

## SENATE BILL NO. 513

INTRODUCED BY ELLIOTT, BRANAE, MATTHEWS

A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING THE ACCURATE DETERMINATION AND COLLECTION OF MONTANA TAXES; ENACTING THE "TAX ABUSE, AVOIDANCE, AND EVASION REPORTING ACT"; REQUIRING DISCLOSURE OF CERTAIN TRANSACTIONS AND RETURN REPORTING POSITIONS; PROVIDING PENALTIES FOR FAILURE TO MAINTAIN AND DISCLOSE INFORMATION; ESTABLISHING A VOLUNTARY TAX COMPLIANCE INITIATIVE; ENACTING THE "REAL ESTATE BACKUP WITHHOLDING ACT"; REQUIRING BACKUP WITHHOLDING WHEN THE SALES PRICE OF MONTANA REAL ESTATE TRANSFERRED BY FOREIGN ENTITIES AND NONRESIDENTS EQUALS OR EXCEEDS \$100,000; PROVIDING EXCEPTIONS FOR BACKUP WITHHOLDING; ESTABLISHING A BACKUP WITHHOLDING RATE; IMPOSING LIABILITY ON THE TRANSFEREE FOR FAILURE TO WITHHOLD; CREATING A LIEN FOR UNPAID BACKUP WITHHOLDING; SIMPLIFYING AND CLARIFYING THE TREATMENT OF CERTAIN ENTITIES SUBJECT TO SPECIAL FEDERAL INCOME TAX TREATMENT ~~TO PREVENT THEIR USE AS VEHICLES TO AVOID MONTANA TAX~~; CONFORMING THE TREATMENT OF S. CORPORATION BUILT-IN GAIN TO FEDERAL LAW BY IMPOSING A TAX ON THE BUILT-IN GAIN OF AN S. CORPORATION; CLARIFYING THE REPORTING REQUIREMENTS OF CERTAIN DISREGARDED ENTITIES, INCLUDING GRANTOR TRUSTS, QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARIES, AND CERTAIN PARTNERSHIPS; REQUIRING PASS-THROUGH ENTITY REPORTING AND WITHHOLDING BY CERTAIN GRANTOR TRUSTS, QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARIES, AND PARTNERSHIPS ELECTING INTERNAL REVENUE CODE SECTION 761 TREATMENT THAT HAVE OWNERS OR BENEFICIARIES THAT ARE NONRESIDENT INDIVIDUALS, FOREIGN CORPORATIONS, OR PASS-THROUGH ENTITIES; CLARIFYING THE TAXATION OF SHAREHOLDERS OF S. CORPORATIONS THAT ARE TRUSTS; CONFORMING THE TREATMENT AND TAXATION OF ELECTING SMALL BUSINESS TRUSTS TO FEDERAL LAW; IMPOSING AN EXCISE TAX ON S. CORPORATIONS ON CERTAIN ALLOCATIONS OR OWNERSHIP OF S. CORPORATION STOCK OR EQUITY PROHIBITED BY FEDERAL LAW; PROVIDING THAT NONINSURANCE INCOME OF AN INSURANCE COMPANY IS SUBJECT TO THE CORPORATION LICENSE TAX; AMENDING SECTIONS 15-1-216, 15-30-101, 15-30-111, 15-30-135, 15-30-137, 15-30-209, 15-30-321, 15-31-113, ~~15-31-114, 15-31-119~~, 15-31-302, 15-31-543, AND 33-2-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Tax Abuse, Avoidance, and Evasion Reporting Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Abusive tax shelter" means any scheme the principal purpose of which is to evade or underreport Montana or federal income taxes and includes:

- (a) a listed transaction;
- (b) a partnership or other entity;
- (c) any investment plan or arrangement; and
- (d) any other plan or arrangement.

(2) "Combined filing group" means the entities included in a state tax return prepared using a combined reporting method.

(3) "Combined reporting method" means a method of determining business income and apportionment that takes into account the business income and apportionment factors of more than a single corporation and includes a consolidated return filing method.

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

(5) "Inconsistent filing position" means ~~treatment of an item of income, deduction, or credit or any combination of these items on a Montana income tax return for a tax year ending after December 31, 2004, that is inconsistent in amount, character, or timing with treatment of the item or combination of items on an income tax return filed with another state~~ THE REPORTING OR REFLECTING OF INFORMATION ON ANY RETURN FILED FOR MONTANA INCOME TAX PURPOSES IN A MANNER INCONSISTENT WITH THE MANNER IN WHICH THE SAME OR SIMILAR INFORMATION WAS REPORTED OR REFLECTED ON ANY RETURN FILED BY THE SAME TAXPAYER, OR BY A MEMBER OF A UNITARY GROUP OF WHICH THE SAME TAXPAYER IS A MEMBER, IN ANOTHER STATE WITH RESPECT TO A TAX ON OR MEASURED BY NET INCOME FOR THE SAME TAX YEAR.

(6) "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 means those provisions as they may be labeled or further amended.

(7) "Listed transaction" means a transaction that:

(a) the U.S. department of the treasury identifies as a listed tax avoidance transaction by notice, regulation, or other form of published guidance; or

(b) is the same as or substantially similar to a type of transaction that the department determines is, and by rule identifies as, a tax avoidance transaction.

(8) "Material adviser" means an individual or entity that:

(a) provides material aid, assistance, or advice about organizing, managing, promoting, selling, implementing, insuring, or carrying out a reportable transaction; and

(b) directly or indirectly derives gross income in excess of the following threshold amounts for the aid, assistance, or advice:

(i) subject to subsection (8)(b)(iii), \$50,000 if substantially all of the purported tax benefits of the reportable transaction are received by individuals;

(ii) subject to subsection (8)(b)(iii), \$250,000 if substantially all of the purported tax benefits are not received by individuals; and

(iii) any other amount as may be prescribed by the U.S. department of the treasury for purposes of section 6111(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 6111(b)(1)(A), or by the department for purposes of [sections 1 through 9].

(9) "Member of the reporting group" means:

(a) the taxpayer;

(b) a disregarded entity for which any income, deduction, or credit is included in determining the taxpayer's income for federal or state income tax purposes;

(c) a member of an affiliated group of corporations filing a consolidated return pursuant to section 1501 of the Internal Revenue Code, 26 U.S.C. 1501, of which the taxpayer is a member;

(d) a member of a unitary group filing a unitary return pursuant to 15-31-312 of which the taxpayer is a member; and

(e) a member of a combined filing group of which the taxpayer is a member.

(10) "Montana income tax" means a tax or an obligation to file a Montana tax return imposed pursuant to Title 15, chapter 30 or 31.

(11) "Montana tax return" means any income tax, license tax, or information return described in Title 15, chapters 30 and 31, and includes:

(a) the estate and trust income tax return described in 15-30-135 and 15-30-143;

(b) the individual income tax return described in 15-30-142;

- (c) the pass-through entity information return described in 15-30-1102;
- (d) the corporation information return described in 15-31-405;
- (e) the corporation income tax return described in 15-31-111 and 15-31-406;
- (f) the consolidated return described in 15-31-141;
- (g) the report of acquired assets and statement of income described in 15-31-142;
- (h) the corporation license tax return described in 15-31-111; and
- (i) the final return on dissolution or cessation of business described in 15-31-143.

(12) "Noneconomic substance transaction" means a transaction that lacks economic substance, as determined by state or federal law, and includes:

(a) the creation or use of an entity that is disregarded because the entity was not created or used for a valid business purpose; and

(b) the creation or use of an entity for the principal purpose of avoiding liability for taxes or of underreporting taxes imposed by Title 15, chapter 30 or 31.

(13) "Reportable transaction" means:

~~\_\_\_\_\_ (a) a transaction described in U.S. treasury regulation 1.6011-4(b), 26 CFR 1.6011-4(b);~~

~~\_\_\_\_\_ (b) an abusive tax shelter;~~

~~\_\_\_\_\_ (c) a listed transaction;~~

~~\_\_\_\_\_ (d) an inconsistent filing position; or~~

~~\_\_\_\_\_ (e) a noneconomic substance transaction~~ ANY TRANSACTION OR ARRANGEMENT WITH RESPECT TO WHICH INFORMATION IS REQUIRED TO BE INCLUDED WITH A STATE RETURN OR STATEMENT BECAUSE, AS DETERMINED UNDER RULES PRESCRIBED PURSUANT TO [SECTIONS 1 THROUGH 9], THE TRANSACTION OR ARRANGEMENT IS OF A TYPE THAT THE DEPARTMENT DETERMINES HAS A POTENTIAL FOR AVOIDANCE OR EVASION OF THE TAX IMPOSED BY TITLE 15, CHAPTER 30 OR 31, WHETHER THROUGH DEDUCTION OR CREDIT, THE EXCLUDABILITY OR OMISSION OF ANY INCOME, THE MANIPULATION OF ANY ALLOCATION OR APPORTIONMENT RULE, OR THE SECURING OF ANY OTHER TAX BENEFIT, AND IS CARRIED OUT THROUGH OR INVESTED IN BY AT LEAST ONE INDIVIDUAL OR ENTITY THAT IS ORGANIZED IN MONTANA, DOING BUSINESS IN MONTANA, DERIVING INCOME FROM SOURCES IN MONTANA, SUBJECT TO TITLE 15, CHAPTER 30 OR 31, OR IS OTHERWISE SUBJECT TO THE JURISDICTION OF MONTANA. A REPORTABLE TRANSACTION INCLUDES BUT IS NOT LIMITED TO ANY TRANSACTION OR ARRANGEMENT DESCRIBED IN U.S. TREASURY REGULATIONS SECTION 1.6011-4(B)(1) THROUGH (7), 26 CFR 1.6011-4(B)(1) THROUGH (7), WHEN THE TRANSACTION OR ARRANGEMENT IS OF A TYPE THAT THE U.S. SECRETARY OF TREASURY DETERMINES HAS A POTENTIAL FOR TAX AVOIDANCE OR EVASION, AN ABUSIVE TAX SHELTER, A LISTED TRANSACTION, AND A NONECONOMIC SUBSTANCE TRANSACTION.

(14) "Reporting group" includes:

(a) an affiliated group of corporations filing a consolidated return pursuant to section 1501 of the Internal Revenue Code, 25 U.S.C. 1501;

(b) a unitary group filing a unitary return pursuant to 15-31-301 or 15-31-312; or

(c) a combined filing group.

(15) "Taxpayer" means an individual or entity subject to a tax or a duty to make a Montana tax return imposed in Title 15, chapter 30 or 31, or in [sections 1 through 9].

(16) "Transaction" means an act or failure to act and includes:

(a) all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement; and

(b) any series of steps carried out as part of a plan.

**NEW SECTION. Section 3. Reportable transactions -- taxpayer disclosure - extension of limitations on assessment -- penalties -- waiver.** (1) A taxpayer shall include in each Montana tax return, whether an original or amended return:

(a) a written statement disclosing:

(i) each reportable transaction in which a member of the reporting group participated during the tax year; and

(ii) each reportable transaction in which a member of the reporting group participated that reduces tax for the tax year; and

(b) a copy of internal revenue form 8886 or any other disclosure statement about a reportable transaction made with respect to a member of the reporting group under treasury regulation 1.6011-4, 26 CFR 1.6011-4, during the tax year.

(2) A taxpayer shall include in any amended Montana tax return that reflects a determination of the federal income tax treatment of a reportable transaction a written statement disclosing the reportable transaction.

(3) In a taxpayer's Montana tax return for the tax year ending in 2005, the taxpayer shall:

(a) include a written statement reporting any reportable transaction in which a member of the reporting group participated after December 31, 1999, and before January 1, 2006; and

(b) include a copy of any disclosure statement described in subsection (1)(b) made by any member of the reporting group after December 31, 1999, and before January 1, 2006.

(4) If the taxpayer or a member of the reporting group is a material adviser, the taxpayer shall, unless

the department prescribes a different method for reporting the information, include the additional information described in [section 4].

(5) If the reportable transaction is an inconsistent filing position, the taxpayer shall, unless the department prescribes a different method for reporting the information, include the additional information described in [section 5(1)].

(6) If a taxpayer fails to include in any Montana tax return for any tax year ending on or after December 31, 1999, any information with respect to a reportable transaction required under this section to be included in the return, the time for assessing any tax, penalty, and interest imposed by Title 15, chapter 30 or 31, that is attributable to the undisclosed reportable transaction does not expire before the date 10 years after the due date, including extensions, of the return.

(7) Subsections (1)(a), (3)(a), (4), (5), and (6) apply to an individual with a net worth in excess of \$2 million and to a taxpayer or reporting group with gross receipts in excess of \$10 million.

(8) (a) A taxpayer who fails to provide the information required by this section with respect to any reportable transaction that is not a listed transaction shall pay in addition to any other penalty:

(i) \$10,000 if the taxpayer is an individual; and

(ii) \$50,000 in all other cases.

(b) A taxpayer who fails to provide the information required by this section with respect to a reportable transaction that is a listed transaction shall pay in addition to any other penalty:

(i) \$100,000 if the taxpayer is an individual; and

(ii) \$200,000 in all other cases.

(c) If a taxpayer has an underpayment of tax that is attributable to a reportable transaction that is not a listed transaction, the taxpayer shall pay, in addition to any other penalty, 20% of the amount of the underpayment.

(d) If a taxpayer has an underpayment of tax that is attributable to a reportable transaction that is a listed transaction, the taxpayer shall pay, in addition to any other penalty, 30% of the amount of the underpayment.

(e) The department shall waive 50% of the penalties imposed in this section if the taxpayer:

(i) files an amended Montana tax return that identifies an underpayment of tax that is attributable to a reportable transaction before the internal revenue service or the department contacts the taxpayer about the transaction; and

(ii) pays the amount of the underpayment of tax that is attributable to the reportable transaction when the amended return is filed.

(f) The penalties imposed by this subsection (8) are considered assessed on the due date, excluding extensions, of the Montana tax return in which the reportable transaction is required by this section to be disclosed.

(g) The penalties provided in this section apply to any failure to disclose any listed transaction entered into after December 31, 1999, and any other reportable transaction entered into after [the effective date of this act], for any tax year or years for which:

(i) the transaction remains undisclosed; and

(ii) the limitation on assessment, extended as provided in subsection (6), has not expired as of 60 days after [the effective date of this act].

(h) Any correspondence mailed by the department to a taxpayer at the taxpayer's last-known address outlining the program established under [section 9] constitutes a contact for purposes of this section.

**NEW SECTION. Section 4. Reportable transactions -- material adviser additional disclosures -- record retention -- penalties.** (1) In any disclosure made pursuant to [section 3] or subsection (3) of this section, a material adviser shall include:

(a) information identifying and describing the reportable transaction, any potential tax benefits expected to result from the transaction, and any additional information that the department prescribes; and

(b) a copy of form 8264 or any other return made by the material adviser or a member of the material adviser's reporting group under treasury regulation 1.6011-4, 26 CFR 1.6011-4.

(2) A material adviser shall:

(a) maintain a list identifying each person for whom the adviser acted as a material adviser with respect to a reportable transaction in the form and manner and containing the information required under section 6112 of the Internal Revenue Code, 26 U.S.C. 6112, and U.S. treasury regulation 301.6112-1, 26 CFR 301.6112-1, or prescribed by the department;

(b) identify in the list any person or reporting group that the adviser has knowledge of that is or may be subject to Montana income tax;

(c) retain the list and any information required to be included in the list for 7 years; and

(d) provide the list to the department within 20 business days after the date of its written request.

(3) The department may, by rule:

(a) require disclosures and returns by material advisers in addition to or in lieu of the disclosures required by [section 3] or subsection (1) of this section;

- (b) limit the number of persons required to make the same disclosure or maintain the same list;
- (c) exempt material advisers from some or all of the requirements of this section; and
- (d) establish different lists and information retention schedules.

(4) (a) A material adviser who fails to maintain or retain the list described in subsection (2) shall pay in addition to any other penalty not less than \$1,000 or more than \$10,000 for each failure.

(b) A material adviser who fails to provide the list described in subsection (2) to the department within 20 days after the date of the department's written request shall pay in addition to any other penalty \$15,000 for each day after the 20th day that the list is not provided.

**NEW SECTION. Section 5. Inconsistent filing position -- reportable transactions -- disclosures generally -- record retention -- extension of limitations on assessments -- burden of proof.** (1) In any disclosure made pursuant to [section 3] or subsection (4) of this section, if the reportable transaction is an inconsistent filing position, the taxpayer shall include the following information about the inconsistent filing position:

(a) with respect to the business income of the taxpayer or a reporting group of which the taxpayer is a member:

- (i) the total amount;
- (ii) the amount reported to each state;
- (iii) with respect to each apportionment factor used to determine the apportionment percentage of each state, the dollar amount of the numerator and denominator; and
- (iv) the apportionment percentage of each state;

(b) with respect to the nonbusiness income of the taxpayer or a reporting group of which the taxpayer is a member:

- (i) the total amount; and
- (ii) the amount allocated to each state;
- (c) with respect to each return made using the combined reporting method:
  - (i) the state in which the method was employed; and
  - (ii) a list of the entities for which the business income was included in the return; and
- (d) additional information that the department prescribes.

(2) A taxpayer who engages in or is a member of a reporting group that engages in any activity in this state and another state that gives rise to gross income or expenses reflected in the taxpayer's federal income tax



return or an income tax return of any state or that uses or holds available for use any property in this state shall:

(a) include in any Montana tax return for a tax year ending after December 31, 2004, in the manner and form prescribed by the department, the filing position taken in the income tax return of each state with respect to business income, nonbusiness income, apportionment and allocation of income, and combined reporting;

(b) retain a complete copy of any income tax return filed in any state by the taxpayer or a reporting group of which the taxpayer is a member for the longer of:

(i) 10 years from the date that the return was filed; or

(ii) the period during which the taxpayer's Montana income tax liability is subject to adjustment; and

(c) provide the tax returns described in subsection (2)(b) to the department within 20 business days after the date of a written request.

(3) A taxpayer and any member of a reporting group of which the taxpayer is a member shall provide any information in the taxpayer's or member's possession that the department requests to determine the taxpayer's liability with respect to any tax year for which the limitation on assessment has not expired.

(4) The department may by rule require disclosures and returns about inconsistent filing positions in addition to or in lieu of the disclosures required by [section 3] or subsection (1) of this section.

(5) (a) A taxpayer who fails to provide the information required by subsection (2)(a) or (3) shall pay in addition to any other penalty:

(i) \$10,000 if the taxpayer is an individual; and

(ii) \$50,000 in all other cases.

(b) In addition to any other penalty, a taxpayer who fails to maintain or retain the information described in subsection (1) or (2) shall pay a penalty determined by the department of not less than \$1,000 or more than \$10,000 for each failure.

(c) A taxpayer who fails to provide the information described in subsection (2) or (3) to the department within 20 days after the date of the department's written request shall pay, in addition to any other penalty, \$20,000.

(d) A taxpayer who fails to provide to the department all information described in subsections (1) and (2) is presumed liable for any underpayment of tax attributable to an inconsistent filing position assessed by the department and may overcome the presumption only by providing clear and convincing evidence to the contrary.

(6) As used in this section, "income tax" means income tax as defined in 15-1-601.

NEW SECTION. **Section 6. Duty to report activity and property.** (1) Subject to subsection (2), an

individual or entity that regularly and systematically solicits business in Montana BUT THAT DOES NOT REPORT OR PAY MONTANA INCOME TAX shall, in the manner and form that the department prescribes, report:

- (a) any income and receipts attributable to Montana;
- (b) how business is solicited in Montana;
- (c) how services or products are delivered in Montana;
- (d) any personnel, property, or sales within Montana; and
- (e) other information that the department determines is reasonably necessary to determine the extent of Montana contacts or Montana's tax jurisdiction.

(2) The department:

- (a) may exempt small businesses from the reporting requirements in subsection (1); and
- (b) shall exempt any business with less than \$500,000 in gross sales made during the tax year within the state.

(3) (a) An individual or entity that fails to provide the information required by this section shall pay, in addition to any other penalty:

- (i) \$10,000 if an individual; and
- (ii) \$50,000 in all other cases.

(b) An individual or entity that fails to provide the information required by this section to the department within 20 days after the date of the department's written request shall pay, in addition to any other penalty, \$20,000.

**NEW SECTION. Section 7. Promoting abusive tax shelters -- penalties -- no confidentiality.** (1)

A penalty of the greater of \$10,000 or 50% of the gross income derived or to be derived from any of the following activities must be paid by a person who:

(a) organizes or assists in the organization of an abusive tax shelter and makes or furnishes or causes another person to make or furnish a statement in connection with the organization about the allowability of any tax deduction or credit, the excludability of any income, or the securing of any other tax benefit, including but not limited to a reduction in Montana income tax, by reason of holding an interest in an entity that is a part of an abusive tax shelter or participating in the abusive tax shelter;

(b) organizes or assists in the organization of an abusive tax shelter and makes or furnishes or causes another person to make or furnish a statement in connection with the organization about the securing of a tax benefit by manipulation of any allocation or apportionment rule, including but not limited to a reduction in Montana

income tax, by reason of holding an interest in an entity that is a part of an abusive tax shelter or participating in the abusive tax shelter;

(c) organizes or assists in the organization of an abusive tax shelter and makes or furnishes or causes another person to make or furnish a gross valuation overstatement as to any material matter in connection with the organization;

(d) participates directly or indirectly in the sale of any interest in an abusive tax shelter or in an entity that forms part of an abusive tax shelter and makes or furnishes or causes another person to make or furnish a statement in connection with the sale about the allowability of any tax deduction or credit, the excludability of any income, or the securing of any other tax benefit, including but not limited to a reduction in Montana income tax, by reason of holding an interest in an entity that is a part of an abusive tax shelter or participating in the abusive tax shelter; or

(e) participates directly or indirectly in the sale of any interest in an abusive tax shelter or in an entity that forms part of an abusive tax shelter and makes or furnishes or causes another person to make or furnish a gross valuation overstatement as to any material matter in connection with the sale.

(2) No privilege of confidentiality applies to any written communication made in connection with the participation of a person in an abusive tax shelter, whether the communication is between a tax practitioner and the person, a director, officer, employee, agent, or representative of the person or a person holding a capital or profits interest in the person.

**NEW SECTION. Section 8. Department authority to seek injunction -- conduct related to reportable transactions and abusive tax shelters.** (1) The department may commence a civil action in the name of the state to enjoin any person from further:

(a) failing to include on any return any information with respect to a reportable transaction that is required under [section 3, 4, or 5] to be included with a Montana tax return;

(b) failing to provide the list described in [section 4(2)];

(c) failing to provide the information required by [section 5(2) or (3)];

(d) failing to make the report described in [section 6]; or

(e) engaging in an activity with respect to the promotion of an abusive tax shelter described in [section 7].

(2) Any action under this section must be brought in the district court of the first judicial district, Lewis and Clark County. The court may exercise its jurisdiction over an action pursuant to this section separate and apart

from any other action brought against the person by the state.

(3) In any action under this section, if the court finds that the person has engaged in any conduct described in subsection (1) and that injunctive relief is appropriate to prevent recurrence of the conduct, the court may enjoin the person from engaging in the conduct or in any other activity subject to a penalty under [sections 1 through 9].

**NEW SECTION. Section 9. Tax shelter voluntary compliance program.** (1) As used in this section, the following definitions apply:

(a) "Eligible taxpayer" means a taxpayer who, during the period beginning December 1, 2005, and ending March 31, 2006:

(i) for each tax year that the taxpayer filed a Montana tax return using a tax avoidance transaction to underreport the taxpayer's Montana income tax liability, files an amended Montana tax return reporting the total Montana taxable income and tax for the tax year computed without regard to any tax avoidance transaction; and

(ii) pays the total amount of Montana income tax and interest due for the tax year that is attributable to the use of a tax avoidance transaction.

(b) "Tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding federal or Montana income tax. Tax avoidance transactions include but are not limited to reportable transactions and listed transactions.

(2) (a) A tax avoidance transaction voluntary compliance program is established for eligible taxpayers subject to Montana income tax as provided in this section.

(b) The department shall develop and administer the program and adopt rules, issue forms and instructions, and take any other action it considers reasonably necessary to implement the program.

(c) The program will be conducted from December 1, 2005, to March 31, 2006, and applies to tax liabilities for tax years beginning before January 1, 2005, attributable to the use of a tax avoidance transaction.

(3) (a) An eligible taxpayer participating in the program shall elect to participate under either subsection (3)(b) or (3)(c). The option elected applies to all tax years for which the taxpayer will participate, and a separate election for different tax years or for different transactions in different tax years is not allowed. The taxpayer shall make the election in the form and manner prescribed by the department, and once made, the election is irrevocable.

(b) If an eligible taxpayer elects to participate under this subsection (3)(b):

(i) subject to subsections (3)(b)(ii) and (6), the department shall waive all penalties applicable to the

underreporting or underpayment of Montana income tax attributable to the use of tax avoidance transactions for the tax years for which the taxpayer voluntarily complies, including penalties imposed under [sections 3 through 8];

(ii) a penalty that relates to an amount of Montana income tax assessed or paid before December 1, 2005, may not be waived;

(iii) except as otherwise provided in subsection (5), the department shall not seek criminal prosecution against the taxpayer for the tax year for underreporting and underpayment with respect to tax avoidance transactions for which the taxpayer voluntarily complies; and

(iv) the taxpayer may not file a claim for refund or credit for any amount paid under this section or with respect to the tax avoidance transactions for the tax year.

(c) If an eligible taxpayer elects to participate under this subsection (3)(c):

(i) subject to subsections (3)(c)(ii) and (6), the department shall waive all penalties imposed under [sections 3 through 8] with respect to disclosure of tax avoidance transactions and underpayment of Montana income tax resulting from the use of tax avoidance transactions for any tax years for which the taxpayer voluntarily complies, but the eligible taxpayer remains subject to the penalties imposed by 15-1-216 before [the effective date of this act];

(ii) a penalty that relates to an amount of Montana income tax assessed or paid before December 1, 2005, may not be waived;

(iii) except as otherwise provided in subsection (5), the department may not seek criminal prosecution against the taxpayer for the tax year for underreporting and underpayment with respect to tax avoidance transactions for which the taxpayer voluntarily complies;

(iv) the fact that a taxpayer participated in the program may not be considered evidence that the taxpayer engaged in a tax avoidance transaction;

(v) any penalties that are not waived are considered assessed on the due date, excluding extensions, of the return under which the amount should have been paid; and

(vi) the taxpayer may file a claim for refund or credit with respect to the tax year as provided in Title 15, chapter 30 or 31, but if the department denies the claim, the taxpayer may not file an appeal until the department issues a final determination with respect to the transactions at issue or the earlier of the date that is:

(A) 180 days after the date of a final determination by the internal revenue service with respect to the transactions at issue;

(B) 4 years after the date that the claim for refund was filed; or

(C) 1 year after full payment of all Montana income tax, including penalty and interest.

(4) The department may enter into an installment payment agreement on the following terms and conditions in lieu of the full payment required to be eligible for the program:

(a) the taxpayer shall pay interest on the unpaid amount at the rate prescribed by 15-1-216;

(b) waiver of penalties is conditioned on the taxpayer's full compliance with the terms of the agreement; and

(c) if the taxpayer fails to comply with any term of the agreement, any waiver of penalties is void and the total amount of tax, interest, and all penalties are due and payable on notice and demand by the department.

(5) The penalty relief provided in this section is not available with respect to any portion of an underpayment of Montana income tax that is not paid to the department and that is attributable to a tax avoidance transaction. After March 31, 2006, the department may, with respect to the difference between the amount shown on an amended return filed by an eligible taxpayer and the correct amount of tax:

(a) issue a deficiency assessment;

(b) impose penalties; and

(c) initiate criminal action.

(6) For the purpose of improving state tax administration, the department may in addition to taking any other action authorized under any other provision of law or [sections 1 through 9] inquire into the facts and circumstances related to the use of tax avoidance transactions by eligible taxpayers who participate in the program. Taxpayers shall cooperate fully with inquiries described in this subsection, and any waiver of penalty provided in this section is conditioned on that cooperation. Notwithstanding any other provision of this section, if an otherwise eligible taxpayer fails to fully cooperate in an inquiry described in this subsection, the department may assess any penalties that may apply.

(7) The department may waive all or any portion of any penalty imposed by [section 3, 4, 5, 6, or 7] if waiving the penalty would promote compliance with the requirements of the program and effective tax administration.

**NEW SECTION.** **Section 10. Short title.** [Sections 10 through 12] may be cited as the "Real Estate Backup Withholding Act".

**NEW SECTION.** **Section 11. Definitions.** As used in [sections 10 through 12], the following definitions apply:

(1) "Certified calculated gain" means the gain the transferor certifies in writing, under penalty of false swearing, that the transferor will realize on a disposition of Montana real estate.

(2) "Disregarded entity" has the meaning provided in 15-30-101.

(3) "Foreign entity" means:

(a) a corporation, pass-through entity, or disregarded entity that does not maintain and staff a permanent office in Montana;

(b) an irrevocable trust for which the principal place of administration is not in Montana;

(c) a revocable trust if the trustor is a corporation, pass-through entity, or disregarded entity that does not maintain and staff a permanent office in Montana; and

(d) an estate if the decedent was a nonresident.

(4) "Improvements" has the meaning provided in 15-1-101.

(5) "Montana real estate" means real estate or improvements located in Montana.

(6) "Nonresident" has the meaning provided in 15-30-101 and includes a revocable trust if the trustor is a nonresident individual.

(7) "Pass-through entity" has the meaning provided in 15-30-101.

(8) "Real estate" has the meaning provided in 15-1-101.

(9) "Sales price" means the total consideration for the transfer, including the fair market value of any property transferred to the transferor and any liability assumed or taken subject to the sales price.

(10) "Transferee" means the purchaser ~~and any individual or entity acting on behalf of the purchaser and includes any intermediary or accommodator in a deferred exchange of property pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. 1031.~~

**NEW SECTION. Section 12. Withholding required on sale or exchange -- transferee liability -- lien.** (1) Except as provided in subsection (2), in the case of any disposition of Montana real estate by a nonresident or foreign entity, the transferee shall withhold an amount equal to the lesser of:

(a) 2.5% of the sales price of the Montana real estate conveyed; or

(b) the transferor's certified calculated gain multiplied by the highest rate of tax provided in 15-30-103.

(2) Withholding is not required if:

(a) the sales price is less than \$100,000;

(b) the transferee is acquiring the Montana real estate at a sale pursuant to a power of sale under a mortgage or deed of trust, under a decree of foreclosure, or by deed in lieu of foreclosure; or

(c) the transferee, in good faith and based on all the information of which the transferee has knowledge, relies on a written exemption certificate executed by the transferor, certifying, under penalty of false swearing, one of the following:

(i) the Montana real estate being conveyed is the principal residence of the seller or decedent within the meaning of section 121 of the Internal Revenue Code, 26 U.S.C. 121;

(ii) the last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of section 121 of the Internal Revenue Code, 26 U.S.C. 121;

(iii) the Montana real estate has been compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033, and the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain under section 1033 of the Internal Revenue Code, 26 U.S.C. 1033;

(IV) THE MONTANA REAL ESTATE IS BEING RELINQUISHED IN AN EXCHANGE IN WHICH GAIN AND LOSS IS NOT RECOGNIZED PURSUANT TO SECTION 1031 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 1031;

~~(iv)~~(V) the transaction will result in a net loss; ~~or~~

~~(v)~~(VI) the transferor is a corporation, pass-through entity, or disregarded entity with a permanent place of business in Montana; OR

(VII) THE TRANSFEROR IS AN INDIVIDUAL WHO IS A MONTANA RESIDENT.

(3) Within 30 days after the date of sale, the transferee shall report and remit to the department, in the manner and on the forms the department prescribes, the amount deducted and withheld under subsection (1), any certified calculated gain used in calculating the withholding amount, and any transferor exemption certificate described in subsection (2).

(4) The transferee is personally liable for all amounts withheld or required to be withheld.

(5) The amount ~~required to be withheld~~ constitutes a lien on the transferred property until the amount is received by the department.

(6) Any amount remitted by the transferee must be considered as payment on the account of the nonresident or foreign entity or, if the foreign entity is a pass-through entity, on behalf of its shareholders, partners, or members, as applicable, for individual income tax imposed pursuant to Title 15, chapter 30, or corporation license tax or corporation income tax imposed pursuant to Title 15, chapter 31.

(7) IF THE DISPOSITION OF THE MONTANA REAL ESTATE IS AN INSTALLMENT SALE, WITHHOLDING MAY BE MADE AS PROVIDED BY THE DEPARTMENT BY RULE.



**NEW SECTION. Section 13. Built-in gain of S. corporation taxable -- REPORT TO INTERIM COMMITTEE.**

(1) A tax at the rate provided in 15-31-121(1) is imposed on the net recognized built-in gain, determined as provided in section 1374 of the Internal Revenue Code, 26 U.S.C. 1374, of an S. corporation.

(2) THE DEPARTMENT SHALL REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE REGARDING DIFFERENCES BETWEEN MONTANA LAW AND FEDERAL LAW AND METHODS OF CONFORMING MONTANA LAW TO FEDERAL LAW ON TAXATION OF NET RECOGNIZED BUILT-IN GAIN OF AN S. CORPORATION.

**Section 14.** Section 15-1-216, MCA, is amended to read:

**"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**

**-- exceptions.** (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(e) An individual who purposely or knowingly files, renders, or signs a false or fraudulent return or supplies false or fraudulent information with respect to a return, report, or investigation shall be assessed an additional penalty of not less than \$1,000 or more than \$20,000.

(f) A corporation, partnership, or other entity, an officer or employee of a corporation, or a member or employee of a partnership or other entity that purposely or knowingly files, renders, or signs a false or fraudulent return or supplies false or fraudulent information with respect to a return, report, or investigation shall be assessed an additional penalty of not less than \$10,000 or more than \$50,000.

(g) An individual who purposely or knowingly files, renders, or signs a false or fraudulent return or supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than \$20,000 or imprisoned for not more than 5 years, or both.

(h) A corporation, partnership, or other entity, an officer or employee of a corporation, or a member or employee of a partnership or other entity that purposely or knowingly files, renders, or signs a false or fraudulent return or supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a

felony and upon conviction shall be fined not more than \$50,000 or imprisoned for not more than 5 years, or both.

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

- (i) property taxes;
- (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or
- (iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law."

**Section 15.** 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~~ tax 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;

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

(c) a qualified real estate investment trust subsidiary that is not treated as a separate corporation as provided in section 856 of the Internal Revenue Code, 26 U.S.C. 856;

(d) a partnership that elected under section 761 of the Internal Revenue Code, 26 U.S.C. 761, to be excluded from some or all of the partnership tax rules; and

(e) a grantor trust.

(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) "Electing small business trust" means an electing small business trust as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361.

~~(7)(8)~~ "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)(9)~~ "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

~~(9)(10)~~ "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(11) "Grantor trust" means a trust any portion for which the grantor or another person is treated as owner as provided in chapter 1, subchapter J, part I, subpart E, of the Internal Revenue Code, 26 U.S.C. chapter 1, subchapter J, part I, subpart E.

~~(10)(12)~~ "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)~~(13) "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.

~~(12)~~(14) "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)~~(15) "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)~~(16) "Knowingly" is as defined in 45-2-101.

~~(15)~~(17) "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)~~(18) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(17)~~(19) "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)~~(20) (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~~ financial institutions 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)(21)~~ (21) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(20)(22)~~ (22) "Nonresident" means a natural person who is not a resident.

~~(21)(23)~~ (23) "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)(24)~~ (24) "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)(25)~~ (25) "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)(26)~~ (26) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(25)(27)~~ (27) "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)~~(28) "Purposely" is as defined in 45-2-101.

~~(27)~~(29) "Received", for the purpose of computation of ~~taxable tax~~ 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)~~(30) "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)~~(31) "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)~~(32) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

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

~~(32)~~(34) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(33)~~(35) "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 16.** 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;

~~(c) 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; ~~and~~

(g) to the extent that it is not included in federal adjusted gross income, any amount distributed or made available for distribution from a trust created by an employer as part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of the employer's employees that is not a return of the amount the employee contributed to the plan.

(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)~~(1)(b)(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) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-113 and 15-31-114.~~

(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 17.** Section 15-30-135, MCA, is amended to read:

**"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts.** (1) A tax ~~shall be~~ is imposed upon either the fiduciaries or the beneficiaries of estates and trusts as ~~hereinafter provided in this section, except to the extent such~~ unless the estates and trusts ~~shall be~~ are held for educational, charitable, or religious purposes; ~~which~~ If an estate or trust held for educational, charitable, or religious purposes has unrelated business taxable income as defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512, or as otherwise provided for federal income tax purposes, the tax is imposed with respect to the unrelated business taxable income. The tax shall must be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

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

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

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

(d) income ~~which~~ that is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary ~~shall be~~ is responsible for making the return of income for the estate or trust for which ~~he the fiduciary~~ the fiduciary acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of ~~such the~~ the estate or trust. In cases under subsections ~~(a) and (d) of subsection (1)~~ (1)(a) and (1)(d), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the ~~taxable tax~~ taxable tax year for which the return is made.

(3) In cases under subsections ~~(a), (b), and (c) of subsection (1)~~ (1)(a), (1)(b), and (1)(c), the tax ~~shall be~~ is imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and ~~shall~~ must be paid by the fiduciary. If the taxpayer's net income for the ~~taxable tax~~ taxable tax year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then ~~his the taxpayer's~~ the taxpayer's distributive share of the net income of the estate or trust for any accounting period of ~~such the~~ the estate or trust ending within the fiscal or calendar year ~~shall~~ must be computed upon the basis on which ~~such the~~ the beneficiary's net income is computed. In ~~such those~~ those cases, a beneficiary who

is not a resident shall be is taxable with respect to his the beneficiary's income derived through such the estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The Except as provided in 15-30-137(4), the fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his the employer's employees, to which contributions are made by such the employer or employees, or both, for the purpose of distributing to such the employees the earnings and principal of the fund accumulated by the trust in accordance with such the plan, shall is not be taxable under this section, but any amount contributed to such the fund by the employer and all earnings of such the fund shall must be included in computing the income of the distributee in the year in which distributed or made available to him the distributee.

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

(6) If there is an allocation or synthetic equity described in section 4979A of the Internal Revenue Code, 26 U.S.C. 4979A, a tax equal to 50% of the amount involved is imposed on and must be paid by the person on whom the tax is imposed as provided in section 4979A(c) of the Internal Revenue Code, 26 U.S.C. 4979A(c)."

**Section 18.** Section 15-30-137, MCA, is amended to read:

**"15-30-137. Determination of tax of estates and trusts.** (1) The Except as provided in subsections (2) and (4), 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 contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

(2) A tax on the taxable income of an electing small business trust, determined as provided in subsection (3), is imposed on the fiduciary at the highest rate provided in section 15-30-103 and must be paid by the fiduciary.

(3) (a) In determining the taxable income of an electing small business trust, the portion of the trust that consists of stock in one or more S. corporations must be treated as a separate trust and the amount of tax imposed on the separate trust must be determined with the modifications described in subsection (3)(b).

(b) In determining the gross, net, and taxable income of the trust:

(i) the exemption amount is zero;

(ii) the only items of income, loss, deduction, or credit taken into account are:

(A) the items required to be taken into account under section 1366 of the Internal Revenue Code, 26 U.S.C. 1366;

(B) gain or loss from the sale, transfer, or other disposition of the stock of the S. corporation; and

(C) administrative expenses allocated to the items described in subsection (3)(b)(ii)(A) and (3)(b)(ii)(B) for federal income tax purposes.

(4) (a) Except as provided in subsection (4)(b), if a trust or organization described in section 1361(c)(2)(A)(iv) or 1361(c)(6) of the Internal Revenue Code, 26 U.S.C. 1361(c)(2)(A)(iv) or 1361(c)(6), holds stock in an S. corporation:

(i) the interest in the S. corporation is treated as an unrelated trade or business;

(ii) all items of income, loss, or deduction taken into account under section 1366(a) of the Internal Revenue Code, 26 U.S.C. 1366(a), and any gain or loss on the sale, transfer, or other disposition of the stock in the S. corporation are included in computing the unrelated business taxable income of the trust or organization;

(iii) the unrelated business taxable income of the trust or organization is taxed at the rate provided in 15-31-121; and

(iv) the basis of any stock acquired by purchase, as purchase is defined in section 1361(e)(1)(C) of the Internal Revenue Code, 26 U.S.C. 1361(e)(1)(C), must be reduced by the amount of any dividends received by the trust or organization with respect to the stock.

(b) The provisions of subsection (4)(a) do not apply to employer securities within the meaning of section 409(l) of the Internal Revenue Code, 26 U.S.C. 409(l), held by an employee stock ownership plan described in section 4975(e)(7) of the Internal Revenue Code, 26 U.S.C. 4975(e)(7)."

**Section 19.** Section 15-30-209, MCA, is amended to read:

**"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior

to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.

(b) If an employer fails to honor the summons provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure with a minimum of \$50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by ~~15-30-321(1)~~ 15-1-216(1)(e) if any part of the affidavit is untrue. The department may bring an action ~~as provided in 15-30-321(1)~~ in the name of the state to recover the civil penalty and any delinquent taxes.

(11) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

**Section 20.** Section 15-30-321, MCA, is amended to read:

**"15-30-321. Penalties for violation of chapter.** (1) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who purposely fails to file a

~~return or files, renders, or signs a false or fraudulent return or statement or supplies false or fraudulent information~~ is liable to a penalty of not less than \$1,000 and not more than \$5,000, to be recovered in the name of the state by action in a court of competent jurisdiction.

(2) An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter ~~or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information~~ is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both, at the discretion of the court.

(3) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."

**Section 21.** Section 15-31-113, MCA, is amended to read:

**"15-31-113. Gross income and net income.** (1) (a) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes ~~and: increased by the items described in subsection (1)(b) and decreased as provided in subsection (1)(c).~~

~~(a)(b) including~~ For the purposes of this chapter, the following items are included in determining a corporation's gross income:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered; AND

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; ~~and,~~

~~— (iii) a capital gain dividend treated by the shareholder or holder of a beneficial interest in a real estate investment trust as gain from the sale or exchange of a capital asset held for more than 1 year described in section 857(b)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(3), as that section may be amended~~



~~or renumbered, and the amount designated by a real estate investment trust and includable in computing the long-term capital gains of a shareholder or holder of a beneficial interest described in section 857(b)(3)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(3)(D), as that section may be amended or renumbered.~~

~~(b)(c) excluding~~ For the purposes of this chapter, the corporation's gross income excludes:

~~(i) gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337, as those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) (1)(b)(ii) of this section; and~~

~~(ii) premiums AND INCOME FROM INVESTMENTS OF PREMIUMS received by insurers defined in 33-1-201(6).~~

~~(2) (a) The Except as provided in subsection (2)(b), the~~ THE term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

~~—— (b) If the corporation is taxed as a regulated investment company as provided in section 851 through 855 of the Internal Revenue Code of 1986, 26 U.S.C. 851 through 855, as those sections may be amended or renumbered, the term "net income" means "investment company income" as defined in subsection (2)(c). If a corporation is taxed as a real estate investment trust as provided in section 856 through 859 of the Internal Revenue Code of 1986, 26 U.S.C. 856 through 859, as those sections may be amended or renumbered, the term "net income" means REIT income, as defined in subsection (2)(d).~~

~~—— (c) "Investment company income" means investment company taxable income, as defined in section 852(b)(2) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(2), as that section may be amended or renumbered, modified as follows:~~

~~—— (i) section 852(b)(2)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(2)(A), as that section may be amended or renumbered, relating to an exclusion for net capital gain, does not apply;~~

~~—— (ii) section 852(b)(2)(B) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(2)(B), as that section may be amended or renumbered, relating to net operating losses, is modified to deny the deduction allowed under 15-31-119 in lieu of denying the deduction allowed by section 172 of the Internal Revenue Code of 1986, 26 U.S.C. 172, as that section may be amended or renumbered;~~

~~—— (iii) the deduction for dividends paid, under section 852(b)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(2)(D), as that section may be amended or renumbered, is modified to allow capital gain dividends and exempt interest dividends, to the extent that interest is included in gross income under this part, to be included in the computation of the deduction;~~

~~—— (iv) section 852(b)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(3), as that section may~~

~~be amended or renumbered, relating to imposition of a separate tax on net capital gains, does not apply; and~~  
~~—— (v) section 852(b)(5)(B) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5)(B), as that section may be amended or renumbered, relating to treatment of exempt interest dividends by shareholders, does not apply;~~

~~—— (d) "REIT income" means real estate investment trust taxable income, as defined in section 857(b)(2) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(2), as that section may be amended or renumbered, modified as follows:~~

~~—— (i) section 857(b)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(2)(D), as that section may be amended or renumbered, relating to an exclusion for an amount equal to the net income from foreclosure property, does not apply;~~

~~—— (ii) section 857(b)(2)(E) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(2)(E), as that section may be amended or renumbered, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the tax year, does not apply;~~

~~—— (iii) section 857(b)(2)(F) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(2)(F), as that section may be amended or renumbered, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, does not apply; and~~

~~—— (iv) no deduction for dividends paid is allowed, whether provided in sections 561, 858, or 860 of the Internal Revenue Code of 1986, 26 U.S.C. 561, 858, or 860, as those sections may be amended or renumbered;~~

(3) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the ~~taxable tax~~ year."

~~—— **Section 22.** 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. A deduction is not allowed for claims paid by an insurer subject to the provisions of Title 33, chapter 2, part 7.~~

~~———(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 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.~~

~~—— (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. A deduction is not allowed for any dividend received from:

——— (a) a regulated investment company including, without limitation, a capital gains dividend as defined in section 852(b)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(3), as that section may be amended or renumbered, or any amount treated as a dividend under section 854(b) of the Internal Revenue Code of 1986, 26 U.S.C. 854(b), as that section may be amended or renumbered;

——— (b) a real estate investment trust including, without limitation, a capital gain dividend as defined in section 857(b)(3)(C) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(3)(C), as that section may be amended or renumbered, a capital gain dividend treated by the shareholder or holder of a beneficial interest in a real estate investment trust as gain from the sale or exchange of a capital asset held for more than 1 year described in section 857(b)(3)(B) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(3)(B), as that section may be amended or renumbered, and the amount designated by a real estate investment trust and includable in computing the long-term capital gains of a shareholder or holder of a beneficial interest described in section 857(b)(3)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 857(b)(3)(D), as that section may be amended or renumbered."

——— **Section 23.** Section 15-31-119, MCA, is amended to read:

——— **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

——— (2) (a) The Except as provided in subsection (2)(b), the term "net operating loss" means the excess of the deductions allowed by this section 15-31-114 over the gross income, with the modifications specified in subsection (6) of this section.

——— (b) The net operating loss of a real estate investment trust must be computed with the adjustments provided in 15-31-113(2)(d).

——— (3) If for any taxable period beginning after December 31, 1970 tax year, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods tax years following the taxable period tax year of the loss.

~~———— (4) A net operating loss for any taxable period ending after December 31, 1975 tax year, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods 7 tax years following the taxable period tax year of the loss.~~

~~———— (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable tax years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods tax years to which the loss was carried. For purposes of this subsection, the net income for the prior taxable period tax year must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period tax year after the loss period, and the net income so computed may not be considered to be less than zero.~~

~~———— (6) The modifications referred to in subsection (2) are as follows:~~

~~———— (a) The net operating loss deduction may not be allowed.~~

~~———— (b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.~~

~~———— (c) Except to the extent provided in section 1382(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1382(b), as that section may be amended or renumbered, a deduction for dividends paid or considered paid is not allowed.~~

~~———— (c)(d) Any net operating loss carried over to any taxable tax year must be calculated under the provisions of this section effective for the taxable tax year for which the return claiming the net operating loss carryover is filed.~~

~~———— (7) A net operating loss deduction may be allowed only with regard to losses attributable to the business carried on within the state of Montana.~~

~~———— (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.~~

~~———— (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.~~

~~———— (10) The net operating loss deduction must be allowed with respect to taxable periods tax years.~~

~~———— (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on~~

or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

~~———— (12) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered."~~

**Section 22.** Section 15-31-302, MCA, is amended to read:

**"15-31-302. Definitions.** (1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. The term includes all income of insurers defined in 33-1-201(6) that is not from premiums received OR INCOME FROM INVESTMENT OF PREMIUMS.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(4) (a) "Nonbusiness income" means all income other than business income.

(b) The term does not include premiums AND INCOME FROM INVESTMENT OF PREMIUMS received by insurers defined in 33-1-201(6).

(5) "Sales" means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision ~~thereof~~ of a foreign country."

**Section 23.** Section 15-31-543, MCA, is amended to read:

**"15-31-543. Penalties.** (1) If a corporation fails to file a return at the time specified in ~~15-31-502~~ or files ~~a false or fraudulent return~~ 15-31-111, the corporation is liable to a penalty of not more than \$5,000 to be recovered by an action in a court of competent jurisdiction.

(2) A corporation that purposely fails to file a return at the time specified in ~~15-31-502~~ 15-31-111 or that purposely files a false or fraudulent return may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as a corporation until the license fee, together with all penalties and

costs, is paid. The forfeiture may be enforced by proper proceedings in court.

(3) Each officer or employee of any corporation or other person who, without fraudulent intent, fails to file, sign, or verify any return or to supply any information within the time required by the provisions of this chapter is liable for the penalty imposed by 15-1-216. The department shall assess and collect any penalty in the same manner as is provided in this chapter with regard to delinquent taxes."

**Section 24.** Section 33-2-705, MCA, is amended to read:

**"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of



the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) ~~With~~ Except as provided in Title 15, chapter 31, and 50-3-109, with respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, and excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, ~~and taxes payable under 50-3-109.~~

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

NEW SECTION. Section 25. Codification instruction. (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 12].

(2) [Section 13] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 13].

NEW SECTION. Section 26. Effective date. [This act] is effective July 1, 2005.

NEW SECTION. Section 27. Applicability -- retroactive applicability. (1) [Sections 10 through 12] apply to sales and exchanges closing after June 30, 2005.

(2) [SECTION 13] APPLIES TO THE BUILT-IN GAIN OF A SMALL BUSINESS CORPORATION FOR WHICH AN ELECTION UNDER 1362(A) OF THE INTERNAL REVENUE CODE, 26 U.S.C. 1362(A), IS MADE AFTER JUNE 30, 2005.

~~(2)(3)~~ [Sections ~~13~~ 14 through ~~26~~ 24] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

- END -

