SENATE BILL NO. 470

INTRODUCED BY J. MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A STATEWIDE GENERAL RETAIL SALES TAX AND USE TAX ON THE SALE OF GOODS AND SERVICES; PROVIDING FOR THE ADMINISTRATION OF THE SALES TAX AND USE TAX; EXEMPTING THE SALE OF CERTAIN GOODS AND SERVICES AND OTHER TRANSACTIONS FROM THE SALES TAX AND USE TAX; PROVIDING A VENDOR ALLOWANCE FOR THE ADMINISTRATIVE COSTS OF COLLECTING SALES TAX AND USE TAX ON THE STATE'S BEHALF; DIRECTING THE DEPARTMENT OF REVENUE TO PURSUE BECOMING A SIGNATORY TO THE STREAMLINED SALES AND USE TAX AGREEMENT; IMPOSING A SALES TAX AND USE TAX ON THE SALE OF CERTAIN MOTOR VEHICLES; PROVIDING FOR THE ALLOCATION OF SALES TAX AND USE TAX REVENUE; REDUCING PROPERTY TAXES BY APPROXIMATELY 25 PERCENT THROUGH THE ELIMINATION OF 95 MILLS THAT ARE CURRENTLY REQUIRED TO BE LEVIED ON TAXABLE PROPERTY IN EACH COUNTY FOR THE EQUALIZATION OF THE BASE FUNDING PROGRAMS FOR PUBLIC ELEMENTARY AND HIGH SCHOOL EDUCATION; PROVIDING FOR INDIVIDUAL INCOME TAX RELIEF; ALLOCATING A PORTION OF THE SALES TAX AND USE TAX REVENUE FOR USE IN THE STATE GENERAL FUND; AMENDING SECTIONS 15-1-111, 15-1-112, 15-1-501, 15-10-420, 15-23-703, 15-24-1402, 15-24-1703, 15-24-1802, 15-24-1902, 15-24-2002, 15-36-324, 17-3-213, 17-7-301, 20-3-106, 20-5-323, 20-5-324, 20-6-702, 20-7-102, 20-9-141, 20-9-212, 20-9-306, 20-9-307, 20-9-308, 20-9-331, 20-9-333, 20-9-343, 20-9-344, 20-9-347, 20-9-351, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-501, 20-9-620, 23-2-512, 23-2-616, 23-2-817, 61-3-303, 67-3-201, 90-6-309, AND 90-6-403, MCA; REPEALING SECTION 20-9-360, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

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

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

(2) (a) "Agriculture" means:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables,

and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

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

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

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

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

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

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

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

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

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

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

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

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

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

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

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

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

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

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

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

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

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

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

(i) can withstand repeated use;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The term does not include:

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

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

(iii) the provision of tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (18)(d)(iii), an operator shall do more than maintain, inspect, or set up the tangible personal property.

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

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

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

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

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

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

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

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

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

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

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

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

(i) a drug facts panel; or

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

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

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

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

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

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

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

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

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

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

(b) Prewritten computer software includes software designed and developed by the author or other

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

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

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

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

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

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

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

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

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

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

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

(a) the transfer of property for consideration; or

(b) the performance or receipt of a service for consideration.

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

(i) the seller's cost of the property sold; and

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the

seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges; or

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) The term does not include:

(i) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing charges, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iv) trade-in value of tangible personal property when the trade-in and purchase occur in one transaction.

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

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

(36) "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.

(37) (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.

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

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

(40) "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.

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

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

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

(2) For the privilege of using property within this state, there is imposed on the person using property a use tax equal to 4% of the value of the property that was:

(a) manufactured by the person using the property within this state;

(b) acquired outside this state as the result of a transaction that would have been subject to the sales tax had the transaction occurred within this state;

(c) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or

(d) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (2)(b) or (2)(c) but which transaction, because of the purchaser's subsequent use of the property, is subject to the sales tax or use tax.

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

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

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

(5) The sale of property or services exempt or nontaxable under [sections 1 through 52] 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 the administration of the sales tax and use tax, it is presumed that:

(a) all sales by a person engaging in business are subject to the sales tax or use tax; and

(b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use within this state.

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

NEW SECTION. **Section 4. Credit -- out-of-state taxes.** If a sales tax, use tax, or similar tax has been levied by another state or a political subdivision of another state on property or a service that was purchased outside this state but that will be used or consumed within this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

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

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

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

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

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

NEW SECTION. **Section 7. Collection of sales tax and use tax -- listing of business locations and agents -- severability**. (1) Except when the purchaser has a direct payment permit as provided in [section 8],

a person engaging in the business of selling property or services subject to taxation under [sections 1 through 52] shall collect the sales tax or use tax from the purchaser and pay the sales tax or use tax collected to the department.

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

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

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

(ii) canvassing;

(iii) demonstrating;

(iv) collecting money;

(v) warehousing or storing merchandise;

(vi) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers;

(vii) to the extent permitted by federal law, soliciting orders for property by means of telecommunications or a television shopping system or by providing telecommunications services that use toll or toll-free numbers and that are intended to be broadcast by cable, satellite, or other means to consumers within this state;

(viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for property or services by means of advertising disseminated primarily to consumers located within this state;

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

(x) soliciting orders, pursuant to a contract with a cable or satellite television operator located within this state, for tangible personal property or services by means of advertising transmitted or distributed over a cable or satellite television system within this state; or

(xi) participating in an act that benefits from banking, financing, debt collection, telecommunications, or marketing activities occurring within this state or that benefits from the location within this state of authorized installation, servicing, or repair facilities.

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

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

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

(i) as provided in [section 32]; or

(ii) under the multistate central registration system established under the agreement.

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

(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 1 through 52] constitute a debt owed to this state by the person required to collect the sales tax or use tax.

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

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

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

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

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

NEW SECTION. **Section 8. Direct payment of sales tax -- direct payment permits.** (1) The department may issue direct payment permits to any person liable for the payment of more than $500 a year in sales taxes or use taxes. A person who desires to make direct payment shall apply to the department, on forms approved by the department. By applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to pay the sales tax due and use tax due under [sections 1 through 52] made by the applicant as a direct payment permitholder. A direct payment permit may be revoked by the department

at any time upon 90 days' written notice to the permittee. A direct payment permitholder may be audited by the department.

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

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

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

(a) a unique identification number;

(b) the nature of the exemption, such as:

(i) the purchase of types of property and services for resale;

(ii) the purchase of types of property and services for manufacturing;

(iii) that the purchaser holds a valid direct payment permit as described in [section 8]; or

(iv) that the purchaser is an entity exempt from payment of sales tax or use tax;

(c) the name and address of the purchaser; and

(d) if it is a paper certificate, a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for an exemption certificate prior to January 1, 2004. The rules adopted by the department must ensure that each person eligible for an exemption certificate within this state prior to January 1, 2004, that has applied in a timely fashion is issued an exemption certificate prior to January 1, 2004.

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

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

(3) If the seller 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, the purchaser is liable for payment of the sales tax or use tax due on sales for which the purchaser incorrectly claimed an exemption.

If the incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser is subject to the penalty provided in [section 35].

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

(a) health services (NAICS sector 62);

(b) educational services (NAICS sector 61), 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 subsector (487);

(f) farm product warehousing and storage (NAICS industry 49313);

(g) water, sewage, and other systems (NAICS group 2213);

(h) security brokerage (NAICS industry 52312); and

(i) advertising and related services (NAICS group 5418).

(2) The following are also specifically exempt from the sales tax and use tax imposed in [section 2]:

(a) services rendered by an employee for the employee's employer;

(b) commissions earned or service fees paid by an insurance company to an agent, insurance producer, or representative for the sale of an insurance policy;

(c) the rental or lease of a motor vehicle rented or leased under a single contract for more than 28 days;

(d) services provided by a corporation to:

(i) another corporation that is centrally assessed and that has identical ownership to the corporation providing the service; and

(ii) a subsidiary that is wholly owned by the corporation providing the service and that is centrally assessed;

(e) retail telecommunications services subject to the retail telecommunications excise tax under Title 15, chapter 53; and

(f) gambling that is regulated under Title 23, chapter 5.

NEW SECTION. **Section 12. Exemption -- government agencies -- 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, water, electricity, telecommunications services, refuse collection, or other utility services is not exempt from the sales tax and use tax.

NEW SECTION. **Section 13. Exemption -- food products**. (1) Except as provided in subsection (3), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

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

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

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

NEW SECTION. **Section 14. Exemption -- medicine, drugs, and certain devices**. The following are exempt from the sales tax and use tax imposed in [section 2]:

(1) prescriptions, over-the-counter drugs, insulin, and oxygen; and

(2) therapeutic and prosthetic devices, durable medical equipment, and mobility enhancing equipment.

NEW SECTION. **Section 15. Exemption -- 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 paid to an insurance company, a health service corporation, a health maintenance organization, or a fraternal benefit society or to an agent or producer of an insurance company, health services corporation, health maintenance organization, or fraternal benefit society are exempt from the sales tax.

NEW SECTION. **Section 17. Exemption -- dividends and interest**. The following are exempt from the sales tax and use tax imposed in [section 2]:

(1) interest on money loaned or deposited;

(2) dividends or interest that accrue 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 -- isolated or occasional sale or lease of property**. (1) The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax.

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

NEW SECTION. **Section 19. 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 20. 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;

(6) water for commercial irrigation; and

(7) agricultural services that are used, applied, distributed, or otherwise employed in the sale or use of property or a service described in subsections (1) through (6).

NEW SECTION. **Section 21. 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 22. Exemption -- minerals -- exceptions.** (1) The sale or lease of interests in minerals is exempt from the sales tax and use tax.

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

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

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

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

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

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

NEW SECTION. **Section 23. Exemption -- certain chemicals, reagents, and substances.** (1) The sale or use by a 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 24. Nontaxability -- sale for resale.** (1) The sale of property for resale is nontaxable if:

(a) the sale is made to a purchaser with an exemption certificate; and

(b) the purchaser resells the property either by itself or in combination with other property in the ordinary course of business and the property will ultimately be subject to the sales tax or use tax.

(2) The sale of a service for resale is nontaxable if:

(a) the sale is made to a purchaser with an exemption certificate;

(b) the purchaser resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and

(c) the subsequent sale is in the ordinary course of business and subject to the sales tax or use tax.

NEW SECTION. **Section 25. 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 26. 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 27. 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 for airing an advertisement is nontaxable if:

(a) the advertising message is supplied by or on behalf of a national or regional seller;

(b) the advertiser does not have its principal place of business within this state; or

(c) the advertiser is not incorporated under the laws of this state.

NEW SECTION. **Section 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 -- sale of tangible personal property for leasing**. The sale of property, other than furniture or appliances that are purchased for use as described in [section 26(2)], 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 30. Nontaxability -- lease for subsequent lease**. The lease of property, other than furniture or appliances that are purchased for use as described in [section 26(2)], 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 31. 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 that is taxable under [section 2].

NEW SECTION. **Section 32. Seller's registration -- rules.** (1) A person that wishes to engage in business within this state shall register as a seller before engaging in business within this state.

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

(3) The department shall register each applicant eligible to engage in business within this state and provide a separate, numbered seller's registration for each location in which the applicant is maintaining an office or other place of business. A registration is valid until revoked or suspended but is not assignable. A registration is valid only for the person in whose name it is issued and for the transaction of business at the place designated. Except as provided in [section 33(1)(c)], 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 and for registering sellers engaging in business within this state prior to January 1, 2004. The rules adopted by the department must ensure that each person engaging in business within this state prior to January 1, 2004, has the opportunity to be registered prior to January 1, 2004.

NEW SECTION. **Section 33. Seller's registration application -- requirements -- place of business -- form**. (1) (a) A person that wishes to engage in business within this state shall file with the department an application for a seller's registration. If the person has more than one location in which the person is maintaining an office or other place of business, an application may include multiple locations.

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

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

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

registration.

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

NEW SECTION. **Section 34. Revocation or suspension of seller's registration -- appeal**. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, suspend or revoke a seller's registration held by a person that fails to comply with the provisions of [sections 1 through 52].

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

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

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

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

NEW SECTION. **Section 35. Improper use of subject of purchase obtained with exemption certificate -- penalty**. (1) (a) If a purchaser that uses an exemption certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 1 through 52], 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.

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

(ii) Upon subsequent sale of the property, the seller shall include the entire amount of the sales price,

without deduction of amounts previously received as rentals.

(2) A 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 good 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 36. Commingling exemption certificate goods**. If a purchaser uses an exemption certificate when purchasing fungible goods and commingles these goods with fungible goods that were not purchased with an exemption certificate but that are of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the exemption certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the exemption certificate.

NEW SECTION. **Section 37. Liability for payment of tax -- security for retailer without place of business -- penalty**. (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

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

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

NEW SECTION. **Section 38. Application for permission to report on accrual basis**. (1) A person that is a registered seller may apply to the department for permission to report and pay the sales tax or use tax

on an accrual basis.

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

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

NEW SECTION. **Section 39. Returns -- payment -- authority of department**. (1) Each person engaged in business within this state or using property or services within this state that are subject to tax under [sections 1 through 52] shall file a return. Sellers that are registered under the agreement and use either a certified automated system or a certified service provider 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 made to the department before the 20th day of the month after the end of the quarter.

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

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

electronically filed.

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

(b) For the purpose of determining compliance with the provisions of [sections 1 through 52], 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 40. Credit for bad debts -- taxes paid if account collected**. (1) (a) Sales taxes paid by a person filing a return under [section 39] on sales found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax. A bad debt must be deducted on the return for the period during which the bad debt is written off as uncollectible in the seller's books and records and must be eligible to be deducted for federal income tax purposes, whether or not the seller is actually required to file federal income tax returns.

(b) A bad debt deduction may not include:

(i) a finance charge or interest, either on the sale itself or that is attributed to the late payment of the purchase price;

(ii) the sales tax or use tax imposed in [section 2];

(iii) any uncollectible amount on property that remains in the possession of the seller until the full

purchase price is paid;

(iv) any expense incurred in attempting to collect any debt; or

(v) repossessed property.

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

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

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

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

NEW SECTION. **Section 41. Vendor allowance**. (1) In lieu of the vendor allowance provided in subsection (3), a certified service provider must receive a monetary allowance determined as provided in the agreement, and the seller using the certified service provider may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax proceeds collected by the seller using the certified service provider.

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

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

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

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

NEW SECTION. **Section 42. Security -- limitations -- bond**. (1) The department may require a person

registered under [section 32] to deposit with the department security in a form and amount that the department determines is appropriate. The security deposit may not be more than twice the estimated average liability for the period for which a return is required to be filed or $10,000, whichever is less.

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

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

NEW SECTION. **Section 43. Examination of return -- adjustments -- delivery of notices and demands**. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 39] constitutes the tax to be paid.

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

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

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

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

(b) served personally upon the taxpayer.

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

NEW SECTION. **Section 44. Penalties and interest for violation**. The provisions of 15-1-216 apply to returns, reports, and failure to pay the tax required under [sections 1 through 52].

NEW SECTION. **Section 45. Authority to collect delinquent taxes**. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 52].

(b) If a tax imposed by [sections 1 through 52] 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 46. Limitations**. (1) Except in the case of a person that purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 52], 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 47. Refunds -- interest -- limitations**. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 52] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

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

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

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

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

NEW SECTION. **Section 48. Administration -- rules**. (1) The department shall:

(a) administer and enforce the provisions of [sections 1 through 52];

(b) cause to be prepared and distributed forms and information that are necessary to administer the provisions of [sections 1 through 52]; and

(c) adopt rules that are necessary or appropriate to administer and enforce the provisions of [sections 1 through 52].

(2) (a) In administering the provisions of [sections 1 through 52], the department shall, when applicable and not in conflict with Montana law, follow the provisions of the agreement.

(b) The department shall report to the revenue and transportation interim committee, as provided in 5-5-227, on:

(i) the operation of the agreement and the benefits and costs to the state of its participation in the agreement; and

(ii) changes to the agreement that require changes in Montana law for compliance with the agreement.

NEW SECTION. **Section 49. Revocation of corporate license -- hearing authorized -- appeal**. (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 1 through 52] fails to comply with any of the provisions of [sections 1 through 52] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

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

(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 50. Taxpayer quitting business -- liability of successor**. (1) (a) All taxes payable under [sections 1 through 52] 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 predecessor taxpayer a sum sufficient to pay any tax due until the predecessor taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

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

(4) (a) A successor is not liable for any tax due from the person 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 predecessor taxpayer of the business within 6 months of receipt of the notice of acquisition from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor. If a copy of the assessment is not mailed to the successor as required in this subsection (4)(b), the successor is not liable for the tax due.

NEW SECTION. **Section 51. Tax as debt.** (1) The tax imposed by [sections 1 through 52] and related

interest and penalties become a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

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

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

(b) In addition to the liability imposed by subsection (3)(a), the officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 1 through 52] and who fails to pay the tax is liable to the state for the amounts imposed by [sections 1 through 52] plus the penalty and interest due, if any, on the amounts.

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

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

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

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

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 52], 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 53. Uniform sales and use tax administration**. [Sections 53 through 60] may be cited as the "Uniform Sales and Use Tax Administration Act".

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

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

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

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

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

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

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

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

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

NEW SECTION. **Section 55. Authority to enter agreement.** (1) The department is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

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

the agreement.

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

NEW SECTION. **Section 56. Relationship to state law.** A provision of the agreement, in whole or 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 57. Agreement requirements.** The department may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

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

(a) limiting the number of state rates;

(b) limiting the application of maximums on the amount of state tax that is due on a transaction;

(c) limiting the application of thresholds on the application of state tax.

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

(a) the sourcing of transactions to taxing jurisdictions;

(b) the administration of exempt sales;

(c) the allowances that a seller may take for bad debts;

(d) sales tax and use tax returns and remittances.

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

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

(5) The agreement must provide that registration with the multistate 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 58. 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 59. Limited binding and beneficial effect.** (1) The agreement binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

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

political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

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

NEW SECTION. **Section 60. Seller and third-party liability.** (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales taxes and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax due each member state on all sales transactions that the certified service provider processes for the seller, except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales tax or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items that the seller sells or unless the seller committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

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

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

NEW SECTION. **Section 61. Sales tax and use tax account -- allocation.** (1) There is within the state special revenue fund an account for sales tax and use tax money.

(2) All money collected under [sections 1 through 52] must be paid by the department into the account for sales tax and use tax.

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

(4) After retaining the amount necessary for the purposes of subsection (3), all remaining revenue in the sales tax and use tax account is allocated as follows:

(a) for fiscal years 2004 and 2005, the first $180 million each year is allocated as follows:

(i) 34.737% for county equalization of the elementary BASE funding program, as described in 20-9-331;

(ii) 23.158% for county equalization of the high school BASE funding program, as described in 20-9-333; and

(iii) the remainder for state equalization aid, as defined in 20-9-343;

(b) for fiscal years 2004 and 2005, the next $104 million each year is allocated for state equalization aid, as defined in 20-9-343, through the guarantee account established in 20-9-622;

(c) for fiscal years 2004 and 2005, the next $96 million each year is allocated to the state general fund; and

(d) the remainder, if any, in the account at the close of fiscal years 2004 and 2005, after the allocations provided for in subsections (4)(a) through (4)(c), is allocated to an account in the state general fund to be used for income tax relief as provided in [section 62]. For the purposes of this subsection (4)(d), the remainder includes all taxes, interest, and penalties received on taxes due during the fiscal year, regardless of when the taxes, interest, and penalties were actually paid or collected.

(5) If the total amount of revenue deposited into the account in fiscal year 2004 is less than $480 million, the allocations in subsections (4)(a) through (4)(d) must be reduced in proportion to the revenue shortfall.

(6) For fiscal years beginning after June 30, 2005, all revenue in the sales tax and use tax account remains in the account until appropriated by the legislature.

(7) This section provides only for the allocation of sales tax and use tax revenue. Allocations made under this section may not be expended from the account for sales tax and use tax money until appropriated by the legislature.

NEW SECTION. **Section 62. Income tax relief -- excess sales tax revenue distribution.** (1) Excess sales tax revenue allocated pursuant to [section 61(4)(d)] must be redistributed to taxpayers as income tax relief as provided in this section.

(2) Each year, the department shall determine the amount of excess sales tax revenue to be distributed as income tax relief to individual income taxpayers and shall distribute the amount of excess sales tax revenue as provided in subsections (3) and (4).

(3) (a) Fifty percent of the excess sales tax revenue must be distributed on a per-taxpayer basis.

(b) Each year, the department shall divide the amount of excess sales tax revenue described in subsection (3)(a) by the number of state individual income taxpayers who filed income tax returns pursuant to 15-30-103 for the previous tax year.

(c) The quotient determined under subsection (3)(b) equals the amount of income tax relief to which each individual income taxpayer is entitled.

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

(4) (a) Fifty percent of the excess sales tax revenue must be distributed as income tax relief on a proportional basis of individual income taxes paid.

(b) The department shall determine each individual income taxpayer's proportional share by:

(i) dividing the amount of individual income tax paid pursuant to 15-30-103 by the taxpayer in the previous tax year by the total amount of individual income taxes paid pursuant to 15-30-103 in the previous tax year; and

(ii) multiplying the quotient determined under subsection (4)(b)(i) by the amount of excess sales tax revenue described in subsection (4)(a).

(c) Before December 31 of each year, the department shall distribute to each individual income taxpayer who filed an income tax return pursuant to 15-30-103 for the previous tax year the taxpayer's proportional share determined pursuant to subsection (4)(b).

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

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

Section 63. Section 15-1-111, MCA, is amended to read:

"15-1-111. (Temporary) Reimbursement to local governments and schools -- duties of department and county treasurer -- statutory appropriation. ~~(1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:~~

~~(a) the number of mills levied in the jurisdiction for tax year 1989;~~

~~(b) the number of mills levied in the jurisdiction for tax year 1990;~~

~~(c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and~~

~~(d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.~~

~~(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, prior to 1994, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145, prior to 1994. The department shall total the amounts for all taxing jurisdictions within the county.~~

~~(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.~~

~~(b) For tax year 1993 through tax year 1998, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.~~

~~(c) (i)~~(1) (a) For tax year ~~1999~~ 2004 through tax year 2008, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for ~~the~~ fiscal year ~~1991~~ 2003, progressively reduced by ~~10%~~ 20% of the ~~1991~~ 2003 amount each year, in accordance with the following schedule:

Tax Year	Percentage of ~~1991~~ 2003 Remittance Amount
~~1999~~	~~90~~
~~2000~~	~~80~~
~~2001~~	~~70~~
~~2002~~	~~60~~
~~2003~~	~~50~~
2004	~~40~~ 80
2005	~~30~~ 60
2006	~~20~~ 40
2007	~~10~~ 20

2008 and following years 0

~~(ii)~~(b) The amount remitted must be adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection ~~(7)~~ (5). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

~~(4)~~(2) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

~~(5)~~(3) (a) For the purposes of this section and subject to subsection ~~(7)~~ (5), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district.

(b) The term does not include county or state ~~school equalization~~ levies provided for in 15-10-107, ~~20-9-331, 20-9-333, 20-9-360,~~ 20-25-423, and 20-25-439.

~~(6)~~(4) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

~~(7)~~(5) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b). (Repealed effective July 1, 2008--secs. 66(2), 68(2), Ch. 422, L. 1997.)"

Section 64. Section 15-1-112, MCA, is amended to read:

"15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. ~~(1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction~~

~~that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.~~

~~(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.~~

~~(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.~~

~~(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.~~

~~(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.~~

~~(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.~~

~~(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995~~

~~market value for property described in 15-6-138 in the same jurisdiction.~~

~~(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.~~

~~(3)~~(1) (a) The department shall, as provided in subsection (2)(a), annually determine a reimbursement amount associated with reducing the tax rate in 15-6-138 pursuant to Chapter 570, Laws of 1995. The reimbursement amounts must be determined for each local government based on the reimbursement amount by each local government for tax year 2003. The department shall total for each county the reimbursement amounts for each local government within the respective county. The reimbursement amount for the county must be paid to the treasurer of each county for distribution as provided for in subsection (3).

(b) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levies or levied mills against property described in 15-6-138, 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)~~(c) The term does not include ~~county or state school equalization levies~~ the vocational-technical education levy provided for in ~~20-9-331, 20-9-333, 20-9-360, and~~ 20-25-439.

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

~~(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.~~

~~(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360~~

~~in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).~~

~~(13)~~(2) (a) The reimbursement amount for tax year ~~1999~~ 2004 and each subsequent tax year for ~~9~~ 5 years must be progressively reduced each year by ~~10%~~ 20% of the reimbursement amount for tax year ~~1998~~ 2003, according to the following schedule:

Tax Year	Percentage of ~~1998~~ 2003 Reimbursement Amount

~~1999~~	~~90~~
~~2000~~	~~80~~
~~2001~~	~~70~~
~~2002~~	~~60~~
~~2003~~	~~50~~
2004	~~40~~ 80
2005	~~30~~ 60
2006	~~20~~ 40
2007	~~10~~ 20
2008 and following years	0

(b) ~~The~~ Of the reimbursement amount, ~~for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360~~ 31% must be distributed in December of the ~~same~~ tax year and 69% must be distributed in June of the following year.

~~(14)~~(3) The county treasurer shall use the funds ~~from the reduced payment to the state for the levy imposed under 20-9-360~~ to reimburse each local government taxing jurisdiction in the amount determined by the department ~~under subsection (2)~~. The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

~~(15)~~(4) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

~~(16)~~(5) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 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."

Section 65. 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 collections, if any, allocated to the general fund in [section 61(4)].

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

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

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

Section 66. 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)~~,~~:

(i) 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; and

(ii) the amount of property taxes and the number of mills assessed in the prior year excludes the amount assessed and the mills levied under 20-9-331, 20-9-333, and 20-9-360, as those sections read on January 1, 2003.

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

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

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property; and

(e) transfer of property from tax-exempt to taxable status.

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

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

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

(c) For the purposes of this section, newly taxable property does not include an increase in appraised

value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

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

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

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

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

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

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

(i) a judgment levy under 2-9-316 or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

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

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

Section 67. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds -- taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give

full notice, as provided in 15-16-101, to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) (a) Except as provided in subsections (5), (6), and (8), the county treasurer shall ~~credit~~ distribute the amount determined under subsection (3) and the amounts received under 15-23-706~~:~~ as provided in subsections (4)(b) and (4)(c) of this section.

~~(a)~~(b) The county treasurer shall forward to the state ~~and~~ for deposit in the state special revenue fund described in 15-10-107 an amount equal to 0.006 times the total amount determined under subsection (4)(a) of this section. This amount is equivalent to the amount that would be generated by the levy imposed in 15-10-107 for support of the Montana university system and is intended to be used by the Montana university system for the same purposes as described in 15-10-107.

(c) After forwarding the amount calculated under subsection (4)(b), the county treasurer shall forward the remainder of the amount determined under subsection (4)(a):

(i) to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for ~~state and~~ county purposes, except for county elementary and high school equalization, in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction, except for county elementary and high school equalization; and

~~(b)~~(ii) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection ~~(4)(a)~~ (4)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds, except proceeds for county elementary and high school equalization, were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988~~,~~ as follows:

(a) for fiscal year 2005, in the relative proportions required by the levies for ~~state,~~:

(i) support of the Montana university system as provided in 15-10-107; and

(ii) county~~,~~ and school district, except county elementary and high school equalization, purposes in the same manner as property taxes were distributed in ~~the previous~~ fiscal year 2004; and

(b) for fiscal year 2006 and succeeding fiscal years, as all other property taxes are distributed for the fiscal year."

Section 68. Section 15-24-1402, MCA, is amended to read:

"15-24-1402. New or expanding industry -- assessment -- notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year ~~thereafter~~ after the 5-year period, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination ~~thereof~~ of land, personal property, or improvements is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) ~~may~~ does not apply to levies or assessments required under Title 15, chapter 10, ~~20-9-331, 20-9-333, or 20-9-360~~ or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

Section 69. Section 15-24-1703, MCA, is amended to read:

"15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:

(1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10~~, 20-9-331, 20-9-333, and 20-25-423~~;

(2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12."

Section 70. Section 15-24-1802, MCA, is amended to read:

"15-24-1802. Business incubator tax exemption -- procedure. (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall ~~do so~~ approve the exemption by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, ~~20-9-331, or 20-9-333~~ or otherwise required under state law."

Section 71. Section 15-24-1902, MCA, is amended to read:

"15-24-1902. Industrial park tax exemption -- procedure -- termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall

approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall ~~do so~~ approve the exemption by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, ~~20-9-331, or 20-9-333~~ or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the ~~taxable~~ tax year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203."

Section 72. Section 15-24-2002, MCA, is amended to read:

"15-24-2002. Building and land tax exemption -- procedure -- termination. (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected

county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, ~~20-9-331, or 20-9-333~~ and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the ~~taxable~~ tax year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203."

Section 73. Section 15-36-324, MCA, is amended to read:

"15-36-324. (Temporary) Distribution of taxes -- rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty,

collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first

12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

~~(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;~~

~~(iii)~~(ii) ~~for the fiscal years beginning on or after July 1, 2003,~~ 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

~~(iv)~~(iii) ~~for the fiscal years beginning on or after July 1, 2003,~~ 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of

natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in 76-15-904;

~~(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;~~

~~(iii)~~(ii) ~~for the fiscal years beginning on or after July 1, 2003,~~ 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

~~(iv)~~(iii) ~~for the fiscal years beginning on or after July 1, 2003,~~ 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal

year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 ~~and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989,~~ must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423~~, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360~~ must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer

by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) ~~In the event that~~ If the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502. (Terminates June 30, 2011--sec. 10, Ch. 531, L. 2001; sec. 8(2), Ch. 12, Sp. L. August 2002.)

15-36-324. (Effective July 1, 2011) Distribution of taxes -- rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 ~~and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989,~~ must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423~~, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360~~ must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) ~~In the event that~~ If the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 74. Section 17-3-213, MCA, is amended to read:

"17-3-213. Allocation of forest reserve funds and other federal funds -- options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (4), as provided in Public Law 106-393, to determine how the forest reserve funds and Public Law 106-393 funds apportioned to each county must be distributed by the county treasurer pursuant to this section.

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.

(4) If a county's full payment is less than $100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 2/3% of the amount designated; and

(b) ~~to the following countywide school levies,~~ 33 1/3% of the amount designated to the following:

(i) county equalization for elementary schools provided for in 20-9-331;

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) (a) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on:

(i) for county equalization for elementary schools under subsection (5)(b)(i), the proportion that 33 mills bears to the total number of mills levied for all funds;

(ii) for county equalization for high schools under subsection (5)(b)(ii), the proportion that 22 mills bears to the total number of mills levied for all funds; and

(iii) the proportion that the mill levy of each fund in subsections (5)(b)(iii) and (5)(b)(iv) bears to the total number of mills levied for all the funds.

(b) Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year ~~to the levies designated~~ as provided in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% distributed under subsection (5)(b) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county."

Section 75. Section 17-7-301, MCA, is amended to read:

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

budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

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

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

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

(c) requested by the attorney general and:

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

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

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

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

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

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

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

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

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

Section 76. Section 20-3-106, MCA, is amended to read:

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

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with the provisions of 20-1-408;

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

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

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

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

Section 77. Section 20-5-323, MCA, is amended to read:

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

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

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

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

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

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

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the

preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

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

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

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

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

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

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

Section 78. Section 20-5-324, MCA, is amended to read:

"20-5-324. Tuition report and payment provisions -- exemption. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b), the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(b) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the ~~basic~~ county ~~tax for elementary~~ equalization of elementary BASE funding program, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the ~~basic~~ county ~~tax for high school~~ equalization of high school BASE funding program, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(10) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

Section 79. Section 20-6-702, MCA, is amended to read:

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

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

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

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

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

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

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

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

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

Section 80. Section 20-7-102, MCA, is amended to read:

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

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

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

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

Section 81. Section 20-9-141, MCA, is amended to read:

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

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

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

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

general fund budget.

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

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

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

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

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

(iii) anticipated oil and natural gas production taxes;

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

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

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

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

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

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

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

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

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

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

Section 82. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) ~~must~~ shall receive and ~~shall~~ hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

~~(a) the basic county tax for elementary equalization;~~

~~(b) the basic county tax for high school equalization;~~

~~(c)~~(a) the county tax in support of the transportation schedules;

~~(d)~~(b) the county tax in support of the elementary and high school district retirement obligations; and

~~(e)~~(c) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) ~~must~~ shall receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent

school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 ~~when~~ whenever there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received ~~from the basic~~ for county ~~taxes for~~ elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7), in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 83. Section 20-9-306, MCA, is amended to read:

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

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

(2) "BASE aid" means~~:~~

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

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

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

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

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

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

(a) $213,819 for each high school district;

(b) $19,244 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $19,244 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $213,819 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

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

and funded with state and county equalization aid.

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

(a) 175% of special education allowable cost payments; or

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

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

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

(a) for a high school district or a K-12 district high school program, a maximum rate of $5,205 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,906 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

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

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

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

Section 84. Section 20-9-307, MCA, is amended to read:

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

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of

the cost of the basic school system through BASE aid to support the BASE funding program in the manner established in this title.

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

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

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

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

(c) appropriations for special education;

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

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

Section 85. Section 20-9-308, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all

property within the district or other revenue available to the district, as provided in 20-9-141."

Section 86. Section 20-9-331, MCA, is amended to read:

"20-9-331. ~~Basic county tax for elementary equalization and other revenue~~ Revenue for county equalization of elementary BASE funding program. (1) (a) ~~Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for~~ For the purposes of elementary equalization and state BASE funding program support~~. The~~, the revenue collected ~~from this levy~~ under this section must be apportioned to the support of the elementary BASE funding programs of the school districts in the county ~~and to the state general fund in the following manner:~~

~~(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county~~.

(b) If the ~~basic levy and other~~ revenue prescribed by this section ~~produce~~ produces more revenue than is required to repay a state advance, if any, for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the ~~levy has been set~~ state advance was received.

(2) The revenue ~~realized from the county's portion of the levy prescribed by this section and the revenue~~ from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; ~~and~~

(g) oil and natural gas production taxes; and

(h) any money appropriated by the legislature that is designated as county elementary equalization money."

Section 87. Section 20-9-333, MCA, is amended to read:

"20-9-333. ~~Basic county tax for high school equalization and other revenue~~ Revenue for county equalization of high school BASE funding program. (1) (a) ~~Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for~~ For the purposes of high school equalization and state BASE funding program support~~. The~~, the revenue collected ~~from this levy~~ under this section must be apportioned to the support of the BASE funding programs of high school districts in the county ~~and to the state general fund in the following manner:~~

~~(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county~~.

(b) If the ~~basic levy and other~~ revenue prescribed by this section ~~produce~~ produces more revenue than is required to repay a state advance, if any, for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the ~~levy has been set~~ state advance was made.

(2) The revenue ~~realized from the county's portion of the levy prescribed in this section and the revenue~~ from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including

federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703; ~~and~~

(d) oil and natural gas production taxes; and

(e) any money appropriated by the legislature that is designated as county high school equalization money."

Section 88. Section 20-9-343, MCA, is amended to read:

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

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

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

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

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

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

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

~~(4)~~(3) ~~Beginning July 1, 2003, the~~ The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) (i) subject to subsection ~~(4)(a)(ii)~~ (3)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

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

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

Section 89. Section 20-9-344, MCA, is amended to read:

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

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

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

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

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

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

(b) maintain accredited status.

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

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

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

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

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

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

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

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

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

Section 90. Section 20-9-347, MCA, is amended to read:

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

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be ~~raised for~~ available through the elementary and high school county equalization funds as provided in 20-9-331 and 20-9-333; and

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of schools with a report of payments for special education allowable costs to districts of the county."

Section 91. Section 20-9-351, MCA, is amended to read:

"20-9-351. Funding of deficiency in BASE aid. If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide ~~the guaranteed tax base aid required under 20-9-366 through 20-9-369 and~~ BASE aid support determined under 20-9-347, the superintendent of public

instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium."

Section 92. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

~~(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid.~~

~~(b)~~(2) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

~~(3) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.~~

~~(b)~~(3) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school facility entitlement and retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 93. Section 20-9-367, MCA, is amended to read:

"20-9-367. Eligibility to receive guaranteed tax base retirement aid or state advance or reimbursement for school facilities. ~~(1) If the district guaranteed tax base ratio of any elementary or high school~~

~~district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.~~

~~(2)~~(1) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

~~(3)~~(2) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund."

Section 94. Section 20-9-368, MCA, is amended to read:

"20-9-368. Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

~~(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:~~

~~(a) multiply the sum of the district's BASE budget amount less direct state aid by the corresponding statewide guaranteed tax base ratio;~~

~~(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and~~

~~(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.~~

~~(4)~~(3) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 95. Section 20-9-369, MCA, is amended to read:

"20-9-369. Duties of superintendent of public instruction and department of revenue. (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

~~(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;~~

~~(b)~~(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the ~~guaranteed tax base aid and~~ state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

~~(c)~~(b) requiring each county and district that qualifies and applies for ~~guaranteed tax base aid~~ state advances and reimbursements for school facilities to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

~~(d)~~(c) keeping a record of the complete data concerning appropriations available for ~~guaranteed tax base aid~~ state advances and reimbursement for school facilities and the entitlements for the aid of the counties and districts that qualify;

~~(e)~~(d) distributing the ~~guaranteed tax base aid~~ state advances and reimbursement for school facilities entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

~~(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.~~"

Section 96. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid <u>for retirement</u> that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district."

Section 97. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in ~~20-9-343(4)(a)(ii)~~ 20-9-343(3)(a)(ii) and available on or after July 1, 2003, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 98. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identification number. (1) The owner of ~~each~~ a motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $3.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form and the information required under subsection (2)(a), (2)(b), or (2)(c), as applicable, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) (a) ~~The~~ Before the application for certification or recertification may be accepted by the county treasurer, the applicant, upon the filing of the application, shall:

(a) pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification ~~before the application for certification or recertification may be accepted by the county treasurer~~; and

(ii) except as provided in subsection (2)(b) or (2)(c), provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of a motorboat, sailboat, or personal watercraft that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax has been paid.

(c) If the applicant is unable to provide the verification required under subsection (2)(a)(ii) or proof of nontaxability under subsection (2)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52].

(d) The department of justice may adopt rules to assist the county treasurer in implementing this section.

(3) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continue in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) ~~In the event of a transfer of~~ Whenever ownership transfers, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and

legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) (a) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(b) Sales tax and use tax collected under subsection (2) must be transmitted to the department of revenue for deposit in the sales tax and use tax account under [section 61].

(11) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 99. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals -- application and issuance -- use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the

department of justice ~~for this purpose, which~~. The forms may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of $6.50, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) (a) The county treasurer may not accept any application under this section until the applicant has:

(i) paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202; and

(ii) except as provided in subsection (5)(b) or (5)(c), provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of a snowmobile that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (5)(a)(ii) or proof of nontaxability under subsection (5)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52].

(d) The department of justice may adopt rules to assist the county treasurer in implementing this section.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) (a) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund.

(b) Sales tax and use tax collected under subsection (5) must be transmitted to the department of revenue for deposit in the sales tax and use tax account under [section 61]."

Section 100. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee -- application and issuance -- disposition. (1) Each off-highway vehicle is subject to an annual registration fee of $2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;

(b) the certificate of ownership number;

(c) the name of the manufacturer of the off-highway vehicle;

(d) the model number or name;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax; and

(g) ~~such~~ any other information ~~as~~ required by the department of justice ~~may require~~.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered.

(5) (a) Upon payment of the registration fee~~, the county treasurer shall sign the application and issue a registration receipt, which~~ and, except as provided in subsection (5)(b) or (5)(c), upon verification by the applicant that the sales tax or use tax imposed in [section 2] has been paid, the county treasurer shall sign the application and issue a registration receipt.

(b) The owner of an off-highway vehicle that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax has been paid.

(c) If the applicant is unable to provide the verification required under subsection (5)(a) or proof of nontaxability under subsection (5)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52].

(d) The registration receipt must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

~~(5)~~(6) (a) All registration fees collected must be forwarded to the department of justice and deposited in the state general fund.

(b) Sales tax and use tax collected under subsection (5) must be transmitted to the department of revenue for deposit in the sales tax and use tax account under [section 61]."

Section 101. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) ~~Each~~ The owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or

more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

(f) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

(3) (a) The application may not be accepted by the county treasurer unless:

(i) the payments required by subsection (2) accompany the application; and

(ii) except as provided in subsection (3)(b) or (3)(c), verification is received from the applicant that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of a motor vehicle that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax imposed in [section 2] has been paid.

(c) If the applicant is unable to provide the verification required under subsection (3)(a)(ii) or proof of nontaxability under subsection (3)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52].

(d) The department of justice may adopt rules to assist the county treasurer in implementing this section.

(e) Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

~~(a)~~(i) the current year; and

~~(b)~~(ii) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the status of the vehicle. An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.

(5) (a) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(b) Sales tax and use tax collected under subsection (3) must be transmitted to the department of revenue for deposit in the sales tax and use tax account under [section 61]."

Section 102. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government ~~which~~ that has been registered with the department and the registration with the department is in force.

(2) (a) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department~~, which must~~. Whenever registering an aircraft, the department shall:

(i) charge a fee, ~~therefor~~ according to the fee schedule in 67-3-206, for registering the aircraft; and

(ii) except as provided in subsection (2)(b) or (2)(c), receive verification from the applicant that the sales tax or use tax imposed in [section 2] has been paid.

(b) The owner of an aircraft that was acquired by the applicant prior to [the applicability date of section 2] is not required to pay the sales tax or use tax or provide verification that the sales tax or use tax has been paid.

(c) If the applicant is unable to provide the verification required under subsection (2)(a)(ii) or proof of nontaxability under subsection (2)(b), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of [section 2]; or

(ii) provide evidence that the purchase was either exempt or nontaxable under [sections 1 through 52].

(d) The registration must be renewed annually on or before March 1 each year.

(e) The department may adopt rules to implement this section.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, ~~the~~ this state, or any political subdivision ~~thereof~~ of the federal government or this state;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in ~~a particular county of the~~ this state~~. This county must be~~ in the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in ~~the~~ this state, if the owner is not a natural person. ~~However, if~~ If the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within ~~the~~ this state, ~~he~~ the owner may register the aircraft as property within ~~such~~ the other county.

(5) Aircraft not registered in ~~the~~ this state but entering ~~the~~ this state to engage in commercial operations ~~shall~~ must be registered prior to commencing operation.

(6) (a) ~~Owners~~ The owner of an ultralight aircraft for which ~~no~~ an appropriate effective license, certificate, or permit is not or has not been issued by the United States government shall pay the fee required in 67-3-206 and, if due, the tax required to be paid under subsection (6)(b) of this section and file with the department an appropriate registration recognized and approved by the United States government.

(b) The requirements under subsection (2) for verification that the sales tax or use tax has paid, that the sales tax or use tax is not required to be paid, or that payment of the sales tax or use tax is due also apply under this subsection (6).

(7) Sales tax and use tax collected under subsections (2) and (6) must be transmitted to the department of revenue for deposit in the sales tax and use tax account under [section 61]."

Section 103. Section 90-6-309, MCA, is amended to read:

"90-6-309. Tax prepayment -- large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment ~~shall exclude~~ does not include the 6-mill university levy established under 20-25-423 ~~and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333~~.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount

established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, ~~they~~ the facilities are subject ~~during the first 3 years and thereafter~~ to taxation in the same manner as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. ~~The~~ However, tax credit allowed in any year may not~~, however,~~ exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation."

Section 104. Section 90-6-403, MCA, is amended to read:

"90-6-403. Jurisdictional revenue disparity -- conditioned exemption and reallocation of certain taxable valuation. (1) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in 90-6-404 and this section, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to 15-10-420 and the application of property tax mill levies in the local government unit to which it is allocated. The increase in taxable valuation allocated to the local government unit is considered newly taxable property in the recipient local government unit as provided in 15-10-420.

(2) Subject to 15-10-420, the total taxable valuation of a large-scale mineral development remains subject to ~~the~~ all statewide mill levies ~~and basic county levies for elementary and high school BASE funding programs as provided in 20-9-331 and 20-9-333~~.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases

operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board."

NEW SECTION. **Section 105. Transition.** (1) Beginning on [the applicability date of this section]:

(a) the department of revenue:

(i) may promulgate rules for implementing and administering the sales tax and use tax provided for in [sections 1 through 52], the income tax relief provided for in [section 62], and changes in the department's duties resulting from [sections 63 through 105] and this section;

(ii) may proceed with activities that will result in the state of Montana becoming a signatory of the Uniform Sales and Use Tax Administration Act provided for in [sections 53 through 60];

(iii) shall work collaboratively with municipalities, counties, and school districts in implementing [sections 63 through 105] to maximize a smooth transition with respect to the assessment of property taxes, budget preparation and adoption, and other fiscal considerations;

(b) the department of justice may promulgate rules for implementing the registration of boats and other watercraft, snowmobiles, and off-highway vehicles within the context of [sections 98 through 100]; and

(c) the department of transportation may promulgate rules for implementing the registration of certain motor vehicles and certain aircraft within the context of [sections 101 and 102].

(2) For property tax levies and for county and school budgeting purposes, the county levy for elementary equalization required in 20-9-331, the county levy for high school equalization required in 20-9-333, and the statewide levy required in 20-9-360, as those sections read on December 31, 2002, must be levied in 2003 and are generally payable in November 2003 and May 2004.

NEW SECTION. **Section 106. Repealer.** Section 20-9-360, MCA, is repealed.

NEW SECTION. **Section 107. Codification instruction.** (1) [Sections 1 through 60] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 60].

(2) [Section 61] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section 61].

(3) [Section 62] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 62].

NEW SECTION. **Section 108. Notification to tribal governments.** The secretary of state shall send

a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 109. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 110. Applicability.** (1) Except as provided in subsection (2), [this act] applies on [the effective date of this act].

(2) (a) [Sections 8, 9, 32, 33, 38, 48, and 53 through 60] apply to fiscal years beginning on or after July 1, 2003.

(b) [Sections 1 through 7, 10 through 31, 34 through 37, 39 through 47, 49 through 52, and 61 through 104] apply beginning January 1, 2004, to tax years and fiscal years beginning after December 31, 2003.

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