

HOUSE BILL NO. 772  
INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT INDIVIDUAL INCOME TAXES BE DETERMINED AT A PERCENT OF A TAXPAYER'S FEDERAL TAXABLE INCOME; REPEALING ALL INDIVIDUAL INCOME TAX EXEMPTIONS, DEDUCTIONS, AND CREDITS; AMENDING SECTIONS 2-18-1312, 7-13-308, 7-14-1133, 7-14-1636, 7-34-2416, 15-30-101, 15-30-103, 15-30-105, 15-30-142, 15-30-146, 15-30-149, 15-30-201, 15-30-303, 15-30-1112, 15-30-1113, 15-31-131, 15-31-135, 15-31-136, 15-31-137, 15-31-150, 15-31-161, 15-31-162, 15-31-907, 15-31-908, 15-32-104, 15-32-106, 15-32-303, 15-32-402, 15-32-404, 15-32-503, 15-32-505, 15-32-510, 15-32-602, 15-32-610, 15-32-701, 15-32-702, 15-32-703, 15-61-202, 15-61-203, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 20-26-603, 33-22-2006, 33-22-2007, 33-27-101, 33-27-102, 33-27-103, 37-4-104, 47-1-111, 53-6-1001, 67-11-303, 87-2-102, 87-2-105, AND 87-5-121, MCA; REPEALING SECTIONS 15-1-230, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125, 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154, 15-30-155, 15-30-156, 15-30-157, 15-30-163, 15-30-164, 15-30-165, 15-30-166, 15-30-167, 15-30-168, 15-30-169, 15-30-171, 15-30-172, 15-30-173, 15-30-174, 15-30-175, 15-30-176, 15-30-177, 15-30-178, 15-30-179, 15-30-180, 15-30-182, 15-30-183, 15-30-184, 15-30-185, 15-30-186, 15-30-187, 15-30-188, 15-30-189, 15-30-190, 15-30-191 15-30-601, 15-30-602, 15-30-603, 15-30-604, 15-30-605, 15-32-109, 15-32-201, 15-32-202, 15-32-203, 15-62-207, 15-62-208, 15-63-101, 15-63-102, 15-63-201, 15-63-202, 15-63-203, 15-63-204, 15-63-205, 15-66-101, 15-66-102, 15-66-201, 15-66-202, 15-66-203, 15-66-204, 15-66-205, AND 50-44-103 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 2-18-1312, MCA, is amended to read:

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

under applicable sections of the Internal Revenue Code."

**Section 2.** Section 7-13-308, MCA, is amended to read:

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

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

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

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

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

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

**Section 3.** Section 7-14-1133, MCA, is amended to read:

**"7-14-1133. Bonds and obligations.** (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the

economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The bonds may be in the form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

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

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

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

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

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

(b) As further security for the bonds, the authority, with the approval of the governing body of the county or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the

bonds. The instrument ~~effecting~~ establishing the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the authority consider advisable. The provisions must be consistent with this part and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged property or collateral in accordance with the proceedings or the provisions of the instrument.

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

**Section 4.** Section 7-14-1636, MCA, is amended to read:

**"7-14-1636. Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

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

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

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

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

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

**Section 5.** Section 7-34-2416, MCA, is amended to read:

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

**Section 6.** Section 15-30-101, MCA, is amended to read:

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

- (1) ~~"Base year structure" means the following elements of the income tax structure:~~
- ~~—— (a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;~~
  - ~~—— (b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;~~
  - ~~—— (c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.~~
- (2) ~~"Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.~~
- (3) (1) "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)~~(2) "Department" means the department of revenue.

~~(5)~~(3) "Disregarded entity" means a business entity:

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

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

~~(6)~~ "Dividend" means:

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

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

(4) "Federal taxable income" means taxable income as defined in section 63 of the Internal Revenue Code, 26 U.S.C. 63.

~~(7)~~(5) "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)~~(6) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

~~(9)~~(7) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~— (10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.~~

~~— (11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.~~

~~(12)~~(8) "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)~~(9) "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)~~(10) "Knowingly" is as defined in 45-2-101.

~~(15)~~(11) "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)~~(12) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

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

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

~~(18)~~(13) (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, or loss, ~~deduction, or credit~~ or item of income, gain, or 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, or loss, ~~deduction, or credit~~ or item of income, gain, or loss, ~~deduction, or credit~~:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

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

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

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not



Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

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

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

~~(20)(14) "Nonresident" means a natural person who is not a resident.~~

~~(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~(22)(15) "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)(16) "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)(17) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.~~

~~(25) "Pension and annuity income" means:~~

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

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

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

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

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

employment.

~~(26)~~(18) "Purposely" is as defined in 45-2-101.

~~(27)~~ "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(28)~~(19) "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)~~(20) "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)~~(21) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(31)~~(22) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

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

~~(33)~~(23) "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 7.** Section 15-30-103, MCA, is amended to read:

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

- ~~(a) on the first \$2,300 of taxable income or any part of that income, 1%;~~
- ~~(b) on the next \$1,800 of taxable income or any part of that income, 2%;~~
- ~~(c) on the next \$2,100 of taxable income or any part of that income, 3%;~~
- ~~(d) on the next \$2,200 of taxable income or any part of that income, 4%;~~
- ~~(e) on the next \$2,400 of taxable income or any part of that income, 5%;~~
- ~~(f) on the next \$3,100 of taxable income or any part of that income, 6%;~~
- ~~(g) on any taxable income in excess of \$13,900 or any part of that income, 6.9%.~~

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

**Section 8.** Section 15-30-105, MCA, is amended to read:

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

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

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

**Section 9.** Section 15-30-142, MCA, is amended to read:

**"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and ~~having a gross income for the tax year of more than \$3,560, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$7,120, as adjusted under the provisions of subsection (6);~~ that are required to file a federal income tax return are liable for a return to be filed on forms and according to rules that the department may prescribe. ~~The gross income amounts referred to in the preceding sentence must be increased by \$1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the~~

~~taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).~~

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

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

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

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

~~(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.~~

~~———— (7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."~~

**Section 10.** Section 15-30-146, MCA, is amended to read:

**"15-30-146. Tolling of statute of limitations.** The running of the statute of limitations provided for under 15-30-145 ~~shall be~~ is suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted

an action which has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by 15-30-304, the statute of limitations ~~shall~~ does not apply until 5 years from the date the federal changes become final or the amended federal return was filed. ~~If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations shall not apply for 2 additional years from the time specified in 15-30-145."~~

**Section 11.** Section 15-30-149, MCA, is amended to read:

**"15-30-149. Credits and refunds -- period of limitations.** (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) ~~(a)~~ A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

~~(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.~~

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested

by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later; or

~~(b) the overpayment results from the carryback of a net operating loss; or~~

~~(c)~~(b) the amount of interest is less than \$1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

**Section 12.** Section 15-30-201, MCA, is amended to read:

**"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) (a) "Employee" means:

(i) an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(ii) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(iii) an officer of a corporation;

(iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(b) The term does not include a sole proprietor performing services for the sole proprietorship.

(2) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;

(b) any individual or organization that has or had in its employ one or more individuals performing services for it within this state, including:

(i) a state government and any of its political subdivisions or instrumentalities;

(ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability company, or domestic or foreign corporation;

(iii) a receiver, trustee, including a trustee in bankruptcy, or the trustee's successor; or

(iv) a legal representative of a deceased person; or

(c) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes, or under Title 39, chapter 71, for workers' compensation purposes.

(3) "Lookback period" means the 12-month period ending the preceding June 30.

(4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the member of a single-member limited liability company that is a disregarded entity if the member is an individual.

(5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of the Internal Revenue Code, 26 U.S.C. 3401.

(b) The term does not include:

~~(i) tips and gratuities exempt from taxation under 15-30-111;~~

~~————(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-111;~~

~~(iii)(i) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-101; or~~

~~(iv)(ii) any amount paid a sole proprietor. (Subsection (5)(b)(i) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"~~

**Section 13.** Section 15-30-303, MCA, is amended to read:

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

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

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

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

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

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes

when the reports or facts shown by the reports are directly involved in the action or proceedings.

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

(3) This section does not prohibit:

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

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

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

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

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

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

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

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

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



(8) The department shall furnish:

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

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

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

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

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

~~(f)(e)~~ to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

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

~~(h)(g)~~ to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

**Section 14.** Section 15-30-1112, MCA, is amended to read:

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

(a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the

composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and

(b) consents to be included in the filing.

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

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

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

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

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

(4) The electing entity:

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

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

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

(d) shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-241(5)(a) computed on the composite tax liability included in the filing of a composite return; and

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

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

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

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

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

(c) 15-31-403.

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

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

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

- (a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:
  - (i) file a composite return;
  - (ii) file an agreement of the individual nonresident to:
    - (A) file a return in accordance with the provisions of 15-30-142;
    - (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
    - (C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
  - (iii) remit an amount equal to the ~~highest marginal~~ tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;
- (b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:
  - (i) file a composite return;
  - (ii) file the foreign C. corporation's agreement to:
    - (A) file a return in accordance with the provisions of 15-31-111;
    - (B) timely pay all taxes imposed with respect to income of the pass-through entity; and
    - (C) be subject to the personal jurisdiction of the state for the collection of corporation license and income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or
  - (iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and
- (c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":
  - (i) file a composite return;
  - (ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners,

shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

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

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

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

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

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

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

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

**Section 16.** Section 15-31-131, MCA, is amended to read:

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

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

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

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

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

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

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

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

- (a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or
- (b) if the amount is paid or incurred for services not performed within this state.

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

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

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

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

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

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

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

**Section 17.** Section 15-31-135, MCA, is amended to read:

**"15-31-135. Contribution by small business corporation.** (1) A contribution to a general endowment fund of the Montana university system or a Montana private college by a small business corporation, as defined in 15-30-1101, qualifies for the credit in 15-30-163. against taxes imposed by this chapter in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the

general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit that a taxpayer may claim in a year under this section is \$500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) For the purposes of this section:

(a) "foundation" means a nonprofit organization that is created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); and

(b) "Montana private college" means a nonprofit private educational institution:

(i) with its main campus and primary operations located within the state; and

(ii) that offers baccalaureate degrees and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

(4) The credit must be attributed to shareholders, using the same proportion used to report the corporation's income or loss for Montana income tax purposes."

**Section 18.** Section 15-31-136, MCA, is amended to read:

**"15-31-136. Contribution by partnership.** A contribution to a general endowment fund of the Montana university system or a Montana private college by a partnership qualifies for the credit in ~~45-30-463~~ 15-31-135. The credit must be attributed to partners, using the same proportion used to report the partnership's income or loss for Montana tax purposes."

**Section 19.** Section 15-31-137, MCA, is amended to read:

**"15-31-137. Small business corporation and partnership credit for alternative fuel conversion.**

(1) (a) ~~If equipment~~ Equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are ~~claimed as a credit under 15-30-164~~ allowed as a tax credit against taxes imposed by 15-31-101.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit that a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred. The credit may not exceed:

(a) \$500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) \$1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol, or other alcohol, ether, or any combination of those substances.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method.

(5) If a credit is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes."

**Section 20.** Section 15-31-150, MCA, is amended to read:

**"15-31-150. Credit for research expenses and research payments.** (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter ~~30~~ ~~or~~ 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter ~~30~~ ~~or~~ 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by



chapter ~~30~~ or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

**Section 21.** Section 15-31-161, MCA, is amended to read:

**"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment -- recapture of credit -- deduction included as income.** (1) A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, ~~as defined in 15-30-165~~. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) If during any tax year a charitable gift is recovered by the corporation, the corporation shall:

(a) include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's corporation license tax or corporation income tax; and

(b) increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken.

(3) For the purposes of this section, "qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(a) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(b) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005.)"

**Section 22.** Section 15-31-162, MCA, is amended to read:

**"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment -- recapture of credit -- deduction included as income.** (1) A contribution to a qualified endowment, as defined in ~~15-30-165~~ 15-31-161, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member of a limited liability company may claim in a year is \$10,000, subject to the limitations in ~~15-30-166(2)~~

subsections (3) through (5). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) (a) If during any tax year a charitable gift is recovered by the small business corporation, partnership, or limited liability company, the entity shall include as income the amount deducted in any prior year that is attributable to the charitable gift.

(b) In the tax year that a charitable gift is recovered, each shareholder, partner, or member shall increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken.

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(4) If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:

(a) include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's corporation license tax; and

(b) increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005.)"

**Section 23.** Section 15-31-907, MCA, is amended to read:

**"15-31-907. (Temporary) Employment production tax credit.** (1) Subject to 15-31-909, a production company that has submitted an application for a tax credit and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter ~~30~~ or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the production company's tax year is equal to the sum of 12% of the first \$50,000 or less of actual compensation paid to each Montana resident employed in connection with the state-certified production during the tax year.

(3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list of all cast and crew participating in the production and the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in 15-31-904.

(4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter ~~30~~ or 31 for the 4 succeeding tax years. However, the credit may not be carried forward to the extent that the credit in the tax year in which the credit is received exceeds the limitation under 15-31-909.

(5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under ~~15-30-121~~ or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application. (Terminates January 1, 2010--sec. 17, Ch. 593, L. 2005.)"

**Section 24.** Section 15-31-908, MCA, is amended to read:

**"15-31-908. (Temporary) Tax credit for qualified expenditures.** (1) Subject to 15-31-909, a production company that has submitted an application and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter ~~30~~ or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is equal to 8% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in 15-31-904. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under ~~15-30-121~~ or 15-31-114. (Terminates January 1, 2010--sec. 17, Ch. 593, L. 2005.)"

**Section 25.** Section 15-32-104, MCA, is amended to read:

**"15-32-104. Limitations on deduction and credit.** Tax treatment under 15-32-103 ~~and 15-32-109~~ is limited to persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development."

**Section 26.** Section 15-32-106, MCA, is amended to read:

**"15-32-106. Procedure for obtaining benefit of deduction or credit.** The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 ~~or 15-32-109~~ that demonstrably promotes energy conservation or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of environmental quality for its advice, and the department of environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of labor and industry for its advice, and the department of labor and industry shall respond within 60 days. The department of revenue may deny a deduction or credit that it finds to be impractical or ineffective."

**Section 27.** Section 15-32-303, MCA, is amended to read:

**"15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer.** In addition to all other deductions ~~from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1,~~ a taxpayer may deduct expenditures for organic fertilizer and inorganic fertilizer produced as a byproduct produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

**Section 28.** Section 15-32-402, MCA, is amended to read:

**"15-32-402. Commercial or net metering system investment credit -- alternative energy systems.** (1) ~~An individual,~~ A corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in property that is depreciable under the Internal Revenue Code for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 15-6-225, is entitled to a tax credit against taxes imposed by ~~15-30-103 or~~ 15-31-121 in an amount equal to 35% of the eligible costs, to

be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

- (a) manufacturing plants located in Montana that produce alternative energy generating equipment;
- (b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- (c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that are associated with the purchase, installation, or upgrading of:

- (a) generating equipment;
- (b) safety devices and storage components;
- (c) transmission lines necessary to connect with existing transmission facilities; and
- (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

**Section 29.** Section 15-32-404, MCA, is amended to read:

**"15-32-404. Carryover of credit.** (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if ~~an individual~~, a corporation, partnership, or small business corporation, as defined in 15-30-1101:

- (a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system."

**Section 30.** Section 15-32-503, MCA, is amended to read:

**"15-32-503. Exploration incentive credit.** (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter ~~30~~ or 31, for the certified expenditures of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

- (a) surveying by geophysical or geochemical methods;
- (b) drilling exploration holes;
- (c) conducting underground exploration;
- (d) surface trenching and bulk sampling; or
- (e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

(i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under

subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date" means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect."

**Section 31.** Section 15-32-505, MCA, is amended to read:

**"15-32-505. Application of credit.** (1) In a tax year, a person may take a credit that was approved under 15-32-504 against taxes payable by the person. The credit may not exceed 50% of the person's tax liability under ~~either~~ Title 15, chapter ~~30~~ or 31, for the tax year that is related to production from the mining operation at which the exploration activities occurred.

(2) If a person applies the credit against the person's tax liability under subsection (1), the department shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's exploration activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of exploration activities required by this subsection must be made on a form prescribed by the department. On the form, the person shall:

(a) identify the mining operations for which the credit is claimed; and

(b) set out the gross income attributable to the mining operations and other information about the mining operations that the department may require.

(3) A person may not apply the credit under this section if the application, when added to credits previously applied under this section, would exceed the total amount of the credits approved under 15-32-504."



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

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

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

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

**Section 33.** Section 15-32-602, MCA, is amended to read:

**"15-32-602. (Temporary) Amount and duration of credit -- how claimed.** (1) ~~An individual, A~~ corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter ~~30 or~~ 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

- (a) 25% of the cost of the property on the first \$250,000 invested;
- (b) 15% of the cost of the property on the next \$250,000 invested; and
- (c) 5% of the cost of the property on the next \$500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of \$1 million.

(Terminates December 31, 2011--secs. 6, 8, Ch. 569, L. 2005.)"

**Section 34.** Section 15-32-610, MCA, is amended to read:

**"15-32-610. (Temporary) Deduction for purchase of recycled material.** In addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~ gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 2011--secs. 6, 8, Ch. 569, L. 2005.)"

**Section 35.** Section 15-32-701, MCA, is amended to read:

**"15-32-701. Oilseed crush facility -- tax credit.** (1) ~~An individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter ~~30 or~~ 31, for investments in depreciable property in Montana to crush oilseed crops for purposes of biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the property, up to a total of \$500,000 for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to crush oilseed:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been processing oilseed or manufacturing a product

from oilseed during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility in which property is installed and for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law."

**Section 36.** Section 15-32-702, MCA, is amended to read:

**"15-32-702. Biodiesel production facility tax credit.** (1) ~~An individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter ~~30~~ or 31, for the cost of constructing and equipping a facility in Montana to be used for biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the tax year in which the facility begins production.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to manufacture biodiesel:

(a) The investment must be for depreciable property used primarily to manufacture biodiesel and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser

or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been manufacturing biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301."

**Section 37.** Section 15-32-703, MCA, is amended to read:

**"15-32-703. Biodiesel blending and storage tax credit -- recapture -- report to interim committee.**

(1) ~~An individual, a~~ corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of storage and blending equipment to be used for blending biodiesel with petroleum diesel.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of installing storage and blending equipment only in the year in which the taxpayer begins blending biodiesel fuel.

(3) (a) The amount of the credit that may be claimed by a distributor under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may

not exceed \$52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.

(b) The amount of the credit that may be claimed by an owner or operator of a motor fuel outlet under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed \$7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.

(4) The following requirements must be met in order to be entitled to a tax credit for investment in property to blend biodiesel:

(a) The investment must be for depreciable property used primarily to blend biodiesel made entirely from Montana-produced ingredients with petroleum diesel.

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the tax year in which the credit is claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending

facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) ~~Beginning after January 1, 2006, the~~ The department shall report to the revenue and transportation interim committee at least once each year regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

**Section 38.** Section 15-61-202, MCA, is amended to read:

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

~~———— (2) An employee or account holder may exclude as an annual contribution in 1 year not more than \$3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.~~

~~———— (3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.~~

~~———— (4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of \$3,000 per year not previously excluded.~~

~~———— (5) The transfer of money in an account owned by one employee or account holder to the account of~~

~~another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.~~

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

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

~~(8)(2) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."~~

**Section 39.** Section 15-61-203, MCA, is amended to read:

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

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

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

**Section 40.** Section 19-2-1004, MCA, is amended to read:

**"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

(1) subject to execution, garnishment, attachment, or any other process; or

~~(2) subject to state, county, or municipal taxes except for:~~

~~—— (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or~~

~~—— (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or~~

~~(3)(2) assignable except as specifically provided in this chapter."~~

**Section 41.** Section 19-17-407, MCA, is amended to read:

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

~~—— (2) Benefits received under this part are not subject to execution, garnishment, attachment, or any other process."~~

**Section 42.** Section 19-18-612, MCA, is amended to read:

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

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

**Section 43.** Section 19-19-504, MCA, is amended to read:

**"19-19-504. Protection of benefits from legal process and taxation.** ~~(1) Except for execution or~~



withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

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

**Section 44.** Section 19-20-706, MCA, is amended to read:

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

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

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

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

~~(2)(1) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and~~

~~(3)(2) unassignable except as specifically provided in this chapter."~~

**Section 45.** Section 19-21-212, MCA, is amended to read:

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

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

~~(2)(1) not subject to execution, garnishment, attachment, or other process;~~

~~(3)(2) not covered or assessable by an insurance guaranty association; and~~

~~(4)(3) unassignable except as specifically provided in the contracts."~~

**Section 46.** Section 20-26-603, MCA, is amended to read:

**"20-26-603. Definitions.** As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college.

(3) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(4) "Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program.

(5) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

(6) "Montana private college" means a ~~nonprofit private educational institution as defined in 15-30-163(3)(b)~~ nonprofit private educational institution:

(a) with its main campus and primary operations located within the state; and

(b) that offers baccalaureate degrees and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

(7) "Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree.

(8) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(9) "Scholarship" means a payment toward tuition and mandatory fees, excluding room and board, rounded up to the nearest dollar.

(10) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

**Section 47.** Section 33-22-2006, MCA, is amended to read:

**"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts.** (1) An

employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in gross compensation, including bonuses and commissions, from the small employer or related employer in the prior tax year.

(2) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

(3) Except as provided in subsection (4), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition

to the employee's spouse.

(4) An employer may not claim a tax credit:

- (a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;
- (b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or
- (c) for premiums for which a deduction is claimed under ~~15-30-121~~ or 15-31-114.

(5) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

**Section 48.** Section 33-22-2007, MCA, is amended to read:

**"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance payments.** (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter ~~30~~ or 31; or

(b) if the eligible small employer did not sponsor a group health plan for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under ~~15-30-103~~ or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under ~~15-30-103~~ or 15-31-121.

(b) A tax credit is not allowed under ~~15-30-129~~, 15-31-132, or any other provision of Title 15, chapter ~~30~~ or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim

for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

**Section 49.** Section 33-27-101, MCA, is amended to read:

**"33-27-101. Short title.** Sections ~~15-30-107, 15-30-127,~~ 15-31-117, 15-31-118, and this chapter may be cited as the "Independent Liability Fund Act"."

**Section 50.** Section 33-27-102, MCA, is amended to read:

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

**Section 51.** Section 33-27-103, MCA, is amended to read:

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

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

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

against it by third parties.

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

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

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

**Section 52.** Section 37-4-104, MCA, is amended to read:

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

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" ~~has the same meaning as provided for the term "permanently and totally disabled" in~~

~~15-30-114~~ means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months; and

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

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

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability."

**Section 53.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) ~~Beginning July 1, 2006, when~~ When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court.

(2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in ~~15-30-174~~ 53-6-1001, is at or less than 133%

of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);  
or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

**Section 54.** Section 53-6-1001, MCA, is amended to read:

**"53-6-1001. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Average wholesale price" means the wholesale price charged on a specific drug that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Discounted price" means a price set by the department by rule pursuant to 53-6-1002.

(4) "Gross household income" ~~has the meaning provided in 15-30-171~~ means all income received by all individuals of a household while the individuals are members of the household.



(5) (a) "Income" means, except as provided in subsection (5)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

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

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

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

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

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

(b) For the purposes of this subsection (5), income is reduced by the taxpayer's basis.

~~(5)(6)~~ "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

~~(6)(7)~~ "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

~~(7)(8)~~ "Program" means the prescription drug plus discount program provided for in 53-6-1002.

~~(8)(9)~~ "Secondary discounted price" means the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program."

**Section 55.** Section 67-11-303, MCA, is amended to read:

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

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation

of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any is pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

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

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

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

(6) Subject to the conditions stated in this subsection, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it shall, subject to 15-10-420, levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it shall, subject to 15-10-420, levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the taxes are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may determine. The resolution must state the principal amount and purpose of the bonds and the substance of the covenant

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

**Section 56.** Section 87-2-102, MCA, is amended to read:

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

(1) (a) A member of the regular armed forces of the United States, a member's dependent, ~~as defined in 15-30-113~~, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

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

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

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana

resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

- (a) the person's principal or primary home or place of abode is in Montana;
- (b) the person files Montana state income tax returns as a resident if required to file;
- (c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;
- (d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and
- (e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

- (a) The person's principal employment is within this state and the income from this employment is the

principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status.

(11) For the purposes of this section, "dependent" means:

(a) a son or daughter of a resident taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the resident taxpayer;

(c) a brother, sister, stepbrother, or stepsister of the resident taxpayer;

(d) the father or mother of the resident taxpayer or an ancestor of either;

(e) a stepfather or stepmother of the resident taxpayer;

(f) a son or daughter of a brother or sister of the resident taxpayer;

(g) a brother or sister of the father or mother of the resident taxpayer;

(h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the resident taxpayer;

(i) an individual who, for the tax year of the resident taxpayer, has as the individual's principal place of abode the home of the resident taxpayer and is a member of the resident taxpayer's household; or

(j) an individual who:

(i) is a descendant of a brother or sister of the father or mother of the resident taxpayer;

(ii) for the tax year of the resident taxpayer received institutional care required by reason of a physical

or mental disability; and

(iii) before receiving the institutional care, was a member of the same household as the resident taxpayer.

(12) For purposes of subsection (11):

(a) the terms "brother" and "sister" include a brother or sister by the half blood;

(b) in determining whether any of the relationships specified in subsection (11) and this subsection (12) exist, a legally adopted child of an individual must be treated as a child of the individual by blood."

**Section 57.** Section 87-2-105, MCA, is amended to read:

**"87-2-105. Safety instruction required.** (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:

- (a) a Montana hunter safety and education course established in subsection (4) or (6); or
- (b) a hunter safety course in any other state or province.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as ~~defined~~ described in 45-30-113 87-2-102, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from

Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

**Section 58.** Section 87-5-121, MCA, is amended to read:

**"87-5-121. Nongame wildlife account.** (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All ~~money collected under 15-30-150 and all~~ interest earned by the fund before being expended under this section must be deposited in the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

- (a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and
- (b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that money collected under 15-30-150, prior to the repeal of that section, may not be used:

- (a) for the purchase of any real property; or
- (b) in such a way as to interfere with the production on or management of private property."

**NEW SECTION. Section 59. Repealer.** Sections 15-1-230, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125, 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154, 15-30-155, 15-30-156, 15-30-157, 15-30-163, 15-30-164, 15-30-165, 15-30-166,

15-30-167, 15-30-168, 15-30-169, 15-30-171, 15-30-172, 15-30-173, 15-30-174, 15-30-175, 15-30-176, 15-30-177, 15-30-178, 15-30-179, 15-30-180, 15-30-182, 15-30-183, 15-30-184, 15-30-185, 15-30-186, 15-30-187, 15-30-188, 15-30-189, 15-30-190, 15-30-191 15-30-601, 15-30-602, 15-30-603, 15-30-604, 15-30-605, 15-32-109, 15-32-201, 15-32-202, 15-32-203, 15-62-207, 15-62-208, 15-63-101, 15-63-102, 15-63-201, 15-63-202, 15-63-203, 15-63-204, 15-63-205, 15-66-101, 15-66-102, 15-66-202, 15-66-203, 15-66-204, 15-66-205, and 50-44-103, MCA, are repealed.

NEW SECTION. **Section 60. Effective date.** [This act] is effective January 1, 2008.

NEW SECTION. **Section 61. Applicability.** [This act] applies to tax years beginning after December 31, 2007.

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