

SENATE BILL NO. 407
INTRODUCED BY B. DEPRATU

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA ECONOMIC DEVELOPMENT TAX ACT; PROVIDING FOR A LIMITED 4 PERCENT SALES TAX AND USE TAX ON CERTAIN PROPERTY AND SERVICES; REDUCING INDIVIDUAL INCOME TAX RATES; ESTABLISHING A CAPITAL GAINS CREDIT; PROVIDING FOR COLLECTION OF THE LIMITED SALES TAX AND USE TAX; PROVIDING FOR DISTRIBUTION OF THE LIMITED SALES TAX AND USE TAX REVENUE; CLARIFYING THE DEFINITION OF "CONSUMER PRICE INDEX" RELATING TO INDIVIDUAL INCOME TAX PROVISIONS; AMENDING INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE INDIVIDUAL INCOME TAX DEDUCTION FOR FEDERAL INCOME TAX PAID; AMENDING THE INDIVIDUAL INCOME TAX STANDARD DEDUCTION; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, AND 15-30-142, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [This act] may be cited as the "Montana Economic Development Tax Act".

NEW SECTION. **Section 2. Definitions.** For purposes of [sections 2 through 41], unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

(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) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

(5) "Camp" means a facility, place, or location in which persons are provided, for payment, instruction or recreation in conjunction with room and board for a limited period of time, typically measured in days or weeks.

(6) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

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

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

(b) The term does not include alcoholic beverages or tobacco.

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

(10) "Guided recreation and sightseeing" means recreational activities or sightseeing in which a service provider, for payment, accompanies or provides direction or instruction to the purchaser.

(11) (a) "Lease", "leasing", 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 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 of 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) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition 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 Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(12) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(13) "Permit" or "seller's permit" means a seller's permit as described in [section 19].

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

(15) (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 includes:

(i) soda pop, juices, coffee, tea, milk, milk shakes, and other beverages, other than alcoholic beverages, that are sold for consumption on the premises of the seller; and

(ii) bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, Danish pastry, cakes, tortes, pies, tarts, muffins, bars, or cookies, that are sold for consumption on the premises.

(c) The term does not include:

(i) food that is only cut, repackaged, or pasteurized by the seller; or

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

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

(17) (a) "Recreation fees" means money paid for participating in or observing sporting, athletic, sightseeing, or recreational activities.

(b) The term does not include money paid to observe a sporting event sanctioned by a school district, college, or university.

(18) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

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

(20) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

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

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

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

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

(iv) delivery charges;

(v) installation charges;

(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; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections (21)(a)(iii) through (21)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

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

(ii) interest, financing, 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;
or

(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.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price,

excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(22) "Sales tax" and "use tax" mean the applicable tax imposed by [section 3].

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

(24) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(25) "Sightseeing" means engaging in a tour or trip for pleasure or culture.

(26) "Sold by the drink" means alcoholic beverages that are sold for consumption on the premises where they are purchased. The term is not limited to single servings, but includes alcoholic beverages sold by the bottle, can, pitcher, or as more than a single serving.

(27) "Sporting goods" means items designed for human use and worn or used in conjunction with sporting, athletic, or recreational activities.

(28) "Sporting, athletic, or recreational activities" are activities commonly performed for pleasure, competition, or fitness purposes. The following list is intended to be examples and not an all-inclusive list:

- (a) horseback riding;
- (b) climbing, trekking, and mountaineering;
- (c) biking;
- (d) golfing;
- (e) baseball, football, hockey, volleyball, tennis, basketball, and soccer;
- (f) hunting and fishing;
- (g) boating, canoeing, jet skiing, rafting, kayaking, and parasailing;
- (h) camping and backpacking;
- (i) swimming and diving;
- (j) bowling and ice skating;
- (k) skiing, snowmobiling, snow boarding, and snowshoeing;
- (l) hang gliding and ballooning; and
- (m) motorcycling, four-wheeling, and riding all-terrain vehicles.

(29) "Tuition" means money paid for instruction, room, or board.

(30) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely

outside this state, in the ordinary course of business.

NEW SECTION. Section 3. Imposition and rate of sales tax and use tax -- exceptions. (1) A sales tax of 4% is imposed on sales of the following property or services:

- (a) prepared food;
- (b) food sold through vending machines;
- (c) alcoholic beverages sold by the drink;
- (d) accommodations and campgrounds;
- (e) the base rental charge for rental vehicles;
- (f) rental or lease of sporting goods;
- (g) guided recreation and sightseeing;
- (h) admissions;
- (i) camp tuition; and
- (j) recreation fees.

(2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be applied to the sales price.

(3) (a) For the privilege of using property or services within this state, there is imposed on the person using the following property or services a use tax equal to 4% of the value of the property or services:

- (i) prepared food;
- (ii) food sold through vending machines;
- (iii) alcoholic beverages sold by the drink;
- (iv) accommodations and campgrounds;
- (v) the base rental charge for rental vehicles;
- (vi) rental or lease of sporting goods;
- (vii) guided recreation and sightseeing;
- (viii) admissions;
- (ix) camp tuition; and
- (x) recreation fees.

(b) The use tax is imposed on property or services that were:

- (i) acquired outside this state as the result of a transaction that would have been subject to the sales tax

had it occurred within this state;

(ii) 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 the exterior boundaries of an Indian reservation within this state;

(iii) 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 (3)(a) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax; or

(iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that because of the buyer's subsequent use of the services is 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 2 through 41] is exempt from the tax imposed in subsections (1) and (3).

NEW SECTION. Section 4. Presumption of taxability -- value -- rules. (1) In order to prevent evasion of the sales tax or use tax and to aid in its administration, it is presumed that:

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

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

(2) In determining the amount of use tax due on the use of property or services, it is presumed, in the absence of preponderant evidence of another value, that value means the total amount of property or service or the reasonable value of other consideration paid for the use of the property or service, exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or service purchased, the use tax must be imposed on the reasonable value of the property or service purchased.

(3) The department shall adopt rules providing for the payment of the sales tax and use tax based on a rounding method.

NEW SECTION. Section 5. Separate statement of tax -- no advertising to absorb or refund tax -- rules. (1) If a person collects a tax in excess of the tax imposed by [section 3], both the tax and the excess tax must be remitted to the department.

(2) Except as provided in subsection (4), the sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the tax imposed by [sections 2 through 41] will be absorbed or refunded.

(4) The department may adopt rules permitting sellers the option of stating sales tax based upon a percentage of taxable sales.

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

(2) The liability imposed by this section is discharged if the buyer 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) A person engaging in the business of selling property or services subject to taxation under [sections 2 through 41] shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to [sections 2 through 41], obtain a seller's permit, as provided in [section 19], and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by [section 3] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by [section 3] by any retailer who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under [sections 2 through 41].

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 2 through 41] constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to [sections 2 through 41] 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.

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

NEW SECTION. Section 8. Nontaxable transaction certificate -- requirements. (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time that a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable.

NEW SECTION. Section 9. Nontaxable transaction certificate -- form. (1) The department shall provide for a uniform nontaxable transaction certificate. A purchaser shall use the certificate when purchasing goods or services for resale or for other nontaxable transactions.

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

- (a) the number of the seller's permit issued to the purchaser as provided in [section 19];
- (b) the general character of property or service sold by the purchaser in the regular course of business;
- (c) the property or service purchased for resale;
- (d) the name and address of the purchaser; and
- (e) a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for and provision of a certificate to a person engaging in business within this state prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] that has applied in a timely fashion is issued a certificate prior to [the applicability date of this section].

NEW SECTION. Section 10. Exemption -- government agencies -- exception. All sales by or uses by the United States or an agency or instrumentality of the United States are exempt from the sales tax and use tax.

NEW SECTION. Section 11. Exemption -- isolated or occasional sale or lease of property. The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax.

NEW SECTION. Section 12. Nontaxability -- food products. (1) The sale of food or a food service offered or delivered as part of a residential living arrangement lasting more than 30 days and food consumed by a person that is party to the arrangement is exempt from the sales tax and use tax.

(2) The sale of food or a food service offered by the state or a political subdivision of the state, including school districts and postsecondary colleges and universities, is exempt from the sales tax and use tax.

NEW SECTION. Section 13. Nontaxability -- sale of property for resale. The sale of property is nontaxable if:

- (1) the sale is made to a buyer who delivers a nontaxable transaction certificate to the seller;
- (2) the buyer resells the property either by itself or in combination with other property; and
- (3) the subsequent sale is in the ordinary course of business and the property will be subject to the sales tax.

NEW SECTION. Section 14. Nontaxability -- sale of service for resale. The sale of a service for resale is nontaxable if:

- (1) the sale is made to a person who delivers a nontaxable transaction certificate;
- (2) the buyer resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and
- (3) the subsequent sale is in the ordinary course of business and subject to the sales tax.

NEW SECTION. Section 15. Nontaxability -- lease for subsequent lease. The lease of property is nontaxable if:

- (1) the lease is made to a lessee who delivers a nontaxable transaction 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 16. Nontaxability -- 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 leasing or selling property of the type leased;
- (2) does not use the property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and
- (3) does not use the property in a manner incidental to the performance of a service.

NEW SECTION. Section 17. Nontaxability -- nonprofits. The sale of property or of a service is nontaxable if the seller is an organization that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

NEW SECTION. Section 18. Credit -- out-of-state taxes. If a sales, use, or similar tax has been levied by another state or a political subdivision of another state on property that was leased outside this state but that will be used or consumed in 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 19. Seller's permit. (1) A person that wishes to engage in business within this state that is subject to [sections 2 through 41] shall obtain a seller's permit before engaging in business within this state.

(2) Upon an applicant's compliance with [sections 2 through 41], the department shall issue to the applicant a separate, numbered seller's permit for each location in which the applicant maintains an office or other place of business within Montana. A permit is valid until revoked or suspended but is not assignable. A permit is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The permit must be conspicuously displayed at all times at the place for which it is issued.

(3) The department shall adopt rules to provide procedures for application for and provision of a seller's

permit to a person engaging in business within this state that is subject to [sections 2 through 41] prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] is issued a seller's permit prior to [the applicability date of this section]. The department may adopt rules providing for seasonal permits.

NEW SECTION. Section 20. Permit application -- requirements -- place of business -- form. (1)

(a) A person that wishes to engage in the business of making retail sales or providing services in Montana that are subject to [sections 2 through 41] shall file with the department an application for a permit. If the person has more than one location in which the person maintains 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 the permit to the applicant's cart, stand, truck, or other merchandising device.

(2) Each person or class of persons required to file a return under [sections 2 through 41] is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity.

NEW SECTION. Section 21. Revocation or suspension of permit -- appeal. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit held by a person that fails to comply with the provisions of [sections 2 through 41].

(2) The department shall provide dispute resolution on a proposed revocation or suspension pursuant to 15-1-211.

(3) If a permit is revoked, the department may not issue a new permit except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 2 through 41]. The department may require security in addition to that authorized by [section 29] in an amount

reasonably necessary to ensure compliance with [sections 2 through 41] as a condition for the issuance of a new permit to the applicant.

(4) A person aggrieved by the department's final decision to revoke a permit, as provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date on which the department issued its final decision.

NEW SECTION. Section 22. Improper use of subject of purchase obtained with nontaxable transaction certificate -- penalty. (1) If a purchaser that uses a nontaxable transaction certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 2 through 41], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) A person that uses a certificate for property that will be used for a purpose other than the purpose claimed is subject to a penalty, payable to the department, of \$100 for each transaction in which an improper use of a certificate has occurred.

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

NEW SECTION. Section 23. Commingling nontaxable certificate goods. If a purchaser uses a nontaxable transaction certificate with respect to the purchase of fungible goods and commingles these goods with fungible goods that were not purchased with a 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 certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the certificate.

NEW SECTION. Section 24. 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 retailer 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 2 through 41] and may be required to furnish adequate security,

as provided in [section 29], to ensure collection and payment of the taxes. When authorized and except as otherwise provided in [sections 2 through 41], the retailer is liable for the taxes upon all property sold and services provided in this state in the same manner as a retailer who maintains an office or other place of business within this state. The seller's permit provided for in [section 19] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer doing business within this state may not sell, solicit orders for, or deliver any property or services within Montana unless the principal, employer, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of [sections 2 through 41], the person is subject to a fine of not more than \$100 for each separate transaction or event.

NEW SECTION. Section 25. Application for permission to report on accrual basis -- rules. (1) A person that has a seller's permit may apply to the department for permission to report and pay the sales tax or use tax on an accrual basis.

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

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

(4) The department may adopt rules to implement this section.

NEW SECTION. Section 26. Returns -- payment -- authority of department. (1) Except as provided in subsection (2), on or before the 20th day of the month following the calendar quarter in which the transaction subject to the tax imposed by [sections 2 through 41] occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department. Each person engaged in business within this state or using property or services within this state that are subject to tax under [sections 2 through 41] shall file a return. A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

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

- (i) a retailer required to collect the tax; and
- (ii) 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) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by [sections 2 through 41] shall keep records, render statements, make returns, and comply with the provisions of [sections 2 through 41] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 2 through 41], 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.

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

(6) A person with collections of less than \$10 in a reporting period is not required to remit a return or payment to the department.

NEW SECTION. Section 27. Credit for taxes paid on worthless accounts -- taxes paid if account collected. (1) Sales taxes paid on an accrual basis by a person filing a return under [section 26] 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.

(2) Bad debts may be deducted within 12 months after the month in which the bad debt has been

charged off for federal income tax purposes. "Charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible or declaring as uncollectible such unpaid balance due on accounts in the case of a seller who is not required to file federal income tax returns.

(3) If an account is subsequently collected, the sales tax must be paid on the amount collected.

(4) A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a 12-month period defined by that bad debt.

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

NEW SECTION. Section 28. Vendor allowance. (1) A person filing a timely return under [section 26] may claim a quarterly vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed \$1,000 a quarter.

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

(3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance.

NEW SECTION. Section 29. Security -- limitations -- sale of security deposit at auction -- bond. (1) The department may require a retailer to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) 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 2 through 41].

NEW SECTION. Section 30. 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 26] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be 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.

(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 31. Penalties and interest for violation. If a person fails to file a return on or before the due date or fails to pay a tax on or before a due date, the person must be assessed penalty and interest as provided in 15-1-216.

NEW SECTION. Section 32. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 2 through 41].

(b) If a tax imposed by [sections 2 through 41] 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 33. Interest on deficiency. Interest accrues on unpaid or delinquent taxes as provided in 15-1-216.

NEW SECTION. Section 34. 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 2 through 41], a deficiency may not be assessed or collected with respect to a 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.

NEW SECTION. Section 35. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 2 through 41] 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 paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 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 36. Administration -- rules. The department shall:

- (1) administer and enforce the provisions of [sections 2 through 41];
- (2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 2 through 41]; and
- (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 2 through 41].

NEW SECTION. Section 37. Revocation of corporate license -- appeal. (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 2 through 41] fails to comply with any of the provisions of [sections 2 through 41] 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 2 through 41].

(3) An order authorized in this section may not be made until the corporation is given an opportunity for dispute resolution as provided in 15-1-211.

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

NEW SECTION. Section 38. Taxpayer quitting business -- liability of successor. (1) (a) All taxes payable under [sections 2 through 41] are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

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

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

becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

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

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

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

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

NEW SECTION. Section 39. Tax as debt. (1) The tax imposed by [sections 2 through 41] 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) (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) 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 2 through 41] and who fails to pay the tax is liable to the state for the amounts imposed by [sections 2 through 41] and the penalty and interest due on the amounts.

NEW SECTION. Section 40. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through (4), 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 2 through 41] 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 or 15-31-511 for violating the confidentiality of individual income tax or corporation license information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state 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 2 through 41], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 2 through 41], 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.

(4) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

NEW SECTION. Section 41. Sales tax and use tax proceeds. All money collected under [sections 2 through 41] must be deposited by the department into the general fund.

NEW SECTION. Section 42. Capital gains credit. An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to 1% of the taxpayer's net capital gains, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-142. The credit allowed under this section may not exceed the taxpayer's income tax liability.

Section 43. Section 13-37-218, MCA, is amended to read:

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

Section 44. Section 15-30-101, MCA, is amended to read:

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

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

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

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

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

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the ~~1967~~ 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

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

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

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

(c) that is not a disregarded entity.

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

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

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

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

(6) "Dividend" means:

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

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

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

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

(9) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in

section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(10) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June ~~1980~~ 2006.

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

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

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

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

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

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

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

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

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

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

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

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

- (v) dividends received or accrued while a resident of the state;
- (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;
- (vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;
- (viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;
- (ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.
- (x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;
- (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;
- (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:
 - (A) derived from a trade, business, occupation, or profession carried on in the state;
 - (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or
 - (C) taken into account while a resident of the state;
- (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:
 - (A) derived from a trade, business, occupation, or profession carried on in the state;
 - (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or
 - (C) taken into account while a resident of the state;
- (xiv) social security benefits received or accrued while a resident of the state;

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

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

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

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

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

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

(20) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

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

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

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

(24) "Pension and annuity income" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 45. Section 15-30-103, MCA, is amended to read:

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

(a) for tax year 2005, the following rates:

- (i) on the first \$2,800 of taxable income or any part of that income, 1%;
- (ii) on the next \$1,400 of taxable income or any part of that income, 2%;
- (iii) on the next \$2,400 of taxable income or any part of that income, 3%;
- (iv) on the next \$2,600 of taxable income or any part of that income, 4%;
- (v) on the next \$3,200 of taxable income or any part of that income, 5%;
- (vi) on the next \$3,000 of taxable income or any part of that income, 6%;
- (vii) on any taxable income in excess of \$15,600 or any part of that income, 6.9%;

(b) for tax years beginning after December 31, 2005, as adjusted under subsection (2), at the following rates:

- ~~(a)~~(i) on the first \$1,000 \$3,400 of taxable income or any part thereof of that income, 2% 1%;
- ~~(b)~~(ii) on the next \$1,000 \$2,100 of taxable income or any part thereof of that income, 3% 2%;
- ~~(c)~~(iii) on the next \$2,000 \$2,400 of taxable income or any part thereof of that income, 4% 3%;
- ~~(d)~~(iv) on the next \$2,000 \$3,000 of taxable income or any part thereof of that income, 5% 4%;
- ~~(e)~~(v) on the next \$2,000 \$2,300 of taxable income or any part thereof of that income, 6% 5%;
- ~~(f)~~(vi) on the next \$2,000 \$2,300 of taxable income or any part thereof of that income, 7% 6%;
- ~~(g) on the next \$4,000 of taxable income or any part thereof, 8%;~~
- ~~(h) on the next \$6,000 of taxable income or any part thereof, 9%;~~
- ~~(i) on the next \$15,000 of taxable income or any part thereof, 10%;~~
- ~~(j)~~(vii) on any taxable income in excess of \$35,000 \$15,500 or any part thereof of that income, 11% 6.9%.

(2) By For tax years beginning after December 31, 2005, by November 1 of each year, the department shall multiply the bracket amount contained in subsection (1)(b) by the inflation factor for that taxable tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that taxable tax year and shall must be used as the basis for imposition of the tax in subsection (1)(b) of this section."

Section 46. Section 15-30-112, MCA, is amended to read:

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

(2) (a) An exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978, for the taxpayer~~ all taxpayers.

(b) An additional exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the ~~taxable tax~~ tax year of the taxpayer begins, ~~has no~~ does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for the taxpayer if ~~he~~ the taxpayer has attained the age of 65 before the close of ~~his taxable~~ the taxpayer's tax year.

(b) An additional exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of ~~such taxable~~ the tax year and, for the calendar year in which the ~~taxable tax~~ tax year of the taxpayer begins, ~~has no~~ does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for the taxpayer if ~~he~~ the taxpayer is blind at the close of ~~his taxable~~ the taxpayer's tax year.

(b) An additional exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the ~~taxable tax~~ tax year of the taxpayer begins, ~~has no~~ does not have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall must be made as of the close of the ~~taxable tax~~ tax year of the taxpayer, except that if the spouse dies during ~~such taxable~~ the tax year, ~~such~~ the determination shall must be made as of the time of ~~such~~ death.

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

(5) (a) An exemption of ~~\$800~~ \$1,950 shall be is allowed for ~~taxable years beginning after December 31, 1978,~~ for each dependent:

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

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

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

of the taxpayer begins; or

(B) is a student.

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

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

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

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

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

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

Section 47. Section 15-30-121, MCA, is amended to read:

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

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

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

(ii) state income tax paid;

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

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

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head

of household, or married filing separately or \$10,000 if married and filing jointly;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) married couples shall file a joint return or file separately on the same form;
 - (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:
 - (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or
 - (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);
 - (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;
 - (D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;
 - (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;
 - (d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;
 - (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;
 - (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;
 - (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:
 - (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and
 - (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:
 - (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or
 - (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;
 - (h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year;
- and

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

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

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

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 48. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is ~~\$665~~ \$1,620, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$1,500~~ \$3,650, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard deduction is ~~\$1,330~~ twice the amount of the minimum standard deduction for a single return, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$3,000~~ twice the amount of the maximum standard deduction for a single return, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest \$10. ~~The minimum and maximum standard deduction for joint returns and qualified head of household returns~~

~~must be twice the amount of the minimum and maximum standard deduction for single returns.~~ The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 49. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than ~~\$1,500~~ \$3,650, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than ~~\$3,000~~ \$7,300, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by ~~\$800~~ \$1,950, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

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

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

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

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

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added

as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

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

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

NEW SECTION. Section 50. Codification instruction. (1) [Section 1] is not intended to be codified.

(2) [Sections 2 through 41] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 41].

(3) [Section 42] 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 42].

NEW SECTION. Section 51. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 52. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 53. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2005.

(2) [Sections 43, 44, 46, 48, and 49] are effective January 1, 2006.

NEW SECTION. Section 54. Applicability. [This act] applies to the sale of goods and services after December 31, 2004.

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