

HOUSE BILL NO. 741

INTRODUCED BY PETERSON, BALES, ROSS, WITT, BLACK, LAKE, ESSMANN, STORY, MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TAXES; IMPOSING A STATEWIDE GENERAL RETAIL SALES TAX AND USE TAX ON THE SALE OF GOODS AND SERVICES; EXEMPTING THE SALE OF CERTAIN GOODS AND SERVICES AND OTHER TRANSACTIONS FROM THE SALES TAX AND USE TAX; REVISING CERTAIN PROVISIONS RELATED TO EXISTING SALES TAX AND USE TAX LAWS; DIRECTING THE DEPARTMENT OF REVENUE TO PURSUE BECOMING A SIGNATORY TO THE STREAMLINED SALES AND USE TAX AGREEMENT; ~~PROVIDING FOR THE ALLOCATION AND APPROPRIATION OF SALES TAX AND USE TAX REVENUE~~; ALLOWING A REFUNDABLE TAX CREDIT, BASED ON GROSS HOUSEHOLD INCOME, IN CONSIDERATION OF SALES TAXES AND USE TAXES PAID; PROVIDING INCOME TAX RELIEF AND PROPERTY TAX RELIEF FOR MONTANA INDIVIDUALS AND BUSINESSES; REVISING THE PROCEDURE FOR CALCULATING LOCAL GOVERNMENT LEVY LIMITS; ESTABLISHING A SINGLE, FLAT RATE FOR INDIVIDUAL INCOME TAX PURPOSES; INCREASING THE PERSONAL EXEMPTION FOR INDIVIDUAL INCOME TAXES; ELIMINATING THE PARTIAL DEDUCTIBILITY OF FEDERAL INCOME TAX PAID FROM INDIVIDUAL INCOME TAXES; EXCLUDING 50 PERCENT OF CAPITAL GAIN INCOME FROM INDIVIDUAL INCOME TAXATION AND FROM CORPORATION LICENSE TAXATION; ELIMINATING THE CAPITAL GAINS TAX CREDIT; REDUCING PROPERTY TAXES THROUGH THE ELIMINATION OF THE 6-MILL LEVY FOR THE MONTANA UNIVERSITY SYSTEM AND THE 95 MILLS THAT ARE LEVIED FOR THE EQUALIZATION OF THE BASE FUNDING PROGRAMS FOR PUBLIC ELEMENTARY AND HIGH SCHOOL EDUCATION; PROVIDING FULL STATE FUNDING FOR ELEMENTARY AND HIGH SCHOOL BASE FUNDING PROGRAMS BY INCREASING TO 80 PERCENT THE DIRECT STATE AID SHARE OF FUNDING FOR THE ELEMENTARY AND HIGH SCHOOL BASE FUNDING PROGRAMS; INCREASING DIRECT STATE AID OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENTS; ELIMINATING GUARANTEED TAX BASE FOR THE BASE FUNDING PROGRAM AS A RESULT OF FULL STATE FUNDING FOR THE PROGRAM; ELIMINATING THE BLOCK GRANTS FOR SCHOOL DISTRICTS, COUNTYWIDE SCHOOL RETIREMENT, AND COUNTYWIDE SCHOOL TRANSPORTATION; PROVIDING A STATUTORY APPROPRIATION TO THE MONTANA UNIVERSITY SYSTEM; ALLOWING THE QUALIFIED ELECTORS OF MONTANA TO APPROVE OR REJECT THE SALES TAX AND USE TAX LAWS BY PROVIDING A CONTINGENT TERMINATION OF THIS ACT; AMENDING SECTIONS 15-68-101, 15-68-102, 15-68-103, 15-68-107, 15-68-110, 15-68-201, 15-68-202, 15-68-206, 15-68-207, 15-68-401, 15-68-402,

15-68-405, 15-68-410, 15-68-501, 15-68-502, 15-68-505, 15-68-506, 15-68-510, 15-68-801, 15-1-111, 15-1-112, 15-1-402, 15-1-501, 15-10-420, 15-16-202, 15-23-703, 15-24-304, 15-24-1402, 15-24-1703, 15-24-1802, 15-24-1902, 15-24-2002, 15-30-101, 15-30-103, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-137, 15-30-142, 15-30-1112, 15-30-1113, 15-31-114, 15-36-331, 15-36-332, 15-62-208, 17-3-213, 17-7-301, 17-7-502, 20-3-106, 20-3-324, 20-5-323, 20-5-324, 20-6-702, 20-7-102, 20-9-104, 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, 20-9-515, 20-9-620, 20-10-144, 20-10-146, 23-2-512, 23-2-616, 23-2-817, 61-3-303, 61-3-317, 61-3-332, 61-3-456, 67-3-201, 67-3-204, 90-6-309, AND 90-6-403, MCA; REPEALING SECTIONS 15-10-107, 15-30-183, ~~15-68-820~~, 20-9-360, 20-9-630, 20-9-631, 20-9-632, AND 20-25-423, MCA, ~~AND SECTION 244, CHAPTER 574, LAWS OF 2004~~; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A CONTINGENT TERMINATION DATE."

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

Section 1. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, 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.~~

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement provided for under [sections 40

through 47].

(2) (a) "Agriculture, forestry, fishing, or hunting" means:

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

(A) food, feed, and fiber commodities;

(B) livestock and poultry;

(C) bees;

(D) fruits and vegetables;

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

(F) timber;

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

(iii) the harvesting of fish and other wild animals from their natural habitats that is dependent upon a continued supply of the natural resource. The harvesting of fish and other wild animals does not include game retreats or hunting preserves or fishing and hunting guiding and outfitting services provided to recreational clients.

(b) Whenever the term agricultural, forestry, fishing, and hunting is used, it is within the context of agriculture, forestry, fishing, and hunting.

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

~~(3)~~(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 and that are separately stated on the invoice or similar document given to the renter.

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

(6) (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.

(7) "Certified automated system" has the meaning provided in [section 41].

(8) "Certified service provider" has the meaning provided in [section 41].

(9) "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.

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

(11) "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.

(12) "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 (12)(a)(i) through (12)(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.

(13) "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.

(14) (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.

(15) (a) "Educational services" means instruction and training in a wide variety of subjects provided by instructors with the requisite subject matter expertise and teaching ability at private, for-profit, or nonprofit elementary or high schools, colleges, universities, training centers, and other locations.

(b) The term includes but is not limited to:

(i) business and management education and training;

(ii) secretarial training;

(iii) computer training;

(iv) professional and management development training, regardless of the location, provided directly to individuals or through an employers' training program; and

(v) training provided at technical and trade schools.

(c) The term does not include sports and recreation training and instruction;

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

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

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

or nutritional value.

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

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

(20) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens, regardless of whether the items meet the definition of over-the-counter drugs.

(21) "Health service" means a service:

(a) performed by a person licensed to practice a health care profession or health care occupation licensed under Title 37, chapters 1 through 4, 6 through 17, 20, 21, 24 through 29, 34, and 35, or licensed as a mental health professional or certified under Title 53, chapter 24, as a chemical dependency counselor as a regular part of the person's business activities; and

(b) applied externally or internally to the human body or mind for diagnosis, cure, mitigation, treatment, or prevention of disease.

~~(6)~~(22) (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, except motor vehicles as defined in subsection (25), 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 the provision of~~ tangible personal property along 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~~ The definition of lease or rental 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~~ The definition of lease or rental must be applied only prospectively from the date of adoption and has no retroactive ~~impact effect~~ on existing leases or rentals.

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

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

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

(24) (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.

~~(7)~~(25) (a) "Motor vehicle" For the purposes of imposing the sales tax on the base rental charge, "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, or 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.

(26) (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.

(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

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

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

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

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

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

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

(29) "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.

(30) (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.

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

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

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

~~(10)~~(33) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(34) "Registration" or "seller's registration" means a seller's registration as described in 15-68-401.

~~(11)~~(35) "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.

~~(12)~~(36) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

~~(13)~~(37) "Sale" or "selling" or "buying" means the transfer of property for consideration or the performance of a service for consideration.

~~(14)~~(38) (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 ~~(14)(a)(iii)~~ (38)(a)(iii) through ~~(14)(a)(vii)~~

~~(38)(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~~ purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

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

(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.

~~(15)(39)~~ "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

~~(16)(40)~~ "Seller" means a person that makes sales, leases, or rentals of personal property or services.

~~(17)(41)~~ (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.

(42) (a) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. For the purposes of this chapter, the term includes:

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

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

(b) Except as provided in subsection (42)(a)(ii), the term does not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

(43) "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.

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

(45) "Transportation services" means the transportation of persons or property by air, pipeline, rail, road, and water. The term includes any reasonable necessary associated services for the transportation of persons or property.

~~(18)~~(46) "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."

Section 2. Section 15-68-102, MCA, is amended to read:

"15-68-102. Imposition and rate of sales tax and use tax -- exceptions. (1) A sales tax of the following percentages is imposed on sales of the following property or services: 4% is imposed on the sales price of all sales of services and tangible personal property and on the base rental charge for rental vehicles.

~~(a) 3% on accommodations and campgrounds;~~

~~(b) 4% on the base rental charge for rental vehicles.~~

(2) The sales tax is imposed on the purchaser and except when the purchaser has a direct payment permit as provided in [section 6], 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 the following percentages of the value of the property ~~or services~~ 4% of the value of the property that was:

~~(i) 3% on accommodations and campgrounds;~~

~~(ii) 4% on the base rental charge for rental vehicles.~~

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

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

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

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

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

(4) (a) For the privilege of using services, including the use of rental vehicles, 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.

~~(iv)(b) rendered as the result of a transaction that was not~~ Services are taxable under this section if the services were initially not subject to the sales tax or use tax but that because of the ~~buyer's~~ purchaser's subsequent use of the services is are subject to the sales tax or use tax.

~~(4)(5)~~ 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)(6)~~ The sale OR USE of property or services exempt or nontaxable under this chapter is exempt from the tax imposed in subsections (1) and (3).

~~(6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and (3)(a)(i) until October 1, 2003, for contracts entered into prior to April 30, 2003, that provide for a guaranteed charge for accommodations or campgrounds."~~

Section 3. Section 15-68-103, MCA, is amended to read:

"15-68-103. 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 money paid for the 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."

Section 4. Section 15-68-107, MCA, is amended to read:

"15-68-107. 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 is discharged if the ~~buyer~~ purchaser has paid the use tax to the seller for payment to the department."

Section 5. Section 15-68-110, MCA, is amended to read:

"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) ~~A~~ Except when the purchaser has a direct payment permit as provided in [section 6], a person engaging in the business of selling property or services subject to taxation under this chapter shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

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

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

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

(ii) canvassing;

(iii) demonstrating;

(iv) collecting money;

(v) warehousing or storing merchandise;

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

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

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

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

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

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

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

~~(2)~~(4) A person engaging in business within this state shall, before making any sales subject to this chapter, ~~obtain a seller's permit~~ register as a seller, as provided in 15-68-401, and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by 15-68-102 from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

~~(3)~~(5) The department may authorize the collection of the sales tax imposed by 15-68-102 by any ~~retailer~~ 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. 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 this chapter.

~~(4)~~(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and 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.

~~(5)~~(8) A person engaging in business within this state that is subject to this chapter 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)~~(9) If any application of this section is held invalid, the application to other situations or persons is not

affected."

NEW SECTION. Section 6. Direct payment of sales tax -- direct payment permits. (1) The department may issue direct payment permits to any person liable for the payment of more than \$500 a year in sales taxes. A person shall apply to the department, on forms approved by the department. By applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to pay any sales tax due under this chapter made by the applicant as a direct payment permit holder. A direct payment permit may be revoked by the department at any time upon 90 days' written notice to the permittee. Any permittee may be audited by the department.

(2) A direct payment permit holder shall pay any sales tax authorized under this chapter directly to the department. The permittee must receive a nontaxable transaction certificate, as provided in 15-68-202, using the direct payment permit as a basis for the exemption.

Section 7. Section 15-68-201, MCA, is amended to read:

"15-68-201. Nontaxable transaction certificate -- requirements. (1) A nontaxable transaction certificate executed by a ~~buyer~~ purchaser 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~~ purchaser or lessee who has registered with the department and whose seller's ~~permit registration~~ 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~~ purchaser 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. The purchaser is liable for payment of the sales tax or use tax due on sales for which the purchaser incorrectly claims an exemption. If an incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser is subject to the penalty provided in 15-68-410."

Section 8. Section 15-68-202, MCA, is amended to read:

"15-68-202. Nontaxable transaction certificate -- form rules. (1) The department shall provide for a uniform nontaxable transaction certificate. An electronic or digitally usable version of a nontaxable transaction

certificate may also be provided. 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~~ a unique identification number of ~~the seller's permit issued to the purchaser as provided in 15-68-401;~~

(b) ~~the general character of property or service sold by the purchaser in the regular course of business;~~ nature of the exemption or nontaxable transaction, such as:

~~(e)(i)~~ the purchase of property or a service purchased for resale;

(ii) the purchase of property and services for agriculture, electric power generation facilities, manufacturing, mining, rail transportation, telecommunications services, or other businesses;

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

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

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

~~(e)~~(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 and provision of a certificate to a person engaging in business within this state ~~for renting accommodations and campgrounds prior to June 1, 2003, [the applicability date of this section] and renting vehicles prior to July 1, 2003.~~ The rules adopted by the department must ensure that each person engaging in business within this state ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the applicability date of this section];~~ that has applied in a timely fashion is issued a certificate ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the applicability date of this section]."~~

Section 9. Section 15-68-206, MCA, is amended to read:

"15-68-206. Exemption -- government agencies. All sales by or uses by the United States or 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."

NEW SECTION. Section 10. Exemption -- certain services. (1) The sale or use of the following services are exempt from the sales tax and use tax:

(a) educational services;

(b) radio and television broadcasting to the extent that the taxation of radio and television broadcasting is prohibited by federal law;

(c) transportation services, except:

(i) nonscheduled air transportation;

(ii) transit and ground transportation, other than urban transit systems and school and employee bus transportation; and

(iii) scenic and sightseeing transportation;

(D) ADVERTISING SERVICES. FOR THE PURPOSES OF THIS SECTION, "ADVERTISING SERVICES" MEANS THE ACTUAL CREATION OR DEVELOPMENT OF ADVERTISING AND INCLUDES BUT IS NOT LIMITED TO ALL ADVERTISING BY:

(I) NEWSPAPER, MAGAZINE, OR OTHER PUBLICATION;

(II) RADIO OR TELEVISION;

(III) BILLBOARD, BANNER, HAND BILL, PLACARD, SIGN, OR THE LIKE;

(IV) ANY OTHER ADVERTISING MEANS, MEDIA, OR METHOD.

(2) The following are also specifically exempt from the sales tax and use tax:

(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 30 days;

(d) services provided by a corporation to:

(i) another corporation that is centrally assessed as provided under chapter 23 of this title 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) gambling that is regulated under Title 23, chapter 5.

NEW SECTION. Section 11. Exemption -- food products. (1) Except as provided in subsection (2), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

(2) The sale of prepared food and food sold through vending machines is taxable, but prepared food offered or delivered as part of a residential living arrangement and consumed by an individual that is party to the arrangement or by patients of a health care facility is exempt from the sales tax and use tax.

NEW SECTION. Section 12. Exemption -- electricity, natural gas, telecommunications, and other utility services. (1) The sale or use of electricity, natural gas, refuse collection, water, or other utility services is exempt from the sales tax and use tax.

(2) (a) The sale or use of a telecommunications service that is subject to the retail telecommunications excise tax under Title 15, chapter 53, is exempt from the sales tax and use tax.

(b) The sale or use of telecommunications services is exempt from the sales tax and use tax to the extent that taxation of the services is prohibited by federal law.

NEW SECTION. Section 13. Exemption -- medicine, drugs, and certain devices -- health services. The following are exempt from the sales tax and use tax:

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

(2) insulin, oxygen, and therapeutic and prosthetic devices;

(3) health services;

(4) any service, including room or bed charges, reasonably related to the delivery of a health service:

(a) by or at a health care facility, as defined in 50-5-101, or a nursing facility, as defined in 15-60-101;

or

(b) by or at the office of a physician, dentist, mental health professional, chiropractor, or other health care professional described in 15-68-101(21).

NEW SECTION. Section 14. Exemption -- motor fuel. (1) The sale or 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, is 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, is exempt from the sales tax and use tax.

NEW SECTION. Section 15. Exemption -- motor vehicles -- exception. (1) Except as provide in subsection (2), the sale or use of the following motor vehicles is exempt from the sales tax and use tax:

(a) a motor vehicle that exceeds the manufacture's rated capacity of a light vehicle, as defined in 61-1-139; and

(b) a motor vehicle that has a manufacturer's rated capacity of 1 ton or more and that is subject to the

fee imposed under 61-10-201.

(2) (A) The sale of a motor home, as defined in 61-1-130, is subject to the sales tax and use tax AT 50% OF THE APPLICABLE RATE IMPOSED UNDER 15-68-102(1) OR (3).

(B) THE REDUCED TAX RATE UNDER SUBSECTION (2)(A) APPLIES ONLY TO THE INITIAL SALE OR USE IN THIS STATE OF A MOTOR HOME.

NEW SECTION. Section 16. Exemption -- insurance premiums. The premiums of an insurance company, a health service corporation, a health maintenance organization, or a fraternal benefit society or of a producer of the company, corporation, organization, or society are exempt from the sales tax and use tax.

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

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

NEW SECTION. Section 18. Exemption -- agriculture, forestry, fishing, and hunting. (1) Except as provided in ~~subsection~~ SUBSECTIONS (2) AND (3), sales by, sales to, or uses by a person engaged in agriculture, forestry, hunting, or fishing are exempt from the sales tax and use tax.

(2) (a) A purchase by a person engaged in agriculture, forestry, fishing, or hunting is exempt from the sales tax or use tax if:

- (i) the person delivers a nontaxable transaction certificate to the seller; and
- (ii) the property or service purchased is used OR CONSUMED exclusively in or for the person's agricultural, forestry, fishing, or hunting operation.

(b) A sale by a person engaged in agriculture, forestry, fishing, or hunting is exempt from the sales tax and use tax only to extent that the property or service sold is not a retail sale.

(3) THE EXEMPTION OF GOODS AND SERVICES UNDER THIS SECTION DOES NOT APPLY TO:

(A) TANGIBLE PERSONAL PROPERTY AND SERVICES USED IN A MANNER THAT IS INCIDENTAL TO AGRICULTURE,

FORESTRY, FISHING, OR HUNTING OPERATIONS;

(B) HAND-HELD TOOLS WITH A UNIT PURCHASE PRICE NOT IN EXCESS OF \$100. FOR THE PURPOSES OF THIS SUBSECTION (3)(B), HAND-HELD TOOLS ARE THOSE TOOLS DESCRIBED IN 15-6-201(1)(R)(I).

(C) TANGIBLE PERSONAL PROPERTY OR SERVICES USED IN ANY ACTIVITY OTHER THAN AGRICULTURE, FORESTRY, FISHING, OR HUNTING OPERATIONS, INCLUDING BUT NOT LIMITED TO:

(I) OFFICE EQUIPMENT AND SUPPLIES;

(II) EQUIPMENT AND SUPPLIES USED IN SELLING OR DISTRIBUTING ACTIVITIES;

(III) JANITORIAL EQUIPMENT, SUPPLIES, AND SERVICES; AND

(IV) CLOTHING;

(D) TANGIBLE PERSONAL PROPERTY USED TO MAKE REPAIRS AND THE ASSOCIATED SERVICE COSTS. THIS SUBSECTION (3)(D) DOES NOT INCLUDE REPAIR PARTS THAT BECOME A COMPONENT PART OF TANGIBLE PROPERTY THAT IS EXEMPT UNDER THIS SECTION OR LUBRICANTS, HYDRAULIC OIL, OR COOLANTS USED IN THE OPERATION OF TANGIBLE PERSONAL PROPERTY THAT ARE EXEMPT UNDER THIS SECTION AND THE ASSOCIATED SERVICE COSTS OF THE REPAIRS.

(E) MOTOR VEHICLES AND AIRCRAFT THAT ARE OTHERWISE SUBJECT TO THE SALES TAX OR USE TAX UNDER THIS CHAPTER.

NEW SECTION. Section 19. 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 and use 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 20. Exemption -- minerals -- exceptions. (1) The sale or lease of interests in minerals is exempt from the sales tax and use tax.

(2) The sale or use of a mineral is exempt from the sales tax and use tax except:

(a) minerals used as or integrated into jewelry, used as or integrated into sculpture or another form of art or used as a decorative embellishment or adornment, either in their own right, in combination with other property, or after being refined, reduced, polished, cut, faceted, or otherwise processed into jewelry, art, or other

decorative embellishment, are not included in the exemption provided in this section; and

(b) 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.

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

Section 21. Section 15-68-207, MCA, is amended to read:

"15-68-207. Exemption -- isolated or occasional sale or lease of property. The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax. Occasional sales include sales that are occasional but not continuous and that are made for the purpose of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal organizations."

NEW SECTION. **Section 22. 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 23. Nontaxability -- construction -- manufacturing -- mining -- rail transportation -- electric generation facility -- telecommunications -- ~~other businesses~~ -- chemicals, reagents, and substances -- INGREDIENT OR COMPONENT PARTS -- EXCEPTIONS.** (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (4), THE sale of property or a service to or the use of property or a service by a purchaser is nontaxable if:

(a) the purchaser delivers a nontaxable transaction certificate to the seller; and

(b) the purchaser is engaged in and DIRECTLY uses OR CONSUMES the property or service in any of the following:

(i) the construction industry, as defined in 39-71-116, and the item purchased is incorporated into an improvement to real property that is to be used for residential or commercial purposes or in the construction of public property;

(ii) mining. For the purposes of this section, the term "mining" means the carrying on of operations of any kind for the purpose of extracting from the earth any mineral, as defined in 15-38-103, and includes operations of any kind for the extraction of any mineral from any other mineral.

(iii) manufacturing. For the purposes of this section, the term "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.

(iv) rail transportation. For the purposes of this section, the term "rail transportation" means the operation of railway engaged in long-haul or mainline rail, short-haul rail, and passenger rail transportation.

(v) an electric generation facility. For the purposes of this section, the term "electric generation facility" has the meaning provided in 15-6-156(3).

(vi) telecommunications. For the purposes of this section, the term "telecommunications" means operating, maintaining, or providing access to facilities for the transmission of voice, data, or text between network termination points and telecommunications reselling.

~~————(2) The sale of property or a service to or the use of property or a service by a purchaser is nontaxable if:~~

~~————(a) the purchaser has a nontaxable transaction certificate; and~~

~~————(b) the purchaser is engaged in business for the purpose of monetary benefit and the property or service is used exclusively in the purchaser's business.~~

(2) THE SALE OR USE OF PROPERTY THAT IS INCORPORATED AS AN INGREDIENT OR COMPONENT PART OF A PRODUCT IS NONTAXABLE IF THE PURCHASER HAS A NONTAXABLE TRANSACTION CERTIFICATE AND THE PURCHASER IS ENGAGED IN AND USES THE PROPERTY IN MINING OR MANUFACTURING. FOR THE PURPOSES OF THIS SUBSECTION, 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.

(3) (A) The sale or use of any chemical, reagent, or other substance that is used or consumed in the processing of ores or petroleum in a mill, smelter, refinery, or reduction facility or in acidizing oil wells is nontaxable if the purchaser has a nontaxable transaction certificate and the purchaser is engaged in and uses the property or service in mining or manufacturing.

(B) THE SALE OR USE OF EXPLOSIVES, BLASTING MATERIAL, OR DYNAMITE IS SUBJECT TO THE SALES TAX AND

USE TAX.

(4) THE NONTAXABILITY OF GOODS AND SERVICES UNDER SUBSECTION (1) DOES NOT APPLY TO:

(A) TANGIBLE PERSONAL PROPERTY AND SERVICES USED IN A MANNER THAT IS INCIDENTAL TO CONSTRUCTION, MINING, MANUFACTURING, RAIL TRANSPORTATION, ELECTRICAL GENERATION, OR TELECOMMUNICATIONS OPERATIONS;

(B) HAND-HELD TOOLS WITH A UNIT PURCHASE PRICE NOT IN EXCESS OF \$100. FOR THE PURPOSES OF THIS SUBSECTION (4)(B), HAND-HELD TOOLS ARE THOSE TOOLS DESCRIBED IN 15-6-201(1)(R)(I).

(C) TANGIBLE PERSONAL PROPERTY OR SERVICES USED IN ANY ACTIVITY OTHER THAN AS DESCRIBED IN SUBSECTIONS (1)(B)(I) THROUGH (1)(B)(VI), INCLUDING BUT NOT LIMITED TO:

(I) OFFICE EQUIPMENT AND SUPPLIES;

(II) EQUIPMENT AND SUPPLIES USED IN SELLING OR DISTRIBUTING ACTIVITIES;

(III) JANITORIAL EQUIPMENT, SUPPLIES, AND SERVICES;

(D) PROPERTY USED IN RESEARCH OR DEVELOPMENT;

(E) TANGIBLE PERSONAL PROPERTY USED TO MAKE REPAIRS AND ASSOCIATED SERVICE COSTS. THIS SUBSECTION (4)(E) DOES NOT INCLUDE REPAIR PARTS THAT BECOME A COMPONENT PART OF TANGIBLE PROPERTY THAT IS NONTAXABLE UNDER THIS SECTION OR LUBRICANTS, HYDRAULIC OIL, OR COOLANTS USED IN THE OPERATION OF TANGIBLE PERSONAL PROPERTY THAT ARE NONTAXABLE UNDER THIS SECTION AND THE SERVICE COSTS ASSOCIATED WITH THE REPAIRS.

(G) MOTOR VEHICLES AND AIRCRAFT THAT ARE OTHERWISE SUBJECT TO THE SALES TAX OR USE TAX UNDER THIS CHAPTER.

NEW SECTION. Section 24. Nontaxability -- sale or lease of real property, improvements, mobile homes, and manufactured homes -- exception. (1) Except as provided in subsections (2) and (3), the sale or lease of real property, improvements, a mobile home, or a manufactured home is nontaxable.

(2) (a) The lease or rental of a house, mobile home, manufactured home, condominium, townhouse, cabin, apartment, or other space leased or rented as a dwelling is taxable if the construction of the property was nontaxable under [section 23(1)(b)(i)].

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

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

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

(ii) a manufactured home, as defined in 15-1-101.

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

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

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

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

NEW SECTION. Section 25. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. (1) A transaction in interstate commerce is nontaxable to the extent that the imposition of the sales tax or use tax would be unlawful under the United States constitution.

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

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

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

NEW SECTION. Section 26. 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 a nontaxable transaction certificate or other evidence acceptable to the department that the transaction and the person that delivers the nontaxable transaction certificate or other evidence acceptable to the department meet the conditions set out in subsection (2).

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

- (a) does not make initial use of the product or the service within this state;
- (b) does not take delivery of the product or the service within this state; or
- (c) concurrent with the performance of the service, does not have a regular place of work within this state or spend more than brief and occasional periods of time within this state and:

- (i) does not have any communication within this state related in any way to the subject matter, performance, or administration of the service with the person performing the service; or
 - (ii) does not personally perform work within this state related to the subject matter of the service.
- (3) Services that initially were nontaxable under this section but that no longer meet the criteria in subsection (2) are nontaxable only for the period prior to the disqualification and are, after disqualification, taxable.

NEW SECTION. Section 27. Nontaxability -- sale of property for sale, rental, or leasing. The sale of tangible personal property is nontaxable if:

- (1) the sale is made to a purchaser who delivers a nontaxable transaction certificate to the seller;
- (2) the purchaser is engaged in a business deriving more than 50% of its receipts from selling, renting, or leasing property of the type leased; and
- (3) the purchaser does not use the property in any manner, other than holding it for sale, rental, or lease or selling, renting, or leasing it, either by itself or in combination with other property, in the ordinary course of business.

Section 28. Section 15-68-401, MCA, is amended to read:

"15-68-401. Seller's permit registration -- rules. (1) A person that wishes to engage in business within this state that is subject to this chapter shall ~~obtain~~ file with the department an application for a seller's permit registration 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.

~~(2)~~(3) Upon an applicant's compliance with this chapter, the department shall issue to the applicant a separate, numbered seller's permit registration for each location in which the applicant maintains an office or other place of business within Montana. A permit registration is valid until revoked or suspended but is not assignable. A permit registration is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The permit registration must be conspicuously displayed at all times at the place for which it is issued.

~~(3)~~(4) The department shall adopt rules to provide procedures for application for and a ~~provision of a~~

~~seller's permit to a person for registering sellers~~ engaging in business within this state that is subject to this chapter ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003~~ [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003;~~ [the applicability date of this section] has the opportunity to be registered ~~is issued a seller's permit for renting accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003~~ [the applicability date of this section]. The department may adopt rules providing for seasonal ~~permits~~ registration."

Section 29. Section 15-68-402, MCA, is amended to read:

"15-68-402. Permit Seller's registration 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 this chapter shall file with the department an application for a ~~permit~~ seller's registration. 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) 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~~ registration to the applicant's cart, stand, truck, or other merchandising device.

(c) 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.

(2) Each person or class of persons required to file a return under this chapter, other than persons with direct payment permits and certified service providers, is required to file an application for a ~~permit~~ seller's registration.

(3) ~~Each~~ An application for a ~~permit~~ registration ~~must~~ may be ~~on a~~ either in electronic or a paper form and ~~must be~~ prescribed by the department, ~~and~~ The application must meet the requirements of the multistate central registration system under the agreement even if the applicant intends to make local retail sales only in Montana. The form must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be 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."

Section 30. Section 15-68-405, MCA, is amended to read:

"15-68-405. Revocation or suspension of permit seller's registration -- appeal. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit seller's registration held by a person that fails to comply with the provisions of this chapter.

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

(3) If a permit seller's registration is revoked, the department may not issue a new permit registration except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of this chapter. The department may require security in addition to that authorized by 15-68-512 in an amount reasonably necessary to ensure compliance with this chapter as a condition for the issuance of a new permit registration to the applicant.

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

Section 31. Section 15-68-410, MCA, is amended to read:

"15-68-410. 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 this chapter, 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) A person that uses a certificate for property or services that will be used for a purpose other than the purpose claimed is subject to a penalty, payable to the department, ~~of \$100~~ The penalty for each transaction in which an improper use of a certificate has occurred is the greater of:

(i) \$100; or

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

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

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

penalty."

NEW SECTION. Section 32. 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.

Section 33. Section 15-68-501, MCA, is amended to read:

"15-68-501. 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~~ 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 this chapter and may be required to furnish adequate security, as provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the ~~retailer~~ seller is liable for the taxes upon all property sold and services provided in this state in the same manner as a ~~retailer~~ seller who maintains an office or other place of business within this state. The seller's ~~permit~~ registration provided for in 15-68-401 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~~ person 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~~ registration issued by the department. If an agent, canvasser, or employee violates the provisions of this chapter, the person is subject to a fine of not more than \$100 for each separate transaction or event determined to be in violation."

Section 34. Section 15-68-502, MCA, is amended to read:

"15-68-502. Returns -- payment -- authority of department. (1) ~~Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter 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 this chapter 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.~~ Sellers that are registered under the agreement and that use either a certified automated system or a certified service provider are subject to the reporting and payment provisions of subsection (2) of this section. A person who has been issued a seasonal seller's registration shall file a return and pay the tax on the date or dates set by the department. 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.

~~(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 purchaser with a direct payment permit; and
- ~~(ii)~~(iii) a person that:

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

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

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

~~(b)~~(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 collect and pay to the department the taxes imposed by this chapter shall keep records, render statements, make returns, and comply with the provisions of this chapter 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 this chapter, 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."

Section 35. Section 15-68-505, MCA, is amended to read:

"15-68-505. Credit for taxes paid on worthless accounts -- taxes paid if account collected. (1) (a) Sales taxes paid by a person filing a return under 15-68-502 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.

(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 15-68-102;

(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) 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 reported and paid on the amount collected return filed for the period in which the collection is made.

(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.

(6) 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.

(7) 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."

Section 36. Section 15-68-506, MCA, is amended to read:

"15-68-506. 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 purchased or leased outside this state or on a service that was purchased 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 or service. The credit may not exceed the sales tax or use tax due this state."

Section 37. Section 15-68-510, MCA, is amended to read:

"15-68-510. Vendor allowance. (1) (a) A person filing a timely return under 15-68-502 may claim a ~~quarterly~~ monthly vendor allowance for each ~~permitted~~ registered location in the amount of ~~5%~~ 1.5% of the tax determined to be payable to the state, not to exceed ~~\$1,000 a quarter~~ \$50 a month.

(b) A person filing a quarterly return may claim 15% of the tax determined to be payable to the state, not to exceed \$45 a quarter.

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

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

(2) In lieu of the vendor allowance provided in subsection (1), a certified service provider must receive a monetary allowance determined as provided in the agreement, and a 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.

(3) In addition to the vendor allowance provided in subsection (1), 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."

Section 38. Section 15-68-801, MCA, is amended to read:

"15-68-801. Administration -- rules -- report to legislative interim committee. (1) The department shall:

~~(1)(a)~~ administer and enforce the provisions of this chapter;

~~(2)(b)~~ cause to be prepared and distributed forms and information that may be necessary to administer the provisions of this chapter; and

~~(3)(c)~~ adopt rules that may be necessary or appropriate to administer and enforce the provisions of this chapter.

(2) (a) In administering the provisions of this chapter, the department shall, when applicable and not in conflict with Montana law, follow the provisions of the Streamlined Sales and Use Tax Agreement adopted pursuant to [sections 40 through 47].

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

(i) the operation of the Streamlined Sales and Use Tax Agreement and the benefits and costs to the state of its participation; and

(ii) changes to the Streamlined Sales and Use Tax Agreement that require changes in Montana law for compliance with the agreement."

NEW SECTION. Section 39. ~~Sales tax and use tax account -- allocation~~ UNIVERSITY SYSTEM -- statutory appropriation. (1) ~~There is a sales tax and use tax account in the state special revenue fund.~~

~~(2) All money collected under Title 15, chapter 68, must be paid by the department of revenue into the~~

account:

~~———(3) There must be retained in the account the amounts necessary under this chapter to repay overpayments, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay any other refunds otherwise required.~~

~~———(4) For fiscal year 2007 and for each subsequent fiscal year, there is statutorily appropriated, as provided in 17-7-502, from the sales tax and use tax account the amount necessary, as certified by the superintendent of public instruction, to fully fund direct state aid for 80% of the basic entitlement, as defined in 20-9-306, and 80% of the total per-ANB entitlement, as defined in 20-9-306, for the general fund budgets of elementary schools and high schools and 40% of the special education allowable cost payments, as described in 20-9-321, for elementary schools and high schools. The amount appropriated in this subsection is for distribution as provided for in 20-9-344 and 20-9-347, as applicable.~~

(5) ~~(a)~~(1) For fiscal year 2007, there is statutorily appropriated, as provided in 17-7-502, \$13.6 \$11.9 million for the support, maintenance, and improvement of the Montana university system.

~~(b)~~(2) For fiscal year 2008 and for each subsequent fiscal year, there is statutorily appropriated the amount appropriated in the previous fiscal year for the Montana university system increased by a percentage amount that is equal to the percentage increase in the taxable value of all real and personal property subject to property taxation in the current fiscal year over the taxable value of all real and personal property subject to property taxation in the previous fiscal year.

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

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

~~———(ii) to ensure that adequate funds are available for the purposes described in subsections (4) and (5) until adequate sales tax and use tax collections are deposited in the account during the next fiscal year.~~

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

NEW SECTION. Section 40. Uniform sales and use tax administration. [Sections 40 through 47] may be cited as the "Uniform Sales and Use Tax Administration Act".

NEW SECTION. Section 41. Definitions. As used in [sections 40 through 47], 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 15-68-102.

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

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

(8) "Use tax" means the tax levied under 15-68-102.

NEW SECTION. Section 42. 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 40 through 47]. 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 43. Relationship to state law. A provision of the agreement, in whole or in part, does not invalidate or amend any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement within this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

NEW SECTION. Section 44. 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; and
- (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; and
- (d) sales tax and use tax returns and remittances.

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

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

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

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

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

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

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

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

(3) No law of this state, or the application of a law of this state, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

NEW SECTION. Section 47. Seller and third-party liability. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales taxes and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax due each member state on all sales transactions that it processes for the seller, except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales tax or use tax due on transactions

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

(2) A person that provides a certified automated system is responsible for the proper functioning of that certified automated 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 48. Credit for sales tax and use tax -- definitions. As used in [sections 48 through 52], the following definitions apply:

(1) "Claimant" means a natural person who is eligible to file a claim under [section 49].

(2)(a) "Gross household income" means, except as provided in subsection (2)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code, plus all nontaxable income, including but not limited to:

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

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

(iii) alimony, child support, or any other type of maintenance payments;

(iv) life insurance and endowment contracts;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief, excluding the face value of all food stamps received;

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

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

(b) For the purposes of this subsection (2), income is reduced by the taxpayer's basis.

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

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

NEW SECTION. Section 49. Credit for sales tax and use tax. (1) Except as provided in subsection (2), there is allowed in consideration of sales taxes and use taxes paid a credit, as provided in subsections (3) and (4), against the tax liability for each resident or part-year resident who files an individual Montana income tax return under this chapter. The credit may be claimed even though the taxpayer does not have taxable income under this chapter.

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

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

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

(c) has gross household income in excess of \$29,999.

(3) A credit is allowed for each exemption claimed under 15-30-112(2) and (5) according to the following table:

Gross household income	Amount of credit for each exemption
\$0 - \$9,999	\$90
\$10,000 - \$11,999	\$80
\$12,000 - \$13,999	\$70
\$14,000 - \$15,999	\$60
\$16,000 - \$17,999	\$50
\$18,000 - \$19,999	\$40
\$20,000 - \$24,999	\$30
\$25,000 - \$29,999	\$25
\$30,000 or more	\$0

(4) If the amount of the credit allowed in this section exceeds the claimant's tax liability under this chapter by \$1 or more, the department shall refund the amount. If the amount is less than \$1, the department may not make a refund.

NEW SECTION. Section 50. Credit for sales tax and use tax -- filing date -- extension. (1) Except as provided in subsection (2), a claim for a credit must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, a claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

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

(3) If an individual who would have a claim under [sections 48 through 52] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

NEW SECTION. Section 51. Examination of credit claims -- adjustments -- delivery of notices and demands. (1) The department may examine a claim for a credit and may make an investigation of the records and accounts of a claimant if the department considers it necessary to determine the accuracy of the claim.

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

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

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

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

or

(b) served personally upon the claimant.

NEW SECTION. Section 52. Penalties for violation. (1) If a claimant, without purposely or knowingly, as those terms are defined in 45-2-101, violates the provisions of [sections 48 through 51] and receives a credit for which the claimant is not entitled, there must be added a penalty of 10% of the amount of the excess, but the penalty may not be less than \$20. Interest on the amount of the excess is as provided in 15-1-216 and must be added to the penalty until the debt is satisfied.

(2) If a claimant purposely or knowingly violates the provisions of [sections 48 through 51], the claimant is subject to the provisions of subsection (1), and the department may deny future claims by the claimant.

Section 53. 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 2006 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 1994 2005, progressively reduced by 40% 33 1/3% of the 1994 2005 amount each year, in accordance with the following schedule:~~

Tax Year	Percentage of 1994 <u>2005</u> Remittance Amount
1999 _____	90
2000 _____	80
2001 _____	70
2002 _____	60

2003	50
2004	40
2005	30
2006	20 <u>66 2/3</u>
2007	10 <u>33 1/3</u>
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~~ the vocational-technical levy 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) (5)(b). (Repealed effective July 1, 2008--secs. 66(2), 68(2), Ch. 422, L. 1997.)"

Section 54. Section 15-1-112, MCA, is amended to read:

"15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions -- appropriation. ~~(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 2005. 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) (i) 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)(ii) The term does not include ~~county or state school equalization levies~~ the vocational-technical levy provided for in 20-9-331, 20-9-333, 20-9-360, and 20-25-439.

~~(c) 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~~ and each subsequent 2006 through tax year for ~~9~~ years 2008 must be progressively reduced each year by ~~40%~~ 33 1/3% of the reimbursement amount for tax year ~~1998~~ 2005, according to the following schedule:

Tax Year	Percentage of 1998 <u>2005</u> Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	<u>20 66 2/3</u>
2007	<u>40 33 1/3</u>
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.

(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 the reduction in the tax rate on personal property.

~~(15)(5)~~ 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)(6)~~ 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 55. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state ~~under 20-25-349~~ 20-25-439 against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the state treasurer.

(ii) The state treasurer shall deposit ~~that portion of the funds levied pursuant to 15-10-107 in the state special revenue fund. The remainder of the funds must be deposited~~ in the state general fund.

(5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the state treasurer shall refund the amount of protested taxes and interest as required in subsection (6)(b).

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."

Section 56. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), 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) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-331;
- (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 DEPOSITED IN the general fund in ~~section 39~~ UNDER 15-68-820.

(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 Title 16, chapters 1 through 4 and 6.

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

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

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department."

Section 57. 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 15-10-107, 20-9-331, 20-9-333, 20-9-360, and 20-25-423 as those sections read on January 1, 2005.

(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).

~~(e) 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 the amount of property taxes actually assessed~~ does not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

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

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of ~~15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439~~. However, the number of mills calculated by the department may not exceed the mill levy ~~limits~~ limit established in ~~those sections~~ 20-25-439. 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, 7-6-4015, 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) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) 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 58. Section 15-16-202, MCA, is amended to read:

"15-16-202. Boats, snowmobiles, and motor vehicles -- payment of fees. (1) The fee in lieu of personal property taxes ~~assessed~~ and the sales tax or use tax, if applicable, imposed against a motorboat, sailboat, or personal watercraft described in 23-2-517 for the year in which application for a registration decal is made must be paid before the registration decal may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax and the sales tax or use tax, if applicable, imposed on a snowmobile for the year in which application for registration is made must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) (a) Except for mobile homes and manufactured homes as defined in 15-1-101 and except as provided in subsection (3)(b) of this section, the light vehicle registration fee or fee in lieu of tax and the sales tax or use tax, if applicable, imposed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(b) The vehicle registration fees or fee in lieu of tax imposed and the sales tax or use tax, if applicable, against a motor vehicle described in 61-3-303~~(9)~~(10) must be paid before a motor vehicle may be registered pursuant to 61-3-303.

(4) The provisions of subsections (1) and (3)(a) do not require payment of the immediately previous year's fees if the fees have already been paid."

Section 59. 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 give full notice 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) Except as provided in subsections (5), ~~(6), and (8)~~ THROUGH (7), the county treasurer shall ~~credit~~

distribute the amount determined under subsection (3) and the amounts received under 15-23-706:

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

(b) ~~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~~ THE REMAINDER TO THE STATE GENERAL FUND.

(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), 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 those for the support of the Montana university system and 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)(7)~~ 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 2007, in the relative proportions required by the levies for state, 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 2006; and

(b) for fiscal year 2008 and succeeding fiscal years, as all other property taxes are distributed for the fiscal year."

Section 60. Section 15-24-304, MCA, is amended to read:

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

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

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

(4) A person owning a migratory aircraft shall register as prescribed in 67-3-201(5) and pay, including paying the fee in lieu of tax and the sales tax or use tax imposed in 15-68-102, if applicable."

Section 61. 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 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~~ the levy under 20-25-439.

(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 62. 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~~ including the levy under 20-25-439;

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

Section 63. 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~~ the levy under 20-25-439."

Section 64. 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~~ the levy under 20-25-439.

(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 65. 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~~ the levy under 20-25-439.

(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~~ 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 66. Section 15-30-101, MCA, is amended to read:

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

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

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

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

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

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

(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 C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

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

(10) "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.

(11) "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 ~~2005~~ 2007.

(12) "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.

(13) "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.

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

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

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

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

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

(18) (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.

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

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

(21) "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.

(22) "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.

(23) "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.

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

(25) "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.

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

(27) "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.

(28) "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.

(29) "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.

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

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

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

(33) "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 67. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. ~~(1)~~ There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax at the rate of 5.75% of the individual's taxable income on the brackets of taxable income as follows:

- ~~—— (a) on the first \$2,300 of taxable income or any part of that income, 1%;~~
- ~~—— (b) on the next \$1,800 of taxable income or any part of that income, 2%;~~
- ~~—— (c) on the next \$2,100 of taxable income or any part of that income, 3%;~~
- ~~—— (d) on the next \$2,200 of taxable income or any part of that income, 4%;~~

- ~~— (e) on the next \$2,400 of taxable income or any part of that income, 5%;~~
- ~~— (f) on the next \$3,100 of taxable income or any part of that income, 6%;~~
- ~~— (g) on any taxable income in excess of \$13,900 or any part of that income, 6.9%.~~

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

Section 68. Section 15-30-111, MCA, is amended to read:

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

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

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

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

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

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

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

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

~~(g)(f)~~ except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not

include the following, which are exempt from taxation under this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a

dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

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

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

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

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

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

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

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

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

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

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must

be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

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

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

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection ~~(4)(e)~~ (1)(d) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 69. 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) must be allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~\$1,900~~ \$5,990 is allowed for all taxpayers.

(b) An additional exemption of ~~\$1,900~~ \$5,990 is allowed 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 tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~\$1,900~~ \$1,970 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of ~~\$1,900~~ \$1,970 is allowed 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 the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~\$1,900~~ \$1,970 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of ~~\$1,900~~ \$1,970 is allowed 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 tax year of the

taxpayer begins, 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 must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

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

(5) (a) An exemption of ~~\$1,900~~ \$5,990 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than ~~\$800~~ \$5,990; 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 tax year of the taxpayer begins; or

(B) is a student.

(b) An exemption is not allowed under this subsection for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the 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 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 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 tax year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 70. 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, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

- (i) items provided for in 15-30-123;
- (ii) state income tax paid;
- (iii) premium payments for medical care as provided in subsection ~~(1)(g)(i)~~ (1)(f)(i);
- (iv) long-term care insurance premium payments as provided in subsection ~~(1)(g)(ii)~~ (1)(f)(ii); and
- (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(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;~~

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

- (i) expenses for household and dependent care services necessary for gainful employment incurred for:
 - (A) a dependent under 15 years of age for whom an exemption can be claimed;
 - (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and
 - (C) a spouse who is unable to provide self-care because of physical or mental illness;

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

- (A) household services that are attributable to the care of the qualifying individual; and
- (B) care of an individual who qualifies under subsection ~~(1)(e)(i)~~ (1)(b)(i);
- (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

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

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

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

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

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

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

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

(vi) for purposes of this subsection ~~(1)(e)~~ (1)(b):

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

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

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

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

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

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

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

~~(d)(c)~~ in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

~~(e)(d)~~ that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct

allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

~~(f)~~(e) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

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

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

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

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

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

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

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

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

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

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

Section 71. 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 ~~\$4,580~~ \$1,630, as adjusted under the provisions of subsection

(2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$3,560~~ \$3,680, 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 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 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 resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 72. Section 15-30-137, MCA, is amended to read:

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

Section 73. 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 ~~\$3,560~~ \$3,680, 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 ~~\$7,120~~ \$7,360, 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 ~~\$1,900~~ \$1,966, 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, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

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

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

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

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

Section 74. Section 15-30-1112, MCA, is amended to read:

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

member, or other owner who:

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

(b) consents to be included in the filing.

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

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

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

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

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

(4) The electing entity:

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

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

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

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

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

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403.

(6) The composite tax is in lieu of the taxes imposed under:

(a) 15-30-103 and 15-30-105;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

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

Section 75. Section 15-30-1113, MCA, is amended to read:

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

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

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

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

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

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

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

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

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

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

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

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

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

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

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included

in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

Section 76. Section 15-31-114, MCA, is amended to read:

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

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

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

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

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All elections made under the

Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

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

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

(A) taxes imposed by this part;

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

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

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

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

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

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

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

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

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

(i) 50% of the total net capital gain determined for federal income tax purposes under section ~~4(h)~~ 1201 of the Internal Revenue Code, 26 U.S.C. ~~4(h)~~ 1201.

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

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

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

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

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered."

Section 77. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year ~~2003~~ 2006 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) ~~plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002,~~ is allocated to each county according to the following schedule:

2003	2004	2005	2006 and succeeding tax years
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Big Horn	45.03%	45.04%	45.04%	45.05%	<u>26.28%</u>
Blaine	57.56%	57.84%	58.11%	58.39%	<u>44.82%</u>
Carbon	50.24%	49.59%	48.93%	48.27%	<u>30.83%</u>
Chouteau	56.67%	57.16%	57.65%	58.14%	<u>42.2%</u>
Custer	103.63%	92.27%	80.9%	69.53%	<u>50.68%</u>
Daniels	48.31%	49.15%	49.98%	50.81%	<u>32.55%</u>
Dawson	56.32%	53.48%	50.64%	47.79%	<u>34.92%</u>
Fallon	39.89%	40.52%	41.15%	41.78%	<u>29.18%</u>
Fergus	112.2%	97.86%	83.52%	69.18%	<u>40.52%</u>
Garfield	54.51%	51.66%	48.81%	45.96%	<u>34.21%</u>
Glacier	76.56%	70.65%	64.74%	58.83%	<u>34.04%</u>
Golden Valley	55.5%	56.45%	57.41%	58.37%	<u>34.08%</u>
Hill	66.97%	66.15%	65.33%	64.51%	<u>40.45%</u>
Liberty	63.32%	61.53%	59.73%	57.94%	<u>41.59%</u>
McCone	58.75%	55.81%	52.86%	49.92%	<u>34.17%</u>
Musselshell	57.06%	54.25%	51.44%	48.64%	<u>34.21%</u>
Petroleum	67.8%	61.21%	54.62%	48.04%	<u>26.78%</u>
Phillips	53.3%	53.54%	53.78%	54.02%	<u>38.49%</u>
Pondera	104.14%	87.51%	70.89%	54.26%	<u>34.43%</u>
Powder River	64.7%	63.44%	62.17%	60.9%	<u>47.12%</u>
Prairie	38.43%	39.08%	39.73%	40.38%	<u>28.69%</u>
Richland	45.23%	45.97%	46.72%	47.47%	<u>32.2%</u>
Roosevelt	46.75%	46.4%	46.06%	45.71%	<u>27.19%</u>
Rosebud	37.41%	38.05%	38.69%	39.33%	<u>22.16%</u>
Sheridan	46.64%	47.09%	47.54%	47.99%	<u>33.87%</u>
Stillwater	56.05%	55.2%	54.35%	53.51%	<u>35.35%</u>
Sweet Grass	58.23%	59.24%	60.24%	61.24%	<u>40.64%</u>
Teton	53.01%	50.71%	48.4%	46.1%	<u>30.62%</u>
Toole	56.2%	56.67%	57.14%	57.61%	<u>39.96%</u>
Valley	59.82%	57.02%	54.22%	51.43%	<u>30.83%</u>
Wibaux	47.71%	48.19%	48.68%	49.16%	<u>39.03%</u>

Yellowstone	50.69%	49.37%	48.06%	46.74% <u>28.05%</u>
All other counties	50.15%	50.15%	50.15%	50.15% <u>33.12%</u>

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

~~(a) for the fiscal year ending June 30, 2003, to be distributed as follows:~~

- ~~—— (i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~
- ~~—— (ii) all remaining proceeds to the state general fund;~~

~~(b) for the fiscal year beginning July 1, 2003~~ 2006, through the fiscal year ending June 30, 2011, to be distributed as follows:

- (i) 1.23% to the coal bed methane protection account established in 76-15-904;
- (ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;
- (iii) 2.95% to the orphan share account established in 75-10-743; and
- (iv) ~~2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~ 2.65% TO THE STATE SPECIAL REVENUE FUND TO BE APPROPRIATED TO THE MONTANA UNIVERSITY SYSTEM FOR THE SUPPORT, MAINTENANCE, AND IMPROVEMENT OF THE UNIVERSITY SYSTEM; AND

~~—— (v)(V) all remaining proceeds to the state general fund;~~

~~(e)(b)~~ for fiscal years beginning after June 30, 2011, to be distributed as follows:

- (i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;
- (ii) 2.95% to the orphan share account established in 75-10-743; and
- (iii) ~~2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~ 2.65% TO THE STATE SPECIAL REVENUE FUND TO BE APPROPRIATED TO THE MONTANA UNIVERSITY SYSTEM FOR THE SUPPORT, MAINTENANCE, AND IMPROVEMENT OF THE UNIVERSITY SYSTEM; AND

~~—— (iv)(IV) all remaining proceeds to the state general fund."~~

SECTION 78. SECTION 15-36-332, MCA, IS AMENDED TO READ:

"15-36-332. Distribution of taxes to taxing units -- appropriation. (1) By the dates referred to in

subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1), including the amounts referred to in subsection (2)(b), to ~~the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts~~ according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99% <u>13.5%</u>
Blaine	5.86%	2.31%	2.71%	24.73% <u>12.37%</u>
Carbon	3.6%	6.62%	1.31%	49.18% <u>24.59%</u>
Chouteau	8.1%	4.32%	3.11%	23.79% <u>11.9%</u>
Custer	6.9%	3.4%	1.19%	31.25% <u>15.63%</u>
Daniels	0	7.77%	3.92%	48.48% <u>24.24%</u>
Dawson	5.53%	2.5%	1.11%	35.6% <u>17.8%</u>
Fallon	0	7.63%	1.24%	42.58% <u>21.29%</u>
Fergus	7.88%	4.84%	2.08%	53.25% <u>26.63%</u>
Garfield	4.04%	3.13%	5.29%	26.19% <u>13.1%</u>
Glacier	11.2%	4.87%	3.01%	46.11% <u>23.06%</u>
Golden Valley	0	11.52%	2.77%	54.65% <u>27.33%</u>
Hill	6.7%	4.07%	1.59%	49.87% <u>24.94%</u>
Liberty	4.9%	4.56%	1.15%	35.22% <u>17.61%</u>
McCone	4.18%	3.19%	2.58%	43.21% <u>21.61%</u>
Musselshell	5.98%	4.07%	3.53%	32.17% <u>16.09%</u>
Petroleum	0	11.92%	4.59%	55.48% <u>27.74%</u>
Phillips	0.43%	6.6%	1.08%	41.29% <u>20.65%</u>
Pondera	6.96%	5.06%	1.94%	45.17% <u>22.59%</u>
Powder River	3.96%	2.97%	4.57%	22.25% <u>11.13%</u>
Prairie	0	8.88%	1.63%	36.9% <u>18.45%</u>
Richland	4.1%	3.92%	2.26%	43.77% <u>21.89%</u>
Roosevelt	9.93%	7.37%	2.74%	40.94% <u>20.47%</u>

Rosebud	3.87%	2.24%	1.05%	72.97%	<u>36.49%</u>
Sheridan	0	3.39%	2.22%	47.63%	<u>23.82%</u>
Stillwater	6.87%	4.86%	1.63%	41.16%	<u>20.58%</u>
Sweet Grass	6.12%	6.5%	2.4%	37.22%	<u>18.61%</u>
Teton	6.88%	8.19%	3.8%	29.43%	<u>14.72%</u>
Toole	2.78%	4.78%	1.3%	43.56%	<u>21.78%</u>
Valley	2.26%	12.61%	4.63%	41.11%	<u>20.56%</u>
Wibaux	0	4.1%	0.77%	31.46%	<u>15.73%</u>
Yellowstone	7.98%	4.56%	1.07%	52.77%	<u>26.39%</u>
All other counties	3.81%	7.84%	1.81%	41.04%	<u>20.51%</u>

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary

school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section 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 year.

(7) 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 under 7-1-2111.

(8) The distribution to taxing units under this section is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund."

Section 79. Section 15-62-208, MCA, is amended to read:

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

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles

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

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

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

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

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

- ~~(a) April 30, 2001; or~~
- ~~(b) the date that is 3 years prior to the date of the withdrawal or distribution.~~

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

Section 80. 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;

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

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

"17-7-301. Authorization to expend during first year of biennium from appropriation for second year -- proposed supplemental appropriation defined -- limit on second-year expenditures. (1) An agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, due to 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 for retirement, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or
- (c) requested by the attorney general and:
 - (i) is to pay the costs associated with litigation in which the department of justice is required to provide representation to the state of Montana; or
 - (ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

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

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

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

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

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

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

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

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-112; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; [section 39]; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

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

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

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

- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;
- (8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;
- (9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;
- (12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;
- (13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;
- (14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;
- (15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;
- (16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;
- (17) 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;

(18) 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;

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

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

(21) 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;

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

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

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

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

(26) 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;

(27) 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;

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

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

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

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

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district

superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

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

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

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

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

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

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

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

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

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

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

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

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

accordance with the provisions of the other school funds parts of this title;

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

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

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

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

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

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

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

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

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

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

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

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

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in

20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

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

(28) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

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

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

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

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

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

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

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

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

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

- (a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;
- (b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;
- (c) an order issued under Title 40, chapter 4, part 2; or
- (d) out-of-state placement by a state agency.

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

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

Section 86. Section 20-5-324, 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;

(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; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(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 subsections (1)(d) and (1)(e) 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) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, 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 87. 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; and

(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 88. 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)(ii)."

Section 89. Section 20-9-104, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

Section 90. Section 20-9-141, MCA, is amended to read:

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

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

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

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

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

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

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

following:

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

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

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

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

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

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

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

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

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

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

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

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

~~(4)~~ (3) For each school district, the department of revenue shall calculate and report to the county

superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 91. Section 20-9-212, MCA, is amended to read:

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

(1) must 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;~~

~~(e)(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 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 92. 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 payments;
~~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 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) \$220,646 for each high school district;
- (b) \$19,859 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) \$19,859 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

- (ii) \$220,646 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 \$5,371 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 \$4,031 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 \$4,031 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 \$5,371 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 93. 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~~ general fund budget of the school district is to be used 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 ~~these~~ instructional, administrative, facility maintenance, and other operational costs of a district that are 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 94. 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 95. 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 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; and

~~(f) gross proceeds taxes from coal under 15-23-703; and~~

~~———(g) oil and natural gas production taxes~~

(f) any money appropriated by the legislature that is designated as county elementary equalization aid."

Section 96. 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~~1~~. ~~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; and

~~(c) gross proceeds taxes from coal under 15-23-703; and~~

~~————(d) oil and natural gas production taxes~~

(c) any money appropriated by the legislature that is designated as county high school equalization aid."

Section 97. 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, guaranteed base aid for retirement, 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 98. 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. The board of public education:

(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) may require reports from the county superintendents, 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 99. 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~~ provide 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 100. 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 101. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, 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) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total ANB amount used to calculate the school districts' current year total per-ANB entitlement.

~~(4) (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) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school 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 102. 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 103. Section 20-9-368, MCA, is amended to read:

"20-9-368. Amount of guaranteed tax base aid for retirement. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

~~(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:~~

~~—— (a) multiply the sum of the district's BASE budget amount less direct state aid by the corresponding statewide guaranteed tax base ratio;~~

~~—— (b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and~~

~~—— (c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.~~

~~(4)(3)~~ Guaranteed tax base aid provided to any county or district under this section is earmarked to

finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 104. 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 for retirement 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 for retirement and 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 for retirement and state advances and reimbursements for school facilities and the entitlements for the aid of the counties and districts that qualify;

~~(e)~~(d) distributing the guaranteed tax base aid for retirement and state advances and reimbursements for school facilities entitlement and the entitlements 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 105. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative 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 as provided in subsection (2)(a). The district's or the cooperative'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 or the cooperative'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 or the cooperative'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 or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) 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.

(4) 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)(II) coal gross proceeds taxes under 15-23-703;~~

~~(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;~~

~~(v)(III) 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)(IV) 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 (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) 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.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) 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.

(8) 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.

(9) 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 (5)(a) by the sum of:

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

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 106. Section 20-9-515, MCA, is amended to read:

"20-9-515. Litigation reserve fund. (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's general fund ~~BASE~~ over-BASE budget levy requirement computed pursuant to 20-9-141."

Section 107. 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 108. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

~~(i) school district block grants distributed under section 244, Chapter 574, Laws of 2001;~~

~~(j)(i)~~ any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(k)(j)~~ any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may

not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

SECTION 109. SECTION 20-10-146, MCA, IS AMENDED TO READ:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

~~(ii) oil and natural gas production taxes;~~

~~(iii) anticipated local government severance tax payments for calendar year 1995 production;~~

~~(iv)~~(ii) coal gross proceeds taxes under 15-23-703;

~~(v) countywide school transportation block grants distributed under section 246, Chapter 574, Laws of 2001;~~

~~(vi)~~(iii) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

~~(vii)~~(iv) federal forest reserve funds allocated under the provisions of 17-3-213; and

~~(viii)~~(v) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 110. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identifying number -- sales tax or use tax. (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 in calendar year 2004 and, in each subsequent year, \$15.50. Any alteration, change, or false statement contained in the application renders 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) (i) ~~The~~ Before the application for certification or recertification may be accepted by the county treasurer, the applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required under 23-2-517 for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft ~~before the application for certification or, if applicable, recertification may be accepted by the county treasurer.~~

(ii) Except as provided in subsection (2)(b) or (2)(c), the applicant shall provide verification that the sales tax or use tax imposed in 15-68-102 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 15-68-102;

or

(ii) provide evidence that the purchase was either exempt or nontaxable under Title 15, chapter 68, part

2.

(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) A certificate of number and a registration decal issued under this part are effective unless terminated

or discontinued in accordance with the provisions of this part.

(6) If ownership is transferred, the purchaser shall notify the county treasurer 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.

(7) 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.

(8) (a) (i) 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.

(ii) 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.

(iii) 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 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.

(iv) A registration decal issued under this part must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck 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 liveryes 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.

(9) (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 39] STATE GENERAL FUND.

(10) 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 if 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 111. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and registration decal -- application and issuance -- sales tax or use tax -- 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 unless it has been registered and a registration decal is displayed in a conspicuous place on the left side of the cowl.

(2) (a) A Montana resident who owns a snowmobile operated on public land shall register the snowmobile at the county treasurer's office in the county where the owner resides.

(b) A county treasurer shall register a snowmobile if:

(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.

(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.

(3) The owner registering a snowmobile shall pay a registration fee of \$6.50 in calendar year 2004 and, in each subsequent year, \$20.50 and, if the snowmobile has previously been registered, show the county

treasurer the registration receipt for the most recent year in which the snowmobile was registered. Upon payment of the proper fees, including the fee in lieu of tax, the treasurer shall issue a registration receipt that contains 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 or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the application to the department of justice and shall issue to the applicant a registration decal in the style and design prescribed by the department of justice.

(5) (a) The county treasurer may not register a snowmobile under this section unless the applicant has:

(i) paid the registration fee and the fee in lieu of property tax on the snowmobile as required by 15-16-202; and

(ii) except as provided in subsection (5)(b) or (5)(c), provided verification that the sales tax or use tax imposed in 15-68-102 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 15-68-102 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 15-68-102;

or

(ii) provide evidence that the purchase was either exempt or nontaxable under Title 15, chapter 68, part

2.

(d) The department of justice may adopt rules to assist the county treasurer in implementing this section.

(6) All money collected from payment of registration fees and all interest accruing from use of ~~this money~~ the registration fees 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 39]~~ STATE GENERAL FUND.

(8) The fee imposed in subsection (3) is a one-time fee except on change of ownership. When ownership of the snowmobile changes, the new owner shall pay the fee in subsection (3)."

Section 112. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee -- sales tax or use tax -- application and issuance -- disposition. (1)

Each off-highway vehicle is subject to a registration fee of \$2.

(2) The county treasurer shall collect the 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 title 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) other information that 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 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 15-68-102 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 15-68-102;

or

(ii) provide evidence that the purchase was either exempt or nontaxable under Title 15, chapter 68, part

2.

(d) The registration receipt must ~~containing~~ 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 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 39] STATE GENERAL FUND."

Section 113. Section 61-3-303, MCA, is amended to read:

"61-3-303. Registration -- process -- fees -- sales tax or use tax. (1) A Montana resident who owns a motor vehicle operated or driven upon the public highways of this state shall register the motor vehicle in the office of the county treasurer in the county where the owner permanently resides or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the county where the vehicle is permanently assigned.

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, sales taxes or use taxes, if applicable, and local option taxes or fees, if applicable,

on each motor vehicle at the time of its registration.

(5) A person who seeks to register a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall 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; and

(d) a donation of \$1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the vehicle to the owner unless the owner makes the payments required by subsection (5) and, except as provided in subsection (7), provides verification that the sales tax or use tax imposed in 15-68-102 has been paid. 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) the current year; and

(b) except as provided in subsection ~~(9)~~ (10), the immediately preceding 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.

(7) (a) 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 15-68-102 has been paid.

(b) If the owner is unable to provide the verification required under subsection (6) or proof of nontaxability under subsection (7)(a), the applicant shall:

(i) pay the applicable amount of sales tax or use tax determined according to the provisions of 15-68-102;

or

(ii) provide evidence that the purchase was either exempt or nontaxable under Title 15, chapter 68, part

2.

(c) The department may adopt rules to assist the county treasurer in implementing this section.

~~(7)~~(8) The department may make full and complete investigation of the registration status of the vehicle. A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department if requested.

~~(8)~~(9) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue 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.

~~(9)~~(10) (a) Except as provided in subsection ~~(9)(b)~~ (10)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection ~~(9)(a)~~ (10)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection ~~(9)(a)~~ (10)(a) is transferred, the new owner is required to register the vehicle as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

~~(10)~~(11) (a) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(b) Sales tax and use tax collected under subsection (7) must be transmitted to the department of revenue for deposit in the sales tax and use tax account established under [section 39] STATE GENERAL FUND."

Section 114. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle -- grace period -- penalty -- display of proof of purchase. (1) Except as otherwise provided in this section, the new owner of a transferred motor vehicle has a grace period of 20 calendar days from the date of purchase to make application for a certificate of title and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year.

(2) The new owner of a vehicle described in 61-3-303~~(9)~~(10) shall make application and pay the

registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously.

(3) If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a current registration receipt or registration decal during the 20-day period if at all times during that period, a temporary registration permit, obtained from the county treasurer or a law enforcement officer as authorized by the department, is clearly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle.

(4) Registration fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(5) Failure to make application for a certificate of title within the time provided in this section subjects the purchaser to a penalty of \$10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."

Section 115. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

- (a) passenger vehicles, including automobiles, vans, and sport utility vehicles;
- (b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";
- (c) trucks, bearing the letter "T" or the word "TRUCK";
- (d) trailers, bearing the letters "TR" or the word "TRAILER";
- (e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";
- (f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";
- (g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";
- (h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word

"DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562 and vehicles described in 61-3-303~~(9)~~(10) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) For passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated

from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must

be assigned numbers by the department as they are formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

(11) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. If the vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 116. Section 61-3-456, MCA, is amended to read:

"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana. (1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

- (a) the name and address of the owner;
- (b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and
- (c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

- (a) ~~the taxes~~ the fees in lieu of tax described in 61-3-303(5)(b) or the sales tax or use tax described in 61-3-303(7) and imposed in 15-68-102;
- (b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or
- (c) any of the fees provided in part 5 of this chapter."

Section 117. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing required -- sales tax or use tax. (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 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 15-68-102 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 15-68-102;

or

- (ii) provide evidence that the purchase was either exempt or nontaxable under Title 15, chapter 68, part

2.

(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 ~~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 39] STATE GENERAL FUND."

Section 118. Section 67-3-204, MCA, is amended to read:

"67-3-204. Fee in lieu of tax on registered aircraft -- exception -- sales tax or use tax -- decal. (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax and, if applicable, the sales tax or use tax, as provided in 67-3-201. No aircraft subject to a fee in lieu of tax may be operated in this state unless there is displayed on the aircraft a decal as visual proof that the fee in lieu of tax has required fees and taxes have been paid for the aircraft and that the aircraft is registered for the current year.

(3) ~~Aircraft~~ An aircraft that ~~meet~~ meets the description of property described in 15-6-145 ~~are~~ is exempt from the fee imposed by subsection (1). ~~Aircraft~~ Except as provided in 67-3-201, an aircraft subject to the fee in

lieu of tax ~~are~~ is exempt from all other taxation."

Section 119. 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 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, the 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 120. 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 any statewide mill levies levy 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 121. Repealer. (1) Sections 15-10-107, 20-9-360, 20-9-630, 20-9-631, 20-9-632, and 20-25-423, MCA, ~~and section 244, Chapter 574, Laws of 2001,~~ are repealed.

~~—(2) Section 15-68-820 is repealed.~~

~~(3)~~(2) Section 15-30-183, MCA, is repealed.

NEW SECTION. Section 122. Transition. (1) Notwithstanding the provisions of 15-30-111, the adjusted gross income of an individual includes refunds of federal income tax received for tax years before December 31, 2007, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) Beginning [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 47], the income tax credit provided for in [sections 48 through 51], and any changes in the department's duties resulting from [sections 53 through 107] 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 40 through 47];

(iii) shall work collaboratively with municipalities, counties, and school districts in implementing [sections 53 through 107] 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 107 through 109] and certain motor vehicles within the context of [section 111]; and

(c) the department of transportation may promulgate rules for implementing the registration of certain aircraft within the context of [sections 115 and 116].

(3) For property tax levies and for county and school budgeting purposes and for university system 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, the statewide levy required in 20-9-360, and the university system levy required in 15-10-107 and 20-25-423, as those sections read on December 31, 2004, must be levied in 2005 and are generally payable in November 2005 and May 2006.

NEW SECTION. Section 123. 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 124. Codification instruction. (1) [Sections 6 and 32] are intended to be codified as an integral part of Title 15, chapter 68, part 5, and the provisions of Title 15, chapter 68, part 5, apply to [sections 6 and 32].

(2) [Sections 10 through 20 and 22 through 27] are intended to be codified as an integral part of Title 15, chapter 68, part 2, and the provisions of Title 15, chapter 68, part 2, apply to [sections 10 through 20 and 22 through 27].

(3) [Section 39] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section 39].

(4) [Sections 40 through 47] are intended to be codified as an integral part of Title 15, chapter 68, and the provisions of Title 15, chapter 68, apply to [sections 40 through 47].

(5) [Sections 48 through 52] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 48 through 52].

NEW SECTION. Section 125. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective ~~on passage and approval~~ JANUARY 1, 2006.

(2) ~~[Sections 48 through 52 and 119(1) and (2)] are effective January 1, 2006~~ [SECTION 122 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(3) [SECTIONS 6, 8, 28, 29, 32, 38, AND 40 THROUGH 47] ARE EFFECTIVE JULY 1, 2005.

~~(3)~~(4) [Sections 66 through 78 and ~~449(3)~~ 121(2)] are effective January 1, 2007.

NEW SECTION. Section 126. Applicability. (1) [Section ~~449~~ 122] applies on [the effective date of ~~this~~
act SECTION 125(2)].

(2) [Sections 6, 8, 28, 29, 32, 38, and 40 through 47] apply to fiscal years beginning on or after July 1, 2005.

(3) [Sections 1 through 5, 7, 9 through 27, 30, 31, 33 through 37, 39, 48 through 65, 77, ~~78, 79~~ 80 through 118, and ~~449(1) and (2)~~ 121(1)] apply beginning January 1, 2006, to tax years and fiscal years beginning after December 31, 2005.

(4) [Sections 66 through 76, ~~78~~ 79, and ~~449(3)~~ 121(2)] apply to tax years beginning after December 31, 2006.

NEW SECTION. Section 127. Contingent termination. [This act] terminates December 31, 2009, unless the legislature refers a measure to the qualified electors of Montana at the general election to be held in November 2008 to extend the sales tax and use tax laws enacted by [this act] and the electors approve the measure.

- END -