

SENATE BILL NO. 220  
INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TAX LAWS; ADOPTING PROVISIONS OF THE MULTISTATE TAX COMMISSION MODEL ACT ON REPORTABLE TRANSACTIONS, MODEL ACT ON COMPILATION OF STATE TAX RETURN DATA, AND MODEL ACT FOR A TAX EVASION TRANSACTION VOLUNTARY COMPLIANCE PROGRAM; REQUIRING TAXPAYERS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING MATERIAL ADVISORS TO DISCLOSE CERTAIN TRANSACTIONS; REQUIRING TAX SHELTER PROMOTERS TO DISCLOSE CERTAIN TRANSACTIONS AND MAINTAIN CERTAIN RECORDS; REQUIRING CERTAIN MULTISTATE TAXPAYERS TO COMPILE AND FILE CERTAIN FILINGS OR FILE COPIES OF STATE INCOME TAX RETURNS; PROVIDING FOR A VOLUNTARY COMPLIANCE INITIATIVE; CREATING THE MONTANA REAL ESTATE BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING WITHHOLDING FOR INCOME TAX PURPOSES ON THE GAIN FROM THE SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE; ESTABLISHING A WITHHOLDING TAX RATE; PROVIDING EXCEPTIONS TO WITHHOLDING; ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS; REQUIRING THAT CERTAIN INFORMATION BE SUBMITTED WITH THE REALTY TRANSFER CERTIFICATE; PROHIBITING THE RECORDING OF A TRANSFER OF MONTANA REAL ESTATE OR A CHANGE IN OWNERSHIP RECORDS OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES IF THE REQUIRED INFORMATION IS NOT PROVIDED; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; CLARIFYING THE LIABILITY OF CLERKS AND RECORDERS; INCREASING THE BUSINESS EQUIPMENT TAX EXEMPTION THRESHOLD FROM \$20,000 TO \$150,000; REQUIRING THAT THE CLASS 8 PROPERTY OF RELATED PERSONS BE AGGREGATED IN DETERMINING WHETHER THE \$150,000 EXEMPTION THRESHOLD IS EXCEEDED; AMENDING SECTIONS 7-4-2623 AND 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 7] may be cited as "The Reportable Transaction Act".

(2) The purpose of enacting [sections 1 through 7] is to address reportable transactions and tax evasion.

[Sections 1 through 7] are not intended to prevent taxpayers from minimizing their taxes in compliance with the law.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Disqualified opinion" has the meaning provided in section 6664(d)(3)(B)(iii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(iii).

(2) "Disqualified tax advisor" has the meaning provided in section 6664(d)(3)(B)(ii) of the Internal Revenue Code, 26 U.S.C. 6664(d)(3)(B)(ii).

(3) "Gross valuation overstatement" has the meaning provided in section 6700(b) of the Internal Revenue Code, 26 U.S.C. 6700(b), and also means any statement as to the value of any property or services if:

(a) the stated value exceeds 200% of the amount determined to be the correct valuation; and

(b) the value of the property or services is directly related to the amount of any deduction or credit allowable under Title 15, chapter 30 or 31, to any participant.

(4) "Internal Revenue Code" has the meaning provided in 15-30-101.

(5) "Listed transaction" has the meaning provided in section 6707A(c)(2) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(2), and also means a reportable transaction that is the same as or substantially similar to a transaction or arrangement specifically identified by the director of revenue pursuant to [section 7] as a tax evasion transaction.

(6) "Material advisor" has the meaning provided in section 6111(b)(1) of the Internal Revenue Code, 26 U.S.C. 6111(b)(1).

(7) "Noneconomic substance transaction" means any transaction or arrangement that lacks economic substance, as defined by Montana or federal law, including a transaction or arrangement in which the separate legal existence of an entity is not respected because the creation or use of the entity lacks a valid nontax Montana business purpose.

(8) "Reportable transaction" has the meaning provided in section 6707A(c)(1) of the Internal Revenue Code, 26 U.S.C. 6707A(c)(1), and also means any transaction or arrangement with respect to which information is required to be included with a Montana return, report, or statement because, as determined under rules adopted pursuant to [sections 1 through 7], the transaction or arrangement is of a type that the director of revenue determines pursuant to [section 7] as having a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, whether through deduction or credit, the excludability or omission of any income, the manipulation of any

allocation or apportionment rule, or the securing of any other tax benefit. A reportable transaction includes, but is not limited to:

(a) any transaction or arrangement described in U.S. treasury regulations 1.6011-4(b)(1) through 1.6011-4(b)(7), 26 CFR 1.6011-4(b)(1) through (b)(7);

(b) a listed transaction; and

(c) a noneconomic substance transaction.

(9) "Tax shelter" has the meaning provided in section 6662(d)(2)(C)(ii) of the Internal Revenue Code, 26 U.S.C. 6662(d)(2)(C)(ii), and also means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of the partnership, entity, plan, or arrangement is the evasion of a tax imposed by Title 15, chapter 30 or 31.

**NEW SECTION. Section 3. Taxpayer responsibility for disclosure of reportable transactions -- penalties -- waiver -- extension of statute of limitations.** (1) For each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member has participated in a reportable transaction, including a listed transaction, the taxpayer, pass-through entity, federal consolidated group, or unitary group is required to disclose the transaction as provided in subsection (2). In addition, for each tax year in which a taxpayer, a pass-through entity, a federal consolidated group of which a taxpayer is a member, or a member of a unitary group of which a taxpayer is a member is required to make a disclosure statement under U.S. treasury regulation 1.6011-4, 26 CFR 1.6011-4, with respect to a reportable transaction, including a listed transaction, in which the taxpayer, pass-through entity, federal consolidated group, or unitary group participated, the taxpayer, pass-through entity, federal consolidated group, or unitary group shall file a copy of the disclosure with the department as provided in subsection (2).

(2) (a) Reportable transactions, including listed transactions, must be disclosed in the manner prescribed in U.S. treasury regulations 1.6011-4, 26 CFR 1.6011-4, and department rules. A taxpayer who is an individual is required to disclose only transactions that are required to be disclosed as listed transactions or reportable transactions for federal income tax purposes.

(b) (i) With respect to a listed transaction entered into after February 28, 2000, but before December 31, 2006, disclosure must be made on or before the due date of and attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for tax year 2006 and to the original and any amended Montana income or corporation license tax or pass-through entity

information return for any subsequent tax year that reflects a reduction in Montana tax resulting from the listed transaction, including a loss, deduction, or credit resulting from a reportable transaction that is being carried forward or back.

(ii) With respect to a reportable transaction, including a listed transaction, entered into after December 31, 2006, disclosure must be attached to the taxpayer's original and any amended Montana individual income or corporation license tax or pass-through entity information return for the tax year during which the transaction was entered into and to the original and any amended Montana individual income or corporation license tax or pass-through entity information return for any later tax year that reflects a reduction in tax resulting from the reportable or listed transaction, including a loss, deduction, or credit that is being carried forward or back and that is a result of the transaction.

(iii) Disclosure of a reportable transaction entered into after February 28, 2000, must also be attached to any amended Montana individual income or corporation license tax or pass-through entity information return filed after December 31, 2006, if the filing reflects a determination by the internal revenue service of the federal tax treatment of a reportable transaction.

(3) The provisions of subsections (1) and (2) apply to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of this act].

(4) (a) A person who does not include on a return or statement information with respect to a reportable transaction that is required under subsection (2) or (3) to be included with the return or statement shall pay a penalty, in addition to any other penalty imposed, in the amount determined under subsections (4)(b) and (4)(c).

(b) Except as provided in subsection (4)(c), the amount of the penalty imposed under subsection (4)(a) is \$10,000 in the case of an individual and \$50,000 in any other case.

(c) With respect to a listed transaction, the amount of the penalty under subsection (4)(a) is \$100,000 in the case of an individual and \$200,000 in any other case.

(5) A penalty imposed under subsection (4) is considered assessed on the due date of the tax return upon or attached to which the disclosure of the reportable transaction was required pursuant to this section and department rules.

(6) The director of revenue may waive all or any portion of any penalty imposed by this section with respect to any violation if:

(a) the violation is with respect to a reportable transaction other than a listed transaction; and

(b) rescinding the penalty would promote compliance with the requirements of Title 15, chapter 30 or 31, and effective tax administration.

(7) The penalty imposed under subsection (4) applies to any failure to disclose any listed transaction entered into after February 28, 2000, or any other reportable transaction entered into after [the effective date of this act] for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under subsection (12), has not expired as of [60 days after the effective date of this act].

(8) (a) If a taxpayer has a reportable transaction understatement for any tax year as determined under subsection (8)(b), there must be added to the tax a penalty in an amount equal to 20% of the amount of the understatement. If the requirements of subsection (1) are not met, the percentage to be used for the penalty determination is 30% with respect to the portion of any reportable transaction understatement.

(b) (i) Except as provided by department rule, a tax treatment included with an amendment or supplement to a return of tax may not be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the department regarding the examination of the return or any other date that is adopted by rule pursuant to [section 7].

(ii) A reportable transaction understatement is the sum of:

(A) the product of:

(I) the highest rate of tax imposed by 15-30-103 if the taxpayer is an individual and 15-31-121 if the taxpayer is a C. corporation; and

(II) the amount of the increase, if any, in Montana taxable income, as determined under subsection (8)(c), that results from a difference between the proper tax treatment of an item to which subsection (3) applies and the taxpayer's treatment of that item as shown on the taxpayer's return of tax, including an amended return if the amended return is filed prior to the date that the taxpayer is first contacted by the department regarding the examination of the tax year for which the amended return is filed; and

(B) the amount of the decrease, if any, in the aggregate amount of credits that results from a difference between the taxpayer's treatment of an item to which subsection (3) applies as shown on the taxpayer's return of tax and the proper tax treatment of that item.

(c) The amount of the increase in Montana taxable income for a particular tax year includes the restatement for another tax year to which a loss or deduction is carried forward or carried back that is attributable to the reportable transaction for that year in which the carryforward or carryback of the loss or deduction applies.

Any reduction of the excess of deductions allowed for the tax year over gross income for the year and any reduction in the amount of capital losses that would be allowed for the year are treated as an increase in taxable income.

(d) This subsection (8) applies to any item that is attributable to:

(i) any listed transaction; and

(ii) any reportable transaction, other than a listed transaction, if section 6662A of the Internal Revenue Code, 26 U.S.C. 6662A, applies to the transaction or if a significant purpose of the transaction is the evasion of Montana income or corporation license tax.

(e) A penalty imposed under this subsection (8) is considered assessed on the due date of the Montana tax return that shows the understatement of tax resulting from a reportable transaction to which the penalty relates.

(9) (a) For an amended return filed after December 31, 2007, and before the taxpayer is contacted by the U.S. internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to all other applicable penalties, equal to 50% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date of payment.

(b) If the taxpayer has been contacted by the internal revenue service or the department regarding a reportable transaction, there must be added to any reportable transaction understatement, as determined under subsection (8)(b), a penalty, in addition to any other applicable penalties, equal to 100% of the interest assessed under 15-1-216 for the period beginning on the last date prescribed by law for the payment of the tax, determined without regard to extensions and ending on the date the notice of proposed assessment is mailed.

(10) (a) Except as provided in subsection (10)(b), the director of revenue may waive all or any portion of any penalty imposed by subsections (8) and (9) with respect to any portion of a reportable transaction understatement if it is shown that the taxpayer had a reasonable basis for the tax treatment applicable to that portion and acted in good faith with respect to that treatment.

(b) Subsection (10)(a) does not apply to any reportable transaction understatement unless:

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with all requirements of subsection (1) and department rules or the penalty for the taxpayer's failure to fully disclose was waived pursuant to subsection (6);

(ii) there is or was substantial authority for the tax treatment; and

(iii) the taxpayer reasonably believed that the tax treatment was more likely than not the proper tax treatment, but only if the belief:

(A) is based on the facts and law that exist at the time the return that includes the tax treatment is filed;

(B) relates solely to the taxpayer's chances of success on the merits of the tax treatment and does not take into account the possibility that a return will not be audited, the tax treatment will not be raised on audit, or the tax treatment will be resolved through settlement if it is raised; and

(C) does not rely upon the opinion of a disqualified tax advisor or on a disqualified opinion.

(11) A penalty imposed under subsections (8) and (9) applies to any understatement of tax resulting from a listed transaction entered into after February 28, 2000, or from any other reportable transaction entered into after [the effective date of this act] in any tax year or years for which the statute of limitations on assessment, taking into account the extension provided in subsection (12), has not expired as of [the effective date of this act].

(12) If a taxpayer does not include on a return or statement for any tax year information about a listed transaction required under subsection (1), the time for assessment of a tax imposed by Title 15, chapter 30 or 31, with respect to that transaction does not expire before the date that is 1 year after the earlier of the date:

(a) on which the department is furnished the information required; or

(b) that a material advisor meets the requirements of [section 4] with respect to a request by the department under [section 4(3)] relating to the transaction with respect to the taxpayer.

**NEW SECTION. Section 4. Material advisor responsibility for disclosure of reportable transactions and maintenance of advisee lists -- penalties -- waiver.** (1) (a) With respect to any reportable transaction, a material advisor shall make a return in the form that the department prescribes setting forth:

(i) information identifying and describing the transaction;

(ii) information describing any potential tax benefits expected to result from the transaction; and

(iii) any other information that the director of revenue may prescribe.

(b) A material advisor who is required to disclose a reportable transaction pursuant to section 6111 of the Internal Revenue Code, 26 U.S.C. 6111, shall file a copy of the disclosure with the department.

(c) The return required by subsection (1)(a) and disclosure required by subsection (1)(b) must be filed not later than the date specified by the department.

(d) The department may adopt rules that provide:

(i) that only one person is required to meet the requirements of this subsection (1) in cases in which two or more persons would otherwise be required to meet the requirements; and

(ii) exemptions from the requirements of this subsection (1).

(2) (a) Each material advisor with respect to any reportable transaction shall, whether or not required to file a return under subsection (1)(a), maintain a list identifying each Montana taxpayer, pass-through entity, member of a federal consolidated group, or member of a unitary group for whom the advisor has acted as a material advisor with respect to the transaction.

(b) The list required under subsection (2)(a) must include the same information and must be maintained in the same form and manner as required under section 6112 of the Internal Revenue Code, 26 U.S.C. 6112, U.S. treasury regulation 301.6112-1, 26 CFR 301.6112-1, and any additional information or maintenance requirements as the department may by rule require.

(3) A person required to maintain a list under subsection (2)(a):

(a) shall make the list available to the department upon written request; and

(b) except as otherwise provided by the department by rule, shall retain any information that is required to be included on the list for 7 years.

(4) The department may, by rule, provide that in cases in which two or more persons are required to maintain the same list or a portion of the list under subsection (2), only one person is required to maintain the list or portion of the list.

(5) (a) If a person who is required to file a return or disclosure under subsection (1) with respect to any reportable transaction does not file the return or disclosure on or before the due date or files false or incomplete information with the department with respect to the transaction, the person shall pay a penalty with respect to the return or disclosure in the amount determined under subsections (5)(b) and (5)(c).

(b) Except as provided in subsection (5)(c), the penalty imposed under (5)(a) with respect to any failure is \$50,000.

(c) The penalty imposed under subsection (5)(a) with respect to any listed transaction is an amount equal to the greater of:

(i) \$200,000; or

(ii) except as provided in subsection (5)(d), 50% of the gross income derived by the person with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return and, if applicable, disclosure is filed under subsection (1).

(d) For an intentional failure or act described in subsection (5)(a), the percentage amount for the penalty computation in subsection (5)(c)(ii) is 75%.

(e) If a person is required to maintain a list under subsection (2) but does not make the list available upon



written request to the department in accordance with subsection (3) within 20 business days after the date of the request, the person shall pay a penalty of \$10,000 for each day the list is not made available after the 20-day period has expired.

(6) Each of the penalties imposed by subsection (5) is in addition to any other applicable penalties.

(7) The director of revenue may waive all or any portion of penalty imposed under subsection (5):

(a) with respect to any violation of subsection (1) if:

(i) the violation relates to a reportable transaction other than a listed transaction; and

(ii) a waiver of the penalty would promote compliance with the requirements of Title 15, chapters 30 and 31, and effective tax administration; and

(b) with respect to any violation of subsection (2), if on any day the violation was due to a reasonable cause.

(8) The provisions of this section apply to transactions with respect to which material aid, assistance, or advice is provided by a material advisor after [the effective date of this act].

**NEW SECTION. Section 5. Tax shelters -- penalty for promotion.** (1) The penalty provided in subsection (3) must be paid by a person who:

(a) (i) organizes or assists in the organization of:

(A) a partnership or other entity;

(B) any investment plan or arrangement; or

(C) any other plan or arrangement; or

(ii) participates, directly or indirectly, in the sale of any interest in an entity, plan, or arrangement referred to in subsection (1)(a); and

(b) makes or furnishes or causes another person to make or furnish in connection with the organization or sale:

(i) a statement with respect to the allowability of any deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in a plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter; or

(ii) a gross valuation overstatement as to any material matter.

(2) Activities described in subsection (1)(a) with respect to each entity or arrangement must be treated as a separate activity and participation in each sale described in subsection (1)(b) must be treated as a separate

activity.

(3) A person described in subsection (1) shall pay, with respect to each activity described in subsection (1)(a) and in addition to any other penalty provided by law, a penalty equal to:

(a) the lesser of:

(i) \$1,000; or

(ii) 100% of the gross income derived or to be derived by the person from the activity; or

(b) if an activity with respect to which a penalty imposed under this subsection involves a disclosure described in subsection (1)(b), a penalty of 50% of the gross income derived or to be derived from the activity by the person on which the penalty is imposed.

(4) The director of revenue may waive all or any part of the penalty provided by subsection (3) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that the valuation was made in good faith.

(5) A privilege of confidentiality does not apply to any written communication that is:

(a) between a tax practitioner and:

(i) any person;

(ii) the director of revenue or any officer, employee, agent, or representative of the person; or

(iii) any other person holding a capital or profits interest in the person; and

(b) in connection with the promotion of the direct or indirect participation of the person in any tax shelter.

(6) The provisions of this section apply to activities after [the effective date of this act].

**NEW SECTION. Section 6. Injunction of certain conduct related to reportable transactions and tax shelters.** (1) A civil action in the name of the state to enjoin any person from further engaging in conduct specified in subsection (3) may be commenced at the request of the director of revenue. An action under this section must be brought in the first judicial district court of Lewis and Clark County. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state against the person.

(2) In any action under this section, if the court finds that the person has engaged in the conduct specified in subsection (3) and that injunctive relief is appropriate to prevent recurrence of that conduct, the court may enjoin the person from engaging in that conduct or in any other activity subject to penalty under [sections 1 through 7].

(3) Conduct subject to injunction under this section is any action or failure to take action that is:

(a) subject to penalty under [sections 1 through 7]; or

(b) in violation of any requirement under rules issued pursuant to [sections 1 through 7].

**NEW SECTION. Section 7. Power of director of revenue -- department rules.** (1) In determining whether a transaction or arrangement is of a type that has a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, and whether to specifically identify a transaction or arrangement as a tax evasion transaction, the director of revenue shall:

(a) consult with the multistate tax commission to promote uniformity;

(b) consider whether the transaction or arrangement:

(i) lacks meaningful economic risk of loss or potential for gain;

(ii) results in inconsistent financial and accounting treatment;

(iii) involves complexity, unnecessary steps, or novel investments; or

(iv) utilizes tax indifferent parties;

(c) consider whether disclosure of the transaction is limited in any manner by express or implied understanding or agreement, whether or not the understanding or agreement is legally binding;

(d) consider whether the taxpayer has the right to a full or partial refund of fees paid to any person who makes or provides an oral or written statement about the potential tax consequences of a transaction if it is not sustained or if fees are contingent on the taxpayer's realization of tax benefits from the transaction; and

(e) determine and consider the costs of taxpayer compliance.

(2) The department shall by rule identify each reportable transaction that the director of revenue determines is of a type having a potential for evasion of a tax imposed by Title 15, chapter 30 or 31, and each transaction or arrangement specifically identified by the director of revenue pursuant to subsection (1) as a tax evasion transaction.

(3) In adopting rules pursuant to [sections 1 through 7], the department shall determine and consider the costs of taxpayer compliance.

**NEW SECTION. Section 8. Short title.** [Sections 8 through 14] may be cited as "The Compilation of State Tax Return Data Act".

**NEW SECTION. Section 9. Definitions.** As used in [sections 8 through 14], the following definitions apply:

(1) "Allocation" means assignment of income to one or more income tax states by means other than

apportionment.

(2) "Apportionment factor" means any component ratio used in the apportionment percentage to apportion business income, such as a property factor, a payroll factor, or a sales factor.

(3) "Apportionment percentage" means the percentage formula used to assign a portion of the business income of the taxpayer or the combined reporting group of which the taxpayer is a member to an income tax state.

(4) "Business activity" means any activity conducted in a state that gives rise to:

(a) gross income;

(b) an expense reflected in the taxpayer's federal income tax return or income tax return of any state;

or

(c) the use or availability for use of property in the state.

(5) "Business income" means the total income or loss subject to apportionment.

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

(7) "Income tax state" means any state that imposes a tax on, according to, or measured by income.

(8) "Nonbusiness income" means income or loss subject to allocation to a specific state or states.

**NEW SECTION. Section 10. Taxpayer responsibility for filing compilation of state tax return data.**

A taxpayer that conducts business activity in this state and one or more other states or is a member of a combined reporting group that conducts business activity in this state and one or more other states shall compile the information described by [section 11] and file, in the form and manner required by [section 11], state tax return data as reported on its tax returns filed in this and all other income tax states with respect to business income, nonbusiness income, apportionment, and combined reporting whether or not a filing is required.

**NEW SECTION. Section 11. Information required to be compiled and filed -- time and manner of filing.**

(1) For each income tax state in which a taxpayer or a member of a combined reporting group of which a taxpayer is a member has business activity, the following information must be compiled and filed:

(a) whether the taxpayer filed in that state;

(b) the business income of the taxpayer or of the taxpayer's combined reporting group reported to that state;

(c) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group;

(d) the total nonbusiness income of the taxpayer or the total nonbusiness income of each member of the taxpayer's combined reporting group that is allocable to that state;

(e) for each of the apportionment factors used to determine the apportionment percentage, the dollar amount of the numerator and the denominator of the ratio used in that factor;

(f) the apportionment percentage used to apportion income subject to taxation in that state;

(g) the dollar amount of business income apportioned to that state;

(h) for those states that use combined reporting to apportion income for each combined reporting group of which the taxpayer is a member, a list of all corporations whose business income was included in business income of the combined reporting group; and

(i) any other information relating to the determination of business income, nonbusiness income, or the apportionment or allocation of that income that the department by rule requires.

(2) The compilation of state tax return data required by subsection (1) must be filed within 180 days of the filing of the original federal income tax return and any amended Montana corporation license tax return exclusive of federal changes.

(3) (a) Except as provided in subsection (3)(b), the compilation of state tax return data required by subsection (1) must be filed in the form and manner required by the department and must be consistent with the format developed and maintained for those filings by the multistate tax commission.

(b) In lieu of the requirements of subsection (3)(a), a taxpayer may elect to file a copy of each income tax return filed in each income tax state in which the taxpayer or a member of a combined reporting group of which the taxpayer is a member has business activity.

**NEW SECTION. Section 12. Retention and provision of records required.** (1) A taxpayer shall retain a copy of its filings of the Montana corporate license tax schedule for apportionment factors for multistate taxpayers and the equivalent schedule filed by the taxpayer or a member of the taxpayer's combined reporting group in the other state or states in which the taxpayer or the taxpayer's combined reporting group conducted business activity. The taxpayer shall, within 60 days of a written request or within any additional time that the department grants upon written request for extension, provide a copy of the schedules to the department. Information required to be retained under this section must be retained for that period of time during which the taxpayer's corporation license tax liability to this state for that tax year may be subject to adjustment, including

all periods in which additional income taxes or penalties may be assessed, or during which a protest, appeal, or lawsuit is pending with respect to Montana corporation license.

(2) (a) Except as provided in subsection (2)(b), the provisions of this section apply to information associated with any return due on or after [the date 2 years prior to the effective date of this act].

(b) During the course of an audit investigation, the director of revenue may, following [the effective date of this act], require production of information in possession of the taxpayer or, if applicable, a member of the taxpayer's combined reporting group for any tax year for which the statute of limitations on assessment has not expired.

**NEW SECTION. Section 13. Penalties for failure to file, retain, or provide information -- assessment date -- waiver.** (1) (a) A taxpayer who does not file, retain, or provide information with respect to state tax return data as required by [sections 10 through 12] and department rules is subject to penalty in an amount determined under subsections (1)(b) and (1)(c) in addition to any other applicable penalties.

(b) For failure to file a compilation of state tax return data as required pursuant to [section 11], the amount of the penalty is the greater of \$10,000 or 0.25% of the amount of net income properly apportioned and allocated to this state;

(c) For failure to provide information required to be retained under [section 12] within 60 days of a request by the department or within any additional time the department allows by extension, the amount of the penalty is \$1,000 and an additional penalty of \$5,000 must be assessed for each additional 30 days that the information is not provided. If a taxpayer states that the information required under [section 12] does not exist and submits an affidavit to that effect, the taxpayer is subject to a penalty in the amount of \$30,000 in lieu of additional 30 day penalties.

(2) (a) The penalty imposed under subsection (1)(b) is considered assessed on the due date of the filing required pursuant to [section 11] and department rules.

(b) The penalty imposed under subsection (1)(c) is considered assessed on the 30th day following a request by the department and, if applicable, is assessed for each additional 30-day period during which the taxpayer fails to provide the information required to be retained pursuant to [section 12].

(3) The director of revenue may waive or abate all or any portion of any penalty imposed by this section with respect to any violation if rescinding the penalty would promote compliance with the requirements of [sections 8 through 14] and effective tax administration.

**NEW SECTION. Section 14. Extension of statute of limitations for assessments associated with non-filing.** If a taxpayer fails to file all information required under [section 11] and department rules with respect to state tax return data, an assessment and notice of deficiency may be issued. The notice of deficiency must be issued not later than 6 years after the tax return was due or filed, whichever is later, with respect to which the filing of state tax return data was required. An extension of the statute of limitations under this section is limited to an extension for the purpose of assessment of a tax deficiency, penalty, and interest resulting from an application of the proper tax treatment with respect to information that was not filed pursuant to [section 11] and that was not reported in the same or similar manner in a tax return filed with another state.

**NEW SECTION. Section 15. Short title.** [Sections 15 through 17] may be cited as "The Act for Tax Evasion Transaction Voluntary Compliance Program".

**NEW SECTION. Section 16. Definitions.** As used in [sections 15 through 17], the following definitions apply:

(1) "Eligible taxpayer" means any taxpayer who, during the period from September 1, 2007, through December 31, 2007, does both of the following:

(a) files an amended Montana tax return for each tax year for which the taxpayer has previously filed a Montana tax return using a tax evasion transaction to underreport the taxpayer's income or corporation license tax liability reporting the total Montana net income and tax for the tax year computed without regard to any tax evasion transactions and without regard to any other adjustments that are unrelated to tax evasion transactions; and

(b) makes full payment or enters into an installment payment agreement as provided in [section 17(6)] for payment of the entire amount of Montana income or corporation license tax and interest due for each tax year that is attributable to the use of the tax evasion transaction.

(2) "Program" means the voluntary compliance program established in [sections 15 through 17].

(3) "Tax evasion transaction" means a transaction, plan, or arrangement devised for the principal purpose of evading federal income tax or Montana income or corporation license tax. A tax evasion transaction includes but is not limited to a reportable transaction as defined in [section 2], including a listed transaction as defined in [section 2].

**NEW SECTION. Section 17. Tax evasion transaction voluntary compliance program.** (1) There is

a tax evasion transaction voluntary compliance program for eligible taxpayers subject to tax under Title 15, chapter 30 or 31, as provided in [sections 15 through 17]. The department shall develop and administer the program. The program must be conducted from September 1, 2007, through December 31, 2007, and applies to tax liabilities attributable to the use of tax evasion transactions for tax years beginning before January 1, 2007. The department shall adopt rules, issue forms and instructions, and take any other action that it considers necessary to implement the program.

(2) An eligible taxpayer may elect to participate in the program with respect to any tax year to which the program applies under either subsection (3) or (4). The election must be made for all tax years for which the taxpayer will participate, and a separate election for different tax years or for different transactions in different tax years is not allowed. The election must be made in the form and manner prescribed by the department and, once made, is irrevocable.

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

(a) the department shall waive all penalties applicable to the underreporting or underpayment of Montana income or corporation license tax attributable to the use of tax evasion transactions for the tax years for which the taxpayer voluntarily complies, including penalties imposed under [sections 1 through 14];

(b) except as otherwise provided in this section, the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under this section if the penalty imposed relates to an amount of Montana income or corporation license tax assessed or paid prior to September 1, 2007; and

(d) the taxpayer may not file a claim for credit or refund with respect to the tax evasion transactions for that tax year or for any amounts paid under the program.

(4) If an eligible taxpayer elects to participate under this subsection (4):

(a) the department shall waive any penalty imposed under [sections 1 through 14] with respect to disclosure of tax evasion transactions and underpayment of Montana income and corporation license tax resulting from the use of tax evasion transactions for any tax years for which the taxpayer voluntarily complies, but may not waive penalties imposed prior to [the effective date of this act];

(b) except as otherwise provided in subsection (5) or (6), the department may not seek criminal prosecution against the taxpayer for the tax year underreporting and underpayment with respect to tax evasion transactions for which the taxpayer voluntarily complies;

(c) a penalty may not be waived under [section 16] or this section if the penalty imposed relates to an



amount of Montana income or corporation license tax assessed or paid prior to September 1, 2007;

(d) the fact a taxpayer participated in the program may not be considered evidence the taxpayer engaged in a tax evasion transaction;

(e) any penalties that are not waived are considered assessed upon the due date of the return, determined without regard to extensions, upon which the amount should have been paid;

(f) the taxpayer may file a claim for credit or refund as provided in Title 15, chapter 30 or 31, with respect to the tax year; and

(g) notwithstanding 15-1-211, the taxpayer may not file an appeal until after either of the following:

(i) the department issues a final determination with respect to the transactions at issue; or

(ii) the earlier of:

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

(B) the date that is 4 years after the date that the claim for refund was filed or 1 year after the full payment of all Montana income or corporation license tax, including penalty and interest.

(5) The provisions of 15-1-211(2)(c) and (4)(c) and 15-2-302(2) do not apply to claims filed under this section.

(6) The department may enter into an installment payment agreement in lieu of full payment of the entire amount of Montana income or corporation license tax and interest due for the tax year that is attributable to the use of the tax evasion transaction. Any installment payment agreement authorized by this subsection must include interest on the unpaid amount at the rate prescribed by 15-1-216. Failure by the taxpayer to fully comply with the terms of the installment payment agreement renders the waiver of penalties void, and the total amount of tax, interest, and all penalties is immediately due and payable.

(7) After December 31, 2007, the department may issue a deficiency assessment upon an amended return filed by an eligible taxpayer as defined in [section 16], impose penalties, or initiate criminal action with respect to the difference between the amount shown on that return and the correct amount of tax. The penalty relief provided in subsection (3) or (4) does not apply to any portion of the underpayment attributable to a tax evasion transaction not paid to the state.

(8) Any correspondence mailed by the department to a taxpayer at the taxpayer's last-known address outlining the program constitutes a contact for purposes of [section 3(9)].

(9) (a) In addition to any other authority to examine returns for the purpose of improving state tax administration, the department may inquire into the facts and circumstances related to the use of tax evasion

transactions to underreport the tax liabilities for which a taxpayer has participated in the program under [sections 15 through 17].

(b) A taxpayer shall cooperate fully with inquiries described in subsection (9)(a).

(c) Failure by a taxpayer to fully cooperate in an inquiry described in subsection (9)(a) renders the waiver of penalties under [sections 15 through 17] void and the taxpayer may be assessed any penalties that may apply.

**NEW SECTION. Section 18. Short title.** [Sections 18 through 23] may be cited as the "Montana Real Estate Backup Withholding Act".

**NEW SECTION. Section 19. Definitions.** As used in [sections 18 through 23], the following definitions apply:

(1) "Certified calculated gain" means the gain the transferor certifies in writing to the department, under penalty of false swearing as provided in 45-7-202, that the transferor will realize on a disposition of Montana real estate.

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

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

(4) "Principal residence" means a principal residence within the meaning of section 121 of the Internal Revenue Code, 26 U.S.C. 121.

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

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

(7) "Transferor" means any person or entity disposing of Montana real estate.

**NEW SECTION. Section 20. Withholding required on sale or exchange of Montana real estate -- rate.** Except as provided in [section 21], there must be withheld from the proceeds from a sale or exchange of Montana real estate an amount equal to the lesser of:

(1) 2.5% of the sales price of the Montana real estate conveyed; or

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

**NEW SECTION. Section 21. Withholding -- application not required.** Withholding is not required on the transfer of Montana real estate under the provisions of [section 20] if:

- (1) the sales price of the Montana real estate conveyed is less than \$100,000;
- (2) the transfer occurs:
  - (a) pursuant to a power of sale under a mortgage or deed of trust;
  - (b) as the result of a decree of foreclosure; or
  - (c) by deed in lieu of foreclosure; or
- (3) the transferor establishes that:
  - (a) the transferor is an individual who is a Montana resident;
  - (b) the Montana real estate being transferred is the principal residence of the transferor or was the principal residence of a decedent;
  - (c) the last use of the property being transferred was by the transferor as the transferor's principal residence;
  - (d) the Montana real estate has been compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033, and the transferor intends to acquire property similar or related in service or use so that the gain is not recognized under the provisions of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033;
  - (e) the Montana real estate is being relinquished in an exchange in which gain and loss is not recognized pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. 1031; or
  - (f) the transferor is a corporation, a pass-through entity, or a disregarded entity incorporated or organized under the laws of the state of Montana.

**NEW SECTION. Section 22. Reporting and remittance.** (1) The transferor shall report to the department under oath, on a form prescribed by the department, all information necessary to compute the amount withheld pursuant to [section 20] or to establish that the transferor is not required to withhold pursuant to [section 21].

(2) Within 5 business days of closing on the sale or exchange of Montana real estate, the transferor shall file the report and remit the amount withheld, if any, to the department.

(3) A copy of the report and a copy of the payment, if any, for withholding must be attached to the realty transfer certificate required by 15-7-305. The county clerk and recorder may not record any deed or other instrument transferring title to Montana real estate if the copies required by this section are not provided.

(4) The department may not change any ownership records used for the assessment or taxation of Montana real estate unless the copies required by subsection (3) are attached to the realty transfer certificate.

(5) Any amount required to be paid pursuant to [section 20] and remitted to the department pursuant to this section is considered a payment on the account of the transferor for the purposes of individual income tax under Title 15, chapter 30, or for the purposes of the corporation license tax or corporation income tax under Title 15, chapter 31. If the transferor is a pass-through entity, the payment is considered a payment on the account of the pass-through entity's shareholders, partners, or members, as applicable.

NEW SECTION. **Section 23. Rulemaking authority.** The department shall adopt rules to implement and administer [sections 18 through 23].

**Section 24.** Section 7-4-2623, MCA, is amended to read:

**"7-4-2623. Liability of clerk relating to duties as recorder.** A county clerk is liable to the party aggrieved for three times the amount of the damages that may result and is punishable as provided in this code if the county clerk to whom an instrument is delivered for record:

(1) neglects or refuses to record the instrument within reasonable time after receipt except when the information required by law to record the instrument is not provided;

(2) falsely records an instrument or records an instrument in any other manner than as directed in this part;

(3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the proper entries in the indexes; or

(4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter in the records."

**Section 25.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property -- description -- taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage

tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) The Except as provided in subsection (5)(b), the class eight property of a person an individual or business entity that owns, directly or indirectly, class eight property with an aggregate market value of \$20,000 \$150,000 or less in market value of class eight property is exempt from taxation.

(b) The class eight property of the taxpayer and of any person who bears a relationship to the taxpayer described in section 267(b) of the Internal Revenue Code, 26 U.S.C. 267(b), is aggregated in determining

whether the taxpayer owns, directly or indirectly, class eight property with an aggregate market value of \$150,000 or less."

**NEW SECTION. Section 26. Codification instruction.** (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 14].

(2) [Sections 18 through 23] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections 18 through 23].

**NEW SECTION. Section 27. Contingent voidness.** If funds are not appropriated to replace the revenue lost to cities, towns, counties, local schools, and special districts from increase of the business equipment tax exemption threshold provided in 15-6-138, [this act] is void.

**NEW SECTION. Section 28. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 29. Applicability -- retroactive applicability.** (1) The provisions of [section 3(1) and (2)] apply retroactively, within the meaning of 1-2-109, to any reportable transaction entered into after February 28, 2000, for any tax year or years for which the transaction remains undisclosed and for which the statute of limitations on assessment, taking into account the extension provided under [section 3(12)], has not expired as of [60 days after the effective date of this act].

(2) The provisions of [sections 8 through 11] apply to tax years beginning after December 31, 2008.

(3) (a) Except as provided in subsection (3)(b), the provisions of [section 12] apply retroactively, within the meaning of 1-2-109, to information associated with any return due on or after [the date 2 years before the effective date of this act].

(b) The provisions of [section 12(2)(b)] apply retroactively, within the meaning of 1-2-109, to any tax year for which the statute of limitations on assessment has not expired.

(c) The penalties imposed under the provisions of [section 13] apply to any failure to file, retain, or provide any information required pursuant to [section 10, 11, or 12] with respect to any tax year ending on or after [the effective date of this act].

(4) The provisions of [sections 18 through 23] apply to transfers of Montana real estate occurring after September 30, 2007.

(5) The provisions of 15-6-138 apply to business equipment taxes imposed after December 31, 2006.

- END -

