31, 2004, and before January 1, 2006, a taxpayer may, on forms that the department prescribes, file an election to make a transition adjustment to Montana taxable income. The election must specify and account for all transition items, including but not limited to the following:

(a) If a taxpayer has a disallowed passive activity loss within the meaning of 26 U.S.C. 469 that is carried over to a tax year ending after December 31, 2004, and before January 1, 2006, and if the amount of the federal carryover is not the same amount as the Montana carryover, the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana carryover is smaller than the federal carryover and the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana carryover is larger than the federal carryover.

(b) If a taxpayer has excess long-term or short-term net capital loss described in 26 U.S.C. 1212(b)(1) that is carried over to a tax year ending after December 31, 2004, and before January 1, 2006, and if the amount of the federal carryover is not the same amount as the Montana carryover, the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana carryover is smaller than the federal carryover and the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana carryover is larger than the federal carryover.

(c) Notwithstanding the deduction that a taxpayer would be allowed for net operating loss carryovers and net operating loss carrybacks under 26 U.S.C. 172(a) in a tax year ending after December 31, 2004, and before January 1, 2006, if the taxpayer's federal net operating loss is different from the taxpayer's Montana net operating loss as of December 31, 2004, an adjustment to the taxpayer's Montana taxable income may not be made.

(d) If a taxpayer has an asset with a different adjusted basis for federal and Montana income tax purposes after taking into account the effect of the adjustments provided in subsections (3)(a) and (3)(b), the

difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is higher than the federal adjusted basis and the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is lower than the federal adjusted basis.

(e) If a taxpayer has a liability with a different adjusted basis for federal and Montana income tax purposes after taking into account the effect of the adjustments provided in subsections (3)(a) and (3)(b), the difference is a negative adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is higher than the federal adjusted basis and the difference is a positive adjustment to the taxpayer's Montana taxable income if the Montana adjusted basis is lower than the federal adjusted basis.

(f) If a taxpayer received a refund of federal income tax the deduction of which in a tax year beginning after December 31, 2003, resulted in a reduction of Montana income tax liability, the refund is, to the extent that the deduction resulted in a reduction of Montana income tax liability, a positive adjustment to the taxpayer's Montana taxable income.

(4) The department of revenue is authorized to adopt rules and require facts and information to be reported that it considers necessary to administer the transition adjustment provided in this section.

NEW SECTION. Section 133. Repealer. Sections 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-126, 15-30-127, 15-30-131, 15-30-136, 15-30-156, 15-30-157, 15-30-161, 15-30-162, 15-32-107, 15-32-108, 15-32-301, 15-32-302, 15-32-303, 15-32-609, 15-32-610, 15-32-611, and 69-3-713, MCA, are repealed.

NEW SECTION. Section 134. Codification instruction. (1) [Sections 1 through 62] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 62].

(2) [Sections 63 through 69 and 91] 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 63 through 69 and 91].

(3) [Section 76] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 76].

NEW SECTION. Section 135. Coordination instruction. If Senate Bill No. 461 and [this act] are both passed and approved, then Senate Bill No. 461 terminates December 31, 2004.

NEW SECTION. Section 136. Saving clause. [This act] does not affect rights and duties that matured,

penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 137. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 138. Effective date.** [This act] is effective January 1, 2004.

NEW SECTION. **Section 139. Applicability.** (1) Except as provided in subsection (2), [this act] applies to tax years and state, local government, and school fiscal years beginning after December 31, 2004.

(2) [Sections 1 through 53] apply to sales of services and tangible personal property after December 31, 2004.

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