

SENATE BILL NO. 504
INTRODUCED BY J. BALYEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE MONTANA INDIVIDUAL INCOME TAX; ELIMINATING CERTAIN CREDITS AGAINST THE MONTANA INDIVIDUAL INCOME TAX; REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO DESIGN, AFTER SUBSTANTIAL RESEARCH, ANALYSIS, AND DISCUSSION, AN APPROPRIATE STATEWIDE GENERAL RETAIL SALES AND USE TAX AS A REVENUE SOURCE TO REPLACE THE REVENUE FROM THE MONTANA INDIVIDUAL INCOME TAX; REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO PREPARE DRAFT LEGISLATION THAT INCORPORATES THE SALES AND USE TAX DESIGN FOR CONSIDERATION BY THE 62ND LEGISLATURE; AMENDING SECTIONS 5-12-303, 7-13-308, 7-14-1133, 7-14-1636, 7-21-3710, 7-34-2416, 10-1-1303, 15-1-101, 15-1-110, 15-1-205, 15-1-208, 15-1-211, 15-1-216, 15-1-302, 15-1-503, 15-2-201, 15-6-193, 15-8-408, 15-30-163, 15-30-164, 15-30-246, 15-30-269, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1121, 15-31-102, 15-31-113, 15-31-131, 15-31-150, 15-31-161, 15-31-162, 15-31-903, 15-31-907, 15-31-908, 15-32-104, 15-32-106, 15-32-303, 15-32-402, 15-32-404, 15-32-502, 15-32-503, 15-32-505, 15-32-510, 15-32-602, 15-32-610, 15-32-701, 15-32-702, 15-32-703, 15-33-106, 15-50-207, 15-61-204, 15-62-208, 15-63-202, 15-68-815, 17-5-1102, 17-6-311, 17-6-316, 17-6-602, 17-7-111, 19-2-303, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-101, 19-20-706, 19-21-212, 19-50-101, 20-25-503, 20-25-504, 25-13-402, 33-17-407, 33-22-2006, 33-22-2007, 33-27-101, 33-27-102, 33-27-103, 37-4-104, 47-1-111, 50-44-103, 50-51-114, 53-2-211, 53-4-1103, 53-6-1001, 67-11-303, 70-9-803, 87-2-102, 87-2-105, 87-5-121, 90-4-1202, 90-8-202, AND 90-10-103, MCA; REPEALING SECTIONS 2-18-1312, 15-1-102, 15-1-109, 15-1-230, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 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, 15-30-140, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146, 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154, 15-30-155, 15-30-156, 15-30-157, 15-30-165, 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, 15-30-193, 15-30-194, 15-30-196, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210, 15-30-215, 15-30-241, 15-30-247, 15-30-248, 15-30-255, 15-30-301, 15-30-302, 15-30-303,

15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310, 15-30-311, 15-30-312, 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331, 15-30-601, 15-30-602, 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-32-109, 15-32-115, 15-32-201, 15-32-202, 15-32-203, 15-61-202, AND 15-62-207, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

WHEREAS, Montana's system of taxation is based largely on ideas, practices, and principles that are nearly a century old; and

WHEREAS, Montana is located in an economic region in which three states impose virtually no taxes on personal income; and

WHEREAS, Montana's imposition of a personal income tax may be a significant deterrent that keeps many entrepreneurs from creating or maintaining businesses in Montana and that promotes the emigration of highly successful Montana entrepreneurs to other states; and

WHEREAS, if the Legislature approves this bill, Montana's individual income tax will be eliminated on January 1, 2012; and

WHEREAS, the 61st Legislature, in anticipation that this bill will be passed and approved, acknowledges that the 62nd Legislature will need to adopt an alternative source of revenue to offset the loss of revenue from the individual income tax; and

WHEREAS, the 2009-10 interim will provide sufficient time for the Legislature's Revenue and Transportation Interim Committee to research, analyze, contemplate, and develop a statewide general retail sales and use tax as the alternative revenue source to the Montana individual income tax.

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

NEW SECTION. Section 1. Sales tax and use tax design -- duty of revenue and transportation interim committee -- requirements and limits. (1) Before December 1, 2010, the revenue and transportation interim committee, provided for in 5-5-227, shall:

(a) research, analyze, and discuss all aspects of a statewide general retail sales and use tax suitable for Montana; and

(b) design and make available for introduction as legislation for the 62nd legislature a statewide general retail sales and use tax that encompasses the findings, conclusions, and recommendations of the interim committee.

(2) Subject to Article VIII, section 16, of the Montana constitution, the rate and base of the proposed sales and use tax must result in an estimate of revenue from the proposed sales and use tax that equals the actual amount of individual income tax revenue collected for fiscal year 2010 or equals the estimated amount of individual income tax revenue to be collected for fiscal year 2011, whichever amount is greater.

(3) The proposed sales and use tax must delineate the goods and services to be exempted from the sales and use tax or to be treated as nontaxable transactions under certain conditions.

(4) The revenue and transportation interim committee:

(a) is authorized to call upon the staff resources of the legislative services division, the legislative fiscal division, and the department of revenue; and

(b) may request assistance from any other entity of the executive branch of state government, any political subdivision of the state or any entity that represents political subdivisions of the state, or any other public or private entity that may have information or insight relevant to the provisions of a statewide general retail sales and use tax.

(5) The revenue and transportation interim committee shall, on or before December 1, 2010, complete draft legislation that incorporates the sales and use tax design and shall make the draft legislation generally available to the public, including posting the draft legislation on the legislature's internet website.

Section 2. Section 5-12-303, MCA, is amended to read:

"5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

~~(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.~~

~~_____ (b) The department of revenue shall provide the name and address of a taxpayer on written request of~~

~~the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.~~

(4)(3) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5)(4) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information."

Section 3. 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~~ the joint district determines, 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~~ amounts 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 4. 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 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 section or 7-14-1134 may 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 5. 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~~ the purposes of the authority, including refunding bonds, in a form and upon

terms as ~~the~~ the authority 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 6. Section 7-21-3710, MCA, is amended to read:

"7-21-3710. Tax credits for employers in empowerment zone. (1) There is allowed to an employer a credit against taxes imposed under ~~15-30-403~~, 15-31-121, 15-31-122, or 33-2-705 for an increase in net employees as provided in this section.

(2) To be eligible for a credit under this section, the owner of a business located in an empowerment zone:

- (a) shall conduct a business in a facility within the empowerment zone in which retail sales of tangible

personal property, other than that manufactured in the business facility, are not in excess of 10% of the business conducted in the facility, whether measured by number of employees doing retail sales, by square footage, or by dollar volume; and

(b) shall increase employment in the empowerment zone with employees:

(i) who are employed for at least 1,750 hours a year in permanent employment intended to last at least 3 years;

(ii) who were not employed by the business in the preceding 12 months;

(iii) at least 35% of whom were residents of the county in which the empowerment zone is located at the time they were hired by the business;

(iv) who are provided a health benefit plan for employees in accordance with 33-22-1811(3)(d) of which at least 50% of the premium is paid by the business; and

(v) who are paid for job duties performed at the empowerment zone location of the business.

(3) (a) For the purposes of subsection (2)(b)(i), an employee hired in the last 90 days of a year is considered to be an employee beginning employment in the following year. If an employee terminates employment, a replacement employee may be hired and the credit for the combined length of time may be claimed.

(b) For the purposes of subsection (2)(b)(iii), if an employee for whom a credit was claimed and who counted as an empowerment zone county resident for credit eligibility in either of the immediate 2 preceding years terminates employment, the replacement employee must have been a resident of the county in which the empowerment zone is located at the time the replacement employee is hired.

(4) An employer shall apply for certification to claim a credit under the provisions of this section. The department shall require a report that contains detailed information to determine whether an employer qualifies under subsections (2) and (3). The information must be detailed enough for auditing purposes. The department is authorized to inspect employers applying for certification or who have obtained certification.

(5) The department shall certify to the department of revenue or the state auditor's office, as applicable, whether a business may claim a credit under the provisions of this section as well as how many additional employees qualify and the year of initial employment of qualifying employees."

Section 7. 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 8. Section 10-1-1303, MCA, is amended to read:

"10-1-1303. Fund account -- statutory appropriation. (1) There is a Montana military family relief fund account in the state special revenue fund provided for in 17-2-102. All money transferred to the fund by the legislature, all monetary contributions, gifts, and grants donated to the fund, ~~all contributions made to the fund pursuant to 15-30-193,~~ and all interest and income earned on money in the account must be deposited into the account.

(2) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this part."

Section 9. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

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

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a

distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

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

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

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

(iii) that is not a disregarded entity.

(g) The term "credit" means solvent debts, secured or unsecured, owing to a person.

~~(g)~~(h) (i) "Department", except as provided in subsection ~~(1)(g)(ii)~~ (1)(h)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(i) "Disregarded entity" means:

(i) a business entity 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

(ii) 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).

(j) "Dividend" means:

(i) 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

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

(k) "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.

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

~~(h)~~(m) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas

found in any coal formation.

(n) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in 26 U.S.C. 61.

~~(j)~~(o) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(p) "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.

(q) "Knowingly" has the meaning provided in 45-2-101.

~~(j)~~(r) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

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

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

~~(k)~~(u) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(v) "Lottery winnings" means income paid either in a lump sum or in periodic payments to a person on a lottery ticket purchased in Montana.

~~(j)~~(w) (i) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection ~~(1)(m)~~ (1)(x), or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

~~(m)~~(x) The term "mobile home" means forms of housing known as "trailers", "housetrailer", or "trailer

coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(y) (i) "Montana source income" means:

(A) all compensation for services performed in the state or while engaged in business in the state;

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

(C) gain attributable to the sale or other transfer of intangible property received or accrued while engaged in business in the state;

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

(E) dividends received or accrued while engaged in business in the state;

(F) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while engaged in business in the state;

(G) net income or loss derived from farming activities carried on in the state or while engaged in business in the state;

(H) net rents from real property and tangible personal property located in the state or received or accrued while engaged in business in the state;

(I) 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 engaged in business in 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.

(J) 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 engaged in business in the state;

(K) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while engaged in business in the state;

(L) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

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

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

(III) taken into account while engaged in business in the state;

(M) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

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

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

(III) taken into account while engaged in business in the state; and

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

(ii) The term does not include interest paid on loans held by out-of-state financial institutions recognized as loans 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.

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

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

(bb) "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 title.

(cc) "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.

(dd) "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.

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

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

(ii) As used in Title 15, chapter 31, the term does not include an individual.

~~(n)~~(gg) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

~~(o)~~(hh) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(p)~~(ii) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(j) "Purposely" has the meaning provided in 45-2-101.

(kk) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

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

(ii) 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.

~~(q)~~(ll) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(mm) "Received", for the purpose of computation of taxable income, 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 title.

~~(r)~~(nn) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

~~(s)~~(oo) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the

experimental production and testing of models, devices, equipment, materials, and processes.

(pp) "Resident" applies only to natural persons and includes 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.

(qq) "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.

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

(t)(ss) The term "stock in trade" means any mobile home, manufactured home, or house trailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(tt) "Tax year" means the person's tax year for federal income tax purposes.

(uu) "Taxable income" means the adjusted gross income of a person less the deductions and exemptions provided for in this title.

(v)(vv) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(ww) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this title.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 10. Section 15-1-110, MCA, is amended to read:

"15-1-110. Rulemaking authority. The department may adopt rules to administer and enforce the provisions of 15-1-108 ~~and 15-1-109.~~"

Section 11. Section 15-1-205, MCA, is amended to read:

"15-1-205. Biennial report -- contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing

all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) ~~personal income and~~ corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against ~~Montana personal income tax or~~ Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(4) The data described in subsection (3), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Section 12. Section 15-1-208, MCA, is amended to read:

"15-1-208. Signature alternatives for electronically filed returns. For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, ~~30~~ 31 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the ~~director of revenue~~ department of revenue, and for the purposes of Title 15, chapter 70, ~~the director of~~ the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer."

Section 13. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform dispute review procedure -- notice -- appeal. (1) The department shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an ~~employer-employee relationship existed between the person or other entity and individuals~~ subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity ~~shall~~ must have the opportunity to resolve the dispute with the department

employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of ~~their~~ the opportunity to resolve the dispute with the person responsible for the notice and ~~their~~ the right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of ~~revenue~~ the department or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be

annulled, modified, set aside, or disregarded."

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

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, ~~as those terms are defined in 45-2-101,~~ fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Interest on taxes not paid when due must be assessed by the department. ~~The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:~~

~~(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.~~

~~(ii) For The interest rate for all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% a year.~~

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(†). (Bracketed language in subsection (5)(a) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

Section 15. Section 15-1-302, MCA, is amended to read:

"15-1-302. Witnesses -- oaths, contempt, and fees. (1) Oaths to witnesses in any investigation by the department may be administered by the director of ~~revenue~~ the department or the director's agent.

(2) ~~(a)~~ If a witness fails to obey a summons to appear before the department or refuses to testify or answer any material question or to produce records, books, papers, or documents when required to do so, the department shall institute proceedings in the district court to compel obedience to a summons or order of the board or to punish the witness for neglect or refusal to obey the summons.

~~(b) As required by 15-30-209, the department, in addition to instituting proceedings to compel obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order requiring the payment of all penalties assessed for the employer's failure to report.~~

(3) A person who testifies falsely in any material matter under consideration by the department is guilty of perjury and shall be punished accordingly.

(4) Witnesses attending an investigation by the department must receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the department."

Section 16. Section 15-1-503, MCA, is amended to read:

"15-1-503. Refund of overpayment -- procedure. (1) When there has been an overpayment of the estate tax collected by county treasurers or any other tax collected by the department and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2).

(2) A refund or payment is not allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time that the tax was paid. Within 6 months after the claim 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 shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by ~~45-30-148~~ 15-2-303."

Section 17. Section 15-2-201, MCA, is amended to read:

"15-2-201. Powers and duties. (1) ~~It is the duty of the~~ The state tax appeal board ~~to shall:~~

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance must be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal;

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, ~~except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,~~ and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall ~~thereupon~~ institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly.

Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.

(3) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law."

Section 18. Section 15-6-193, MCA, is amended to read:

"15-6-193. Extended property tax assistance -- phasein. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles ~~that begin after December 31, 2008~~, the rate of taxation of class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set in 15-6-134(2)(a) is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

(a) (i) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal. The taxable value after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal.

(ii) The tax rate before reappraisal is the tax rate that was in effect during the last year of the previous reappraisal cycle.

(iii) The tax rate after reappraisal is the tax rate that will be in effect during the last year of the current reappraisal cycle.

(iv) The homestead exemption before reappraisal is the homestead exemption that was in effect during the last year of the previous reappraisal cycle.

(v) The homestead exemption after reappraisal is the homestead exemption that will be in effect during the last year of the current reappraisal cycle.

(b) The dollar increase in tax liability is measured as the percentage change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal times the mill levy applied to the property before reappraisal. The tax liability after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal times the mill levy applied to the property before reappraisal. The mill levy applied to the property before reappraisal is the total of all mills applied to the property in the last year of the previous reappraisal cycle.

(c) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(d) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is \$25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated ~~such~~ so that the total increase in taxable value over the reappraisal cycle is 24% and ~~such~~ so that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(b) If total household income is greater than \$25,000 but less than or equal to \$50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated ~~such~~ so that the total increase in taxable value over the reappraisal cycle is 30% and ~~such~~ so that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(c) If total household income is greater than \$50,000 but less than or equal to \$75,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate ~~will~~ must be calculated ~~such~~ so that the total increase in taxable value over the reappraisal cycle is 36% and ~~such~~ so that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in ~~45-30-303~~ 15-31-511.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section, "entity" means:

(a) a corporation, fiduciary, or pass-through entity, as those terms are defined in ~~45-30-404~~ 15-1-101; and

(b) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person."

Section 19. Section 15-8-408, MCA, is amended to read:

"15-8-408. Personal property. Personal property, other than livestock, subject to taxation or a fee in lieu of tax in the state shall be taxable in the taxing jurisdiction where it is located on January 1, whether or not the ~~same property~~ property is owned, claimed, or possessed by the person, as defined in ~~45-1-402~~ 15-1-101, owning, claiming, or possessing it on January 1."

Section 20. Section 15-30-163, MCA, is amended to read:

"15-30-163. Credit for contributions to university system or private college foundations. (1) An

~~individual~~, A corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax credit against taxes imposed by ~~15-30-103~~ or 15-31-101 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) (a) For the purposes of this section, "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.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

- (i) whose main campus and primary operations are within the state; and
- (ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education."

Section 21. Section 15-30-164, MCA, is amended to read:

"15-30-164. Credit for alternative fuel motor vehicle conversion. (1) (a) Except as provided in subsection (1)(b), ~~an individual~~, a corporation, a partnership, or a small business corporation as defined in 15-30-1101 is allowed a tax credit against taxes imposed by ~~15-30-103~~ or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(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 a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred but 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 them.

(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."

Section 22. Section 15-30-246, MCA, is amended to read:

"15-30-246. Policy and purpose. ~~(4)~~ It is the policy and intent of the legislature that lottery ~~proceeds~~ winnings received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased in Montana under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence of the person or entity that redeems the ticket. This policy statement affirms that the legislature has always considered lottery ~~proceeds~~ winnings to be Montana source income.

~~(2) The purpose of 15-30-247 is to ensure that lottery proceeds that are Montana source income are subject to the withholding tax under the individual income tax laws of the state."~~

Section 23. Section 15-30-269, MCA, is amended to read:

"15-30-269. Remitter to furnish annual statement to department. (1) On or before February 28 of each year, each remitter shall file with the department a royalty and tax statement, on a form provided by the department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld from the royalty payments under the provisions of 15-30-261 through 15-30-272 for the same period.

(2) The annual statement filed by a remitter under this section complies with the requirements of ~~15-30-301 relating to the duties of information agents~~ 15-30-261 through 15-30-272. An additional information return is not required with respect to the royalty payments.

(3) The department shall make the forms described in 15-30-266 and this section available no later than November 15, 2007."

Section 24. Section 15-30-1101, MCA, is amended to read:

"15-30-1101. Definition of small business corporation. (1) Except as provided in subsection (2), the term "small business corporation" is synonymous with "S. corporation" as defined in ~~45-30-404~~ 15-1-101 and means a corporation for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

Section 25. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities -- information returns required.

~~(1) Except as otherwise provided:~~

~~—— (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;~~

~~—— (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and~~

~~—— (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.~~

~~(2)(1) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation, described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c) a disregarded entity, the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an a disregarded entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.~~

~~(3)(2) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of~~

accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

~~(4)(3)~~ (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file ~~an information~~ a return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

- (i) the name, address, and social security or federal identification number of each partner;
- (ii) the partnership's Montana source income;
- (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
- (v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file ~~an information~~ a return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

- (i) the name, address, and social security or federal identification number of each shareholder;
- (ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
- (iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

- (i) the name, address, and social security or federal identification number of each member or other owner during the tax year;
- (ii) the entity's Montana source income; and
- (iii) any other information the department prescribes.

(d) (i) Except as provided in subsection ~~(4)(d)(ii)~~ (3)(d)(ii), a pass-through entity that fails to file ~~an information~~ a return required by this section by the due date, including any extension, must be assessed a late

filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection ~~(4)(d)(i)~~ (3)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection ~~(4)(d)(i)~~ (3)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 26. 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~~ shall file a composite return and pay a composite tax on behalf of participants. ~~A participant is a~~ each 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~~ 15-31-121, 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)~~ 15-31-503 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~~ entity's 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)~~(a) 15-31-101 and 15-31-121; and

~~(c)~~(b) 15-31-403.

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

Section 27. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. ~~Consent or withholding~~ Withholding. (1) A pass-through entity that is required to file ~~an information~~ a 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) and~~ remit an amount equal to the highest marginal tax rate in effect under ~~15-30-103~~ 15-31-121 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)~~(2) 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)~~(3) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection ~~(1)(c)(iii)~~ (1)(a) 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)~~(4) A pass-through entity is entitled to recover a payment made pursuant to subsection ~~(1)(a)(iii)~~; or ~~(1)(b)(iii)~~; or ~~(1)(c)(iii)~~ from the partner, shareholder, member, or other owner on whose behalf the payment was made.

~~(6)~~(5) 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)~~(6) 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 28. Section 15-30-1121, MCA, is amended to read:

"15-30-1121. Small business option unavailable on dissolution -- exception. In the case of corporation dissolution, ~~no~~ benefits may not be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders ~~unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.~~"

Section 29. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1) Except

as provided in subsection (3), there may not be taxed under this title any income received by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;
- (i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;
- (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;
- (k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.
- (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire

taxable year a valid election under federal law to be treated as a DISC. ~~If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.~~

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 30. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

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

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

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or

renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

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

Section 31. 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 32. 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 this 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 this chapter ~~30 or 31~~ for the 2 preceding tax years and may be used as a carryforward against taxes imposed by this 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 33. 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 ~~45-30-465~~ 15-1-101. 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 A~~ carryback or carryforward of the credit is not 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. (Terminates December 31, 2013--sec. 7, Ch. 4, L. 2005; secs. 2, 3, 4, 7(2), Ch. 208, L. 2007.)"

Section 34. 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~~ 15-1-101, 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~~ federal income tax purposes. 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. 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).~~ The credit allowed under this section may not exceed the taxpayer's income tax liability. ~~There is no~~ A carryback or carryforward of the credit is not 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. (Terminates December 31, 2013--sec. 7, Ch. 4, L. 2005; secs. 2, 3, 4, 7(2), Ch. 208, L. 2007.)"

Section 35. Section 15-31-903, MCA, is amended to read:

"15-31-903. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Compensation" means salary, wages, or other compensation, including related benefits paid to a Montana resident.

(2) (a) "Production" means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, television pilot, magazine advertising, other than advertising for

tobacco products, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet, or other viewing.

(b) The term does not include the production of television coverage of news and athletic events or a film, video, internet production, television series, magazine advertising, or commercial that:

(i) contains any obscene material or performance as described in 45-8-201(2); or

(ii) is produced in whole or in part with money received for tobacco product placement, advertisement, or other tobacco use in the production.

(3) (a) "Production company" means a company engaged in the business of producing nationally or regionally distributed productions.

(b) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.

(4) (a) "Qualified expenditures" means expenditures in Montana made by a production company that are directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant and food expenses, location fees, lumber and construction materials, rental of production equipment and vehicles, and supplies and materials that will be used in the production.

(b) The term does not include expenditures made for goods and services obtained out of state.

(5) "Resident" or "Montana resident", for the purpose of determining eligibility for the tax credit provided under 15-31-907, has the meaning provided in ~~45-30-104~~ 15-1-101.

(6) "State-certified production" means a production certified by the department of commerce as provided in 15-31-904 and produced by a production company that has a national or regional distribution plan, including but not limited to a major theatrical exhibition, film festival, television network, cable television programming, magazine advertising, or video or internet distribution. (Terminates January 1, 2010--sec. 17, Ch. 593, L. 2005.)"

Section 36. Section 15-31-907, MCA, is amended to read:

"15-31-907. (Temporary) Employment production tax credit. (1) 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 this chapter ~~30 or 34~~ 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 14% 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 this chapter ~~30~~ or ~~31~~ for the 4 succeeding tax years.

(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; sec. 9, Ch. 367, L. 2007.)"

Section 37. Section 15-31-908, MCA, is amended to read:

"15-31-908. (Temporary) Tax credit for qualified expenditures. (1) 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 this 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 9% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) (a) 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.

(b) The taxpayer shall certify in writing to the department, under penalty of false swearing as provided

in 45-7-202, that the taxpayer has paid in full to each vendor in Montana for all goods and services purchased by the taxpayer in connection with the state-certified production during the tax year. A credit under this section may not be claimed unless the taxpayer has paid in full for all purchases of goods and services from Montana vendors.

(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; sec. 9, Ch. 367, L. 2007.)"

Section 38. 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 39. 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 40. 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 41. 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 42. 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~~ and the 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 43. Section 15-32-502, MCA, is amended to read:

"15-32-502. Definitions. For purposes of this part, the following definitions apply:

(1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration activity conducted at a specific exploration site for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit. The term includes:

(i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity referred to in 15-32-503;

(ii) direct labor costs and the cost of benefits for employees directly associated with work described in 15-32-503;

(iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and taking the credit;

(iv) the reasonable costs of owning, maintaining, and operating equipment;

(v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through (1)(a)(vii);

(vi) payments to consultants and independent contractors; or

(vii) the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in 15-32-503.

(b) The term does not include return on investment, insurance or bond premiums not covered under subsection (1)(a)(v), or any other expense that the person has not incurred to complete work described in 15-32-503.

(2) "Credit" means the exploration incentive credit for activities involving mineral and coal deposits authorized by this part.

(3) "Exploration activity data list" means, as applicable, a summary of work completed during the year that includes but is not limited to:

(a) the number of core or rotary drilling holes completed;

(b) chemical analytical data available; or

(c) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken.

(4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil, rock, water, air, vegetation, and similar samples and their chemical analyses.

(5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements.

(6) "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by 82-1-111.

(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit interest and may be composed of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines, transportation equipment, and mining techniques and technology and may also consider the extent to which the mineral deposit interest comprises a common mining property.

(8) "Person" means a sole proprietorship, corporation, partnership, small business corporation as defined in 15-30-1101, or limited liability company as defined in 35-8-102.

(9) "Tax year" means the calendar year."

Section 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 the costs of investments in depreciable property in Montana that is used primarily for crushing oilseed crops for purposes of producing biodiesel or biolubricant.

(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 costs described in subsection (1) incurred in the 2 tax years before the facility begins crushing oilseed or in any tax year in which the facility is crushing oilseed.

(3) The total amount of credits for all years that may be claimed for a facility under this section is 15% of the costs described in subsection (1), up to a total of \$500,000.

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section:

(a) The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2015.

(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, except for the 2 tax-year period claimed in subsection (2), must have been using the depreciable property for the purposes described in subsection (1) during the tax year for which the credit is claimed and during each year for which the credit is carried forward.

(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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may be carried forward for credit against a taxpayer's tax liability for any

succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not crushing oilseed or beyond the 7th tax year after the tax year for which the credit was initially claimed. If a facility in which property is installed and for which a credit is claimed ceases production of biodiesel or biolubricant for a period of 12 continuous months within 5 years after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming the credit is liable for the total 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.

(9) For the purposes of this section, "biolubricant" means a commercial or industrial product, other than food or feed, that is composed in whole or in substantial part of biological products, renewable domestic agricultural materials, including plant, animal, or marine materials, or forestry materials and that is used in place of a petroleum-based lubricant."

Section 50. Section 15-32-702, MCA, is amended to read:

"15-32-702. Biodiesel or biolubricant 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 costs of investments in depreciable property for constructing or equipping a facility, or both, in Montana to be used for biodiesel or biolubricant 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 costs described in subsection (1) incurred in the 2 tax years before the facility begins producing biodiesel or biolubricant or in any tax year in which the facility is producing biodiesel or biolubricant.

(3) The total amount of the credits for all years that may be claimed for a facility under this section is 15% of the costs described in subsection (1).

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section:

(a) The depreciable property for which the credit is claimed must begin operating before January 1, 2015.

(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 or biolubricant.

(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, except for the 2 tax-year period claimed in subsection (2), must have been producing biodiesel or biolubricant during the tax year for which the credit is claimed and during each year in which the credit is carried forward.

(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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit was initially taken may be carried forward for credit against a taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not producing biodiesel or biolubricant or beyond the 7th tax year after the tax year for which the credit was initially claimed. If a facility for which a credit is claimed ceases production of biodiesel or biolubricant for a period of 12 continuous months within 5 years after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming the credit is liable for the total 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 or biolubricant 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, the following definitions apply:

(a) "Biodiesel" has the meaning provided in 15-70-301.

(b) "Biolubricant" has the meaning provided in 15-32-701(9)."

Section 51. 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 costs of investments in depreciable property used for storing or blending biodiesel with petroleum diesel for sale.

(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 costs described in subsection (1) incurred in the 2 tax years before the taxpayer begins blending biodiesel fuel for sale or in any tax year in which the taxpayer is blending biodiesel fuel for sale.

(3) (a) The total amount of the credits for all years that may be claimed by a distributor under this section is 15% of the costs described in subsection (1), up to a total of \$52,500.

(b) The total amount of the credits for all years that may be claimed by an owner or operator of a motor fuel outlet under this section is 15% of the costs described in subsection (1), up to a total of \$7,500.

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section:

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

(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 initial tax year in which the credit is initially 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, except for the 2 tax-year period claimed in subsection (2), 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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may be carried forward for credit against the taxpayer's tax liability for any

succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility is not blending biodiesel or storing biodiesel for blending or beyond the 7th tax year after the tax year for which the credit was initially claimed. If a facility for which a credit is claimed ceases blending of biodiesel with petroleum diesel for sale for a period of 12 continuous months within 5 years after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the total credit is subject to recapture. The person claiming the credit is liable for the total 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) 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 52. Section 15-33-106, MCA, is amended to read:

"15-33-106. Capital gains -- dividends exempted. Any capital gains or dividend income realized by ~~an individual~~ or a corporation from an investment in an SBIC organized in accordance with this part is exempt from taxation under the provisions of Title 15, ~~chapters 30 and~~ chapter 31."

Section 53. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes -- credit for personal property taxes and certain fees. (1) (a) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax or income tax provided for in Title 15, chapter 31 ~~of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.~~

(b) The credit allowed under this subsection (1) may be used as a carryforward against taxes imposed

by chapter ~~30~~ or 31 for the 5 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.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-321(2) and 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the ~~income tax or corporation license or~~ income tax credit."

Section 54. Section 15-61-204, MCA, is amended to read:

"15-61-204. Administration of account. (1) (a) An account administrator shall administer the medical care savings account from which the payment of claims is made and, except as provided in subsection (1)(b), has a fiduciary duty to the person for whose benefit the account is administered.

(b) Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical savings account as a regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other provision of this chapter, a financial institution is not responsible for determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent

of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder or a dependent of the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

(7) In the case of an account administrator who is also the account holder or an employee:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution or other holder of the account;

(c) documentation of eligible medical expenses must be maintained but is not required to be submitted to the account administrator;

(d) contributions to a medical savings account must be established in a separate account and be segregated from other funds;

(e) the account holder is subject to the same yearend reporting requirements as all other account administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state.

(8) 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 55. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103, as that section read on December 31, 2009, on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(11), as that section read on December 31, 2009.

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

(3) ~~(a)~~ The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on ~~the income tax return of the account owner forms provided by the department~~ and is payable ~~with the income tax payment for~~ on or before December 31 of the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

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

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that

all or a portion of the contributions did not reduce adjusted gross income. ~~Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.~~

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

~~_____ (a) April 30, 2001; or~~

~~_____ (b) the date that is 3 years prior to the date of the withdrawal or distribution.~~

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

Section 56. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption -- conditions Contributions -- limits -- administration. ~~(1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. 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 for eligible costs for the purchase of a single-family residence.~~

~~_____ (2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to \$3,000.~~

~~(b) An account holder who files jointly may exclude as annual contribution in 1 year up to \$6,000.~~

~~(c)(1) (a) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.~~

~~(d)(b) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.~~

~~(3) An 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) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified~~

~~in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.~~

~~(5)(2) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section is allowed. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.~~

~~(6)(3) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.~~

~~(7)(4) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.~~

~~(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.~~

~~(9)(5) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."~~

Section 57. Section 15-68-815, MCA, is amended to read:

"15-68-815. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through (4), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under this chapter or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are

classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in ~~15-30-303~~ or 15-31-511 for violating the confidentiality of individual income tax or corporation license information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of this chapter, the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by this chapter, the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

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

Section 58. Section 17-5-1102, MCA, is amended to read:

"17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

- (i) an individual whose signature to the certificated public obligation is required or permitted; or
- (ii) an individual who may be permitted by an authorized officer, either alone or with the concurrence of another or others, to affix the individual's signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

- (a) issued pursuant to a system of registration;
- (b) represented by an instrument; and
- (c) either one of a class or series or by its terms is divisible into a class or series of obligations.

(3) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(4) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(5) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee that in the ordinary course of its business maintains public obligation accounts for its customers.

(6) "Internal Revenue Code" has the meaning provided in ~~45-30-104~~ 15-1-101.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in the agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means:

(a) the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents;

(b) the successor or successors of the official or official body; and

(c) any other person or group of persons who are assigned duties of the official or official body under applicable law.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the Internal Revenue Code. The term may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or any other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations."

Section 59. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate ~~and personal income~~ taxes estimated to be paid by the business ~~and its employees~~;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary."

Section 60. Section 17-6-316, MCA, is amended to read:

"17-6-316. Economic development loan -- infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan must be made to a local government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter ~~30 or~~ 31, for the portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years."

Section 61. Section 17-6-602, MCA, is amended to read:

"17-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including ~~income~~ tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) (a) "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and exposure to secondhand tobacco smoke, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(b) Programs for tobacco disease prevention include:

- (i) community-based education programs;
- (ii) American Indian community tobacco education programs;
- (iii) general public awareness and education programs;
- (iv) tobacco cessation services;
- (v) chronic disease programs;
- (vi) a tobacco use resource center;
- (vii) special education and cessation programs to reach youth and women of childbearing age;
- (viii) smokeless tobacco user programs; and
- (ix) advertising issue programs.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through this part."

Section 62. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or

different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the

budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

- (i) a prioritized list of services that would be eliminated or reduced;
 - (ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and
 - (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- (g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and
- (h) other information the budget director feels is necessary for the preparation of a budget.
- (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

- (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;
- (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding

requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from ~~such~~ the accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

~~(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.~~

~~———— (b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."~~

Section 63. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to

purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(25) "Internal Revenue Code" has the meaning provided in ~~45-30-101~~ 15-1-101.

(26) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
- (b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

- (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

- (a) terminated from service; and
- (b) received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal

retirement age.

(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(47) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member's contribution account;
- (b) the vested portion of the employer's contribution account; and
- (c) the member's account for other contributions.

(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(51) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 64. 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;
- (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) assignable except as specifically provided in this chapter."

Section 65. 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~~ Benefits received under this part ~~is~~ are 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 66. 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~~ are exempt from state, county, and municipal taxation."

Section 67. 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~~ are exempt from state, county, and municipal taxation."

Section 68. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been

converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year.

(9) "Internal Revenue Code" has the meaning provided in ~~15-30-101~~ 15-1-101.

(10) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 69. 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) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

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

Section 70. 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) not subject to execution, garnishment, attachment, or other process;

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

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

Section 71. Section 19-50-101, MCA, is amended to read:

"19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from ~~state and~~ federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(4) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) "Fund" means the state deferred compensation investment account.

(6) "Participant" means an employee enrolled in the plan.

(7) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana."

Section 72. Section 20-25-503, MCA, is amended to read:

"20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana ~~and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and~~ renounces residency in any other state, and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or

spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 73. Section 20-25-504, MCA, is amended to read:

"20-25-504. Evidence as to domiciliary intent -- changes in status. (1) To determine the domicile of a person, the units of the system shall ~~apply the following rules:~~

~~—— (a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.~~

~~—— (b) A person must intend~~ consider whether the person intends to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence ~~shall~~ must be filed with the registering authority of the unit. Changes in classification ~~shall~~ must be in writing signed by the registering authority and ~~shall~~ must take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if ~~his~~ the minor's parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom ~~he~~ the minor customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile ~~heretofore~~ set forth in this subsection.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in ~~his or his dependent's~~ classification for tuition and fee purposes unless ~~he~~ the individual completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the ~~executive secretary of the Montana university system~~ commissioner. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of ~~his~~ the decision and a complete file on the student to the ~~executive secretary~~ commissioner. The ~~executive secretary~~ commissioner may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the ~~executive secretary~~ commissioner shall determine the resident status of the student and shall notify the student and the registering authority of ~~his~~ the decision. The ~~executive secretary's~~ commissioner's decision may be appealed to the regents if the regents agree to ~~entertain such~~ consider an appeal."

Section 74. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsections (6) and (7), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (8), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to any funds due on or after the date of service through the expiration of the writ. Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes or other debt as provided in ~~15-30-149, 15-30-310,~~ 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

(8) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 75. Section 33-17-407, MCA, is amended to read:

"33-17-407. Nonresident insurance producer to pay taxes -- annual report required. (1) A nonresident insurance producer is subject to ~~personal income,~~ business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident insurance producer shall file annually a Montana ~~income~~ tax return, if applicable, as required in Title 15."

Section 76. 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; or

~~(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or~~

~~(c)(b)~~ 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 77. 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 78. Section 33-27-101, MCA, is amended to read:

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

Section 79. 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 80. 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 81. 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 15-30-111~~ 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 82. 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 83. Section 50-44-103, MCA, is amended to read:

"50-44-103. End-stage renal disease program account -- administration. (1) There is an end-stage renal disease program account in the state special revenue fund provided for in 17-2-102.

~~(2) All money collected under 15-30-169 must be deposited in the account.~~

~~(3)~~(2) Money in the account must be used by the department of public health and human services for the treatment of end-stage renal disease under 50-44-102."

Section 84. Section 50-51-114, MCA, is amended to read:

"50-51-114. Temporary emergency lodging program -- definitions. (1) There is a voluntary temporary emergency lodging program for licensed establishments located in Montana to assist designated charitable organizations in providing short-term lodging in Montana to individuals and families displaced from their residences.

(2) Except as provided in subsection (8), participating establishments may receive a tax credit as provided in ~~45-30-196~~ and 15-31-171 for providing temporary lodging to an individual who is:

(a) displaced from the individual's residence because of temporary immediate danger to the individual posed by an assault, as described in 45-5-206, or potential assault by a partner or family member, as defined in 45-5-206; and

(b) referred to the establishment by a designated charitable organization.

(3) Except as provided in subsection (8), establishments participating in the temporary emergency lodging program are eligible for a tax credit as provided in ~~45-30-196~~ and 15-31-171 for up to 5 nights of lodging for each individual per calendar year.

(4) Temporary emergency lodging provided under this section must be provided at no cost to the individual or the referring organization.

(5) Participating establishments may offer lodging based on availability of rooms.

(6) The department shall maintain a registry of designated charitable organizations and shall provide a list of approved organizations to establishments upon request. The department shall seek comment from statewide nonprofit organizations that work with victims of disaster and domestic violence when developing and updating the registry.

(7) For the purposes of 50-51-115 and this section, "designated charitable organization" means an organization approved by the department to make referrals for temporary emergency lodging.

(8) The tax credit referred to in subsections (2) and (3) does not apply to the costs of providing lodging to an individual who is displaced by a major disaster declared by the president under 42 U.S.C. 5170 or 5191 and who receives financial assistance for temporary housing under 42 U.S.C. 5174."

Section 85. Section 53-2-211, MCA, is amended to read:

"53-2-211. Department to share eligibility data. (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. ~~If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).~~

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance."

Section 86. Section 53-4-1103, MCA, is amended to read:

"53-4-1103. Definitions. For purposes of this part, the following definitions apply:

(1) "Comprehensive" means health insurance having benefits at least as extensive as those provided under the children's health insurance program.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enrollee" means a child who is enrolled or in the process of being enrolled in the plan, including children already enrolled in the programs described in 53-4-1104(2).

(4) (a) "Enrollment partner" means an organization or individual approved by the department to assist in enrolling eligible children in the plan.

(b) An enrollment partner may be but is not limited to:

- (i) a licensed health care provider;
- (ii) a school;
- (iii) a community-based organization; or
- (iv) a government agency.

(5) "Health coverage" means a program administered by the department or a disability insurance plan, referred to in 33-1-207(1)(b), that provides public or private health insurance for children.

(6) "Income" has the meaning provided in ~~45-30-171(9)(a)~~ 53-6-1001.

(7) "Plan" means the healthy Montana kids plan established in 53-4-1104.

(8) "Premium" means the amount of money charged to provide coverage under a public or private health coverage plan.

(9) "Presumptive eligibility" has the meaning provided in 42 CFR 457.355."

Section 87. 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 15-30-174~~ means all income received by all individuals of a household while they are members of the household.

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

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

(6) (a) "Income" means, except as provided in subsection (6)(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 (6), income is reduced by the taxpayer's basis as defined in the Internal Revenue Code.

~~(5)(7)~~ "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

~~(6)(8)~~ "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)(9)~~ "Program" means the prescription drug plus discount program provided for in 53-6-1002.

~~(8)(10)~~ "Secondary discounted price" means the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program."

Section 88. 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 89. Section 70-9-803, MCA, is amended to read:

"70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (a) traveler's check, 15 years after issuance;
- (b) money order, 7 years after issuance;
- (c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:
 - (i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or
 - (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;
- (d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;
- (e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or

is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor defined in ~~45-30-104~~ subsection (7). The amount considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger.

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

(p) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

(q) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located.

(7) For the purposes of this section, the following definitions apply:

(a) "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.

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

Section 90. 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)~~ (4)(d);

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)~~ (4)(d). 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~~ must 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)~~(b) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

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

~~(d)(c)~~ 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:

(a) "dependent" means any of the following individuals over half of whose support for the calendar year in which residency is at issue was received from the resident on whom the dependent depends:

(i) a son or daughter of the resident or a descendant of either;

(ii) a stepson or stepdaughter of the resident;

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

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

(v) a stepfather or stepmother of the resident;

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

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

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

(ix) an individual who, for the calendar year in which residency is at issue, has as the individual's principal place of abode the home of the resident and is a member of the resident's household; or

(x) an individual who:

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

(B) for the calendar year in which residency is at issue received institutional care required by reason of a physical or mental disability; and

(C) before receiving institutional care was a member of the same household as the resident;

(b) "sister" and "brother" include a sister or brother by the half blood.

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

Section 91. 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 in ~~15-30-113~~ 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 92. 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 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."~~

Section 93. Section 90-4-1202, MCA, is amended to read:

"90-4-1202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

- (1) "Ancillary services" has the meaning provided in 69-3-2003.
- (2) "Bond" means bond, note, or other obligation.
- (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant

to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

(4) "Commission" means the public service commission provided for in 69-1-102.

(5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.

(7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(8) "Internal Revenue Code" has the meaning provided in ~~45-30-104~~ 15-1-101.

(9) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in 69-3-2003; or

(c) an alternative renewable energy source as defined in 15-6-225."

Section 94. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000; or

(b) a qualified Montana small business investment capital company a certified Montana small business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as a qualified Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) (a) The total amount of tax credits authorized for a single qualified capital company or a qualified Montana small business investment capital company may not exceed \$1,500,000, except that a qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to a qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by a qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to a qualified Montana small business investment capital company in accordance with this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in a qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as a qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as a qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), ~~an individual,~~ a small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied to a qualified small business investment capital company, the maximum tax credit is \$250,000 per taxpayer and the tax credit limitation relating to a capital investment in a

qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined in 15-30-1101 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's corporation license or income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company or a qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) ~~An individual,~~ A small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not more than \$250,000 in the case of a qualified Montana small business investment capital company, in credits ~~as an individual and~~ as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. ~~An individual,~~ A small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter ~~30 or~~ 31, for donation of stock in a qualified Montana small business investment capital company."

Section 95. Section 90-10-103, MCA, is amended to read:

"90-10-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the Montana capital investment board provided for in 90-10-201.
- (2) "Capitalize" means to acquire or provide debt, equity, or a combination of debt and equity.
- (3) "Certificate" means the document authorized by the board for which contingent, deferred tax credits may be available pursuant to a contract between the board and the designated investor group.
- (4) "Certificate holder" means the person to whom a tax credit initially is allowed pursuant to 90-10-303 and any person who receives a tax credit allocated under 90-10-303 under a transfer agreement that meets the registration and verification requirements provided for in 90-10-301.
- (5) "Designated investor group" means the investor group selected by the board pursuant to 90-10-202.
- (6) "Equity capital" means cash invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.
- (7) "Investor" means an individual, corporation, partnership, limited liability company, or other legal entity organized under state or federal laws that has contracted with the designated investor group and that has capitalized the Montana equity fund.
- (8) "Montana business or project" means an entity with at least 50% of its employees or assets located in Montana.
- (9) "Montana equity fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group pursuant to 90-10-305.
- (10) "Montana evergreen fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group as a subfund of the Montana equity fund with investments to be made in primary sector businesses as defined in 39-11-103. These businesses must be headquartered in Montana or have 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location.
- (11) "Near-equity capital" means cash invested in unsecured, undersecured, subordinated, or convertible loans or debt securities.
- (12) "Person" means ~~a taxpayer as defined in 15-30-101~~ or a corporation as described in 15-31-101.
- (13) "Proceeds" means revenue arising from the designated investor group's investments after deducting contractual obligations to the designated investor group's investors and the Montana equity fund's investors. Contractual obligations include but are not limited to fees, reimbursement of expenses, and up to 10% of net

realized gains that may be allocated and contractually obligated to the designated investor group and specified Montana equity fund investors.

(14) "Tax credits" means credits allowed pursuant to 90-10-303 and available to a certificate holder against tax liabilities imposed by Title 15, chapter ~~30~~ 31, or by 33-2-705."

NEW SECTION. Section 96. Repealer. Sections 2-18-1312, 15-1-102, 15-1-109, 15-1-230, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 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, 15-30-140, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146, 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154, 15-30-155, 15-30-156, 15-30-157, 15-30-165, 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, 15-30-193, 15-30-194, 15-30-196, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210, 15-30-215, 15-30-241, 15-30-247, 15-30-248, 15-30-255, 15-30-301, 15-30-302, 15-30-303, 15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310, 15-30-311, 15-30-312, 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331, 15-30-601, 15-30-602, 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-32-109, 15-32-115, 15-32-201, 15-32-202, 15-32-203, 15-61-202, and 15-62-207, MCA, are repealed.

NEW SECTION. Section 97. Directions to code commissioner. Sections 15-30-163, 15-30-164, 15-30-246, 15-30-261, 15-30-262, 15-30-263, 15-30-264, 15-30-265, 15-30-266, 15-30-267, 15-30-268, 15-30-269, 15-30-270, 15-30-271, 15-30-272, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1114, and 15-30-1121 are intended to be renumbered and codified as an integral part of Title 15, chapter 31.

NEW SECTION. Section 98. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 99. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell

Chippewa tribe.

NEW SECTION. **Section 100. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2012.

(2) [Section 1 and this section] are effective on passage and approval.

NEW SECTION. **Section 101. Applicability.** [Sections 2 through 95] apply to calendar years, tax years, and fiscal years beginning after December 31, 2011.

- END -

