

HOUSE BILL NO. 651

INTRODUCED BY J. COHENOUR

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO TAXATION;  
5 REQUIRING DISCLOSURE OF REPORTABLE TRANSACTIONS; PROVIDING A PENALTY FOR FAILING TO  
6 REPORT A REPORTABLE TRANSACTION; PROVIDING A PENALTY FOR A LISTED TRANSACTION  
7 UNDERSTATEMENT; PROVIDING A PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS; PROVIDING  
8 A PENALTY FOR A SUBSTANTIAL UNDERSTATEMENT OF TAX; PROVIDING A PENALTY FOR FAILING TO  
9 PROVIDE INFORMATION; PROVIDING A PENALTY FOR FILING A FRAUDULENT RETURN; PROVIDING  
10 FOR VOLUNTARY COMPLIANCE PROGRAMS; CLARIFYING THE INTEREST RATE ON CORPORATION  
11 LICENSE TAX REFUNDS; EXTENDING THE TIME WITHIN WHICH CERTAIN DEFICIENCIES MAY BE  
12 ASSESSED; REQUIRING CORPORATIONS TO FURNISH OTHER STATE RETURNS AND ADJUSTMENTS;  
13 REQUIRING CORPORATIONS TO FILE INFORMATION ABOUT STATE TAX RETURN ITEMS AND FILING  
14 POSITIONS TAKEN IN OTHER STATES; REQUIRING CERTAIN TAXPAYERS THAT PROTEST TAXES  
15 ASSESSED ON CERTAIN CENTRALLY ASSESSED PROPERTY TO SUPPORT THEIR ASSERTED PROTEST  
16 VALUE WITH A WRITTEN APPRAISAL; PROHIBITING THE USE OF CONTINGENCY FEE APPRAISALS IN  
17 PROPERTY TAX APPEALS; AMENDING SECTIONS 15-1-206, 15-1-216, 15-1-402, 15-2-301, 15-2-302,  
18 15-30-145, AND 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, RETROACTIVE  
19 APPLICABILITY DATES, AND APPLICABILITY DATES."  
20

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

22  
23 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], the following definitions  
24 apply:

25 (1) "Listed transaction" means a listed transaction under section 6707A of the Internal Revenue Code,  
26 26 U.S.C. 6707A.

27 (2) "Reportable transaction" means a transaction that:

28 (a) is a reportable transaction under section 6707A of the Internal Revenue Code, 26 U.S.C. 6707A; or

29 (b) is a listed transaction.  
30

1           **NEW SECTION. Section 2. Disclosures of reportable transactions -- rules.** (1) (a) Any person who  
2 engages in a reportable transaction as a buyer or transferor shall report the transaction to the department.

3           (b) Any person who, as a result of a reportable transaction, acquires an interest in property, a present  
4 or future right to income, a present or future right to claim a loss, deduction, credit, exemption, or other tax benefit,  
5 or a present or future right to an adjustment to basis shall report the transaction to the department.

6           (c) Any person who is associated with a reportable transaction in an association that the department has  
7 identified as an association that requires reporting shall report the transaction to the department.

8           (2) A reportable transaction must be reported to the department in the time, form, and manner prescribed  
9 by the department.

10          (3) The department shall adopt rules for the administration of this section.

11  
12          **NEW SECTION. Section 3. Penalty for failure to report reportable transaction.** (1) If a taxpayer fails  
13 to report a reportable transaction to the department as required by [section 2], there must be added to the tax  
14 liability of the taxpayer for the tax year a penalty as follows:

15           (a) individual taxpayers \$5,000; or

16           (b) C. corporation taxpayers \$25,000.

17           (2) If the reportable transaction is a listed transaction, in lieu of the penalty provided in subsection (1),  
18 the penalty is:

19           (a) individual taxpayers \$50,000; or

20           (b) C. corporations \$100,000.

21  
22          **NEW SECTION. Section 4. Listed transaction understatement penalty.** (1) If a taxpayer has a listed  
23 transaction understatement for a tax year, there must be added to the tax liability of the taxpayer for the tax year  
24 a penalty equal to 60% of the amount of the understatement. The penalty is in addition to any other penalty.

25           (2) As used in this section, "listed transaction understatement" means the sum of:

26           (a) the amount determined by multiplying the highest rate of tax imposed on the taxpayer under  
27 15-30-103 or, if the taxpayer is a C. corporation, under 15-31-121, by any net increase in taxable income that  
28 results from the difference between the proper tax treatment of a listed transaction and the treatment of the  
29 transaction on the return of the taxpayer; and

30           (b) the amount of any decrease in the aggregate amount of credits determined under Title 15 that results

1 from the taxpayer's treatment of a listed transaction and the proper tax treatment of the transaction.

2

3 **NEW SECTION. Section 5. Penalty for promoting abusive tax shelters.** (1) The department shall  
4 impose a penalty on a person who promotes a tax shelter if:

5 (a) the person is or would be subject to a penalty for promoting an abusive tax shelter under section 6700  
6 of the Internal Revenue Code, 26 U.S.C. 6700; and

7 (b) the tax shelter satisfies any of the following conditions:

8 (i) the tax shelter is organized in this state;

9 (ii) the tax shelter is doing business in this state;

10 (iii) the tax shelter derives income from sources in this state; or

11 (iv) at least one investor in the tax shelter is a Montana individual income taxpayer, a Montana  
12 corporation license taxpayer, or a member of a Montana unitary combined group.

13 (2) The amount of the penalty is 100% of the amount of gross income derived by the person in promoting  
14 the tax shelter.

15 (3) The penalty is in addition to any other penalty.

16

17 **NEW SECTION. Section 6. Extended limitations -- listed transactions.** If the department finds that  
18 a return reflects the use of a listed transaction, as defined in [section 1], and that use of the listed transaction  
19 results in a deficiency in tax paid, notice of that deficiency may be given at any time within 10 years after the  
20 return was filed.

21

22 **NEW SECTION. Section 7. Furnishing copy of other state's return, report, and adjustment.** (1)  
23 Every taxpayer shall, upon request of the department, furnish a copy of any income tax return or audit report  
24 made upon any audit or adjustment of the taxpayer's income tax return of another state.

25 (2) (a) The taxpayer shall report to the department any change in the taxpayer's taxable income that is  
26 subject to tax by this state or any change in the taxpayer's tax liability paid to or owing this state because:

27 (i) a competent authority has changed or corrected the amount of a taxpayer's taxable income, tax credit,  
28 or other amount taken into account in determining the taxpayer's tax liability as reported on an income tax return  
29 of another state for any tax year; or

30 (ii) the taxpayer:

- 1 (A) files an original or amended return that is accepted by the taxing authority of another state; or  
 2 (B) is assessed tax by the taxing authority of another state for the failure to file a return as required.
- 3 (b) In the case of a change or correction made by the taxing authority of another state, the report must  
 4 either concede the accuracy of the determination or state why the taxpayer believes it to be erroneous.
- 5 (c) In the case of a taxpayer filing an original or amended return of another state that reports a change  
 6 in the taxpayer's taxable income that is subject to tax by this state or that results in a change in the taxpayer's  
 7 tax liability paid to or owing this state, the report required by this subsection must be an amended Montana return.  
 8 The taxpayer shall file the amended return with the department within 90 days.
- 9 (3) For purposes of this section:
- 10 (a) a change or correction of a taxpayer's taxable income is considered to be made on the date of the  
 11 audit report making the change or correction; and
- 12 (b) the date on which an original or amended return is accepted by the taxing authority of another state  
 13 is the date the original or amended return is filed if the return is subsequently accepted by the other state's taxing  
 14 authority.
- 15 (4) (a) If an authorized officer of another state's taxing authority makes a change or correction as  
 16 provided in this section and, as a result of the change or correction, an assessment of tax or issuance of a refund  
 17 is permitted under any provision of the applicable law of the other state or pursuant to an agreement between  
 18 the taxpayer and the other state's taxing authority that extends the period in which an assessment of other state  
 19 tax may be made, then notice of deficiency under 15-31-503 may be given within the later of the time provided  
 20 in 15-31-509 or 2 years after the department is notified by the taxpayer or other tax official of the correction.
- 21 (b) A notice of deficiency given pursuant to this subsection (4) may assert any adjustment necessary to  
 22 arrive at the correct amount of Montana taxable income and Montana tax liability for the tax year for which the  
 23 other state's change or correction is made.

24

25 **NEW SECTION. Section 8. Disclosure of inconsistent state tax filing positions.** (1) (a) Subject to  
 26 subsection (1)(b), a taxpayer that conducts business activity in this state and one or more other states or is a  
 27 member of a combined reporting group that conducts business activity in this state and one or more other states  
 28 shall, in the time, form, and manner required by subsection (2), disclose whether the taxpayer or a combined  
 29 reporting group of which the taxpayer is a member has taken an inconsistent filing position.

30 (b) A taxpayer is subject to the provisions of this section for any tax year for which the taxpayer or a

1 combined reporting group of which the taxpayer is a member:

- 2 (i) is required to file U.S. treasury, internal revenue service Schedule M-3 with a federal tax return;  
 3 (ii) is subject to allocation and apportionment under 15-31-301; and  
 4 (iii) has a Montana apportionment percentage, as shown on the Montana tax return, of less than 20%.

5 (2) (a) The disclosure required by subsection (1) must be filed, for any tax year to which this section  
 6 applies, within 180 days after:

7 (i) the date the taxpayer or the consolidated return group of which the taxpayer is a member files the  
 8 original federal income tax return; and

9 (ii) the date the taxpayer or the Montana unitary combined group of which the taxpayer is a member files  
 10 an amended Montana corporation license tax return.

11 (b) The disclosure required by subsection (1) must be filed in the form and manner required by the  
 12 department.

13 (3) As used in this section, the following definitions apply:

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

- 15 (i) gross income;  
 16 (ii) an expense reflected in the taxpayer's federal income tax return or income tax return of any state; or  
 17 (iii) the use or availability for use of property in the state.

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

21 (c) "Inconsistent filing position" means the reporting or reflecting of information on any return filed for  
 22 corporation license tax purposes in a manner inconsistent with the manner in which the same or similar  
 23 information was reported or reflected on any return filed by the same taxpayer, or by a member of a combined  
 24 reporting group of which the same taxpayer is a member, in another state with respect to a tax on or measured  
 25 by net income for the same tax year.

26

27 **Section 9.** Section 15-1-206, MCA, is amended to read:

28 **"15-1-206. Waiver of penalties -- interest -- voluntary compliance program -- rules.** (1) The  
 29 department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

30 **(2) (a) The department may develop and administer voluntary compliance programs for taxes**

1 administered by the department under Titles 15 and 16.

2 (b) The department shall adopt rules to establish the requirements and procedures for each program.

3 The rules must include a description of eligible participants, the tax years and penalties to which the program

4 relates, and the penalties that may be waived.

5 ~~(2)~~(3) Whenever the department waives a penalty provided for in this title, it also may, in its discretion,

6 waive interest not to exceed \$100 due upon the tax."

7

8 **Section 10.** Section 15-1-216, MCA, is amended to read:

9 **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**

10 **-- exceptions -- uniform provision for interest on overpayments.** (1) A person who fails to file a required tax

11 return or other report with the department by the due date, including any extension of time, of the return or report

12 must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

13 (2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be

14 assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not

15 exceed 12% of the tax due.

16 (b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter

17 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The

18 penalty may not exceed 15% of the tax due.

19 (c) A person who makes a substantial understatement of tax imposed under Title 15, chapter 30 or 31,

20 must be assessed a substantial understatement penalty in an amount equal to 20% of the understatement. As

21 used in this subsection (2)(c), "understatement" means the amount of the tax required to be shown on the return

22 for the tax year minus the amount of tax imposed that is shown on the return. For purposes of this subsection

23 (2)(c):

24 (i) there is a substantial understatement of tax imposed under Title 15, chapter 30, if the understatement

25 is the greater of 10% of the amount of tax required to be shown on the return or \$3,000; and

26 (ii) there is a substantial understatement of tax imposed under Title 15, chapter 31, if the understatement

27 exceeds the lesser of:

28 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than

29 \$10,000; or

30 (B) \$500,000.

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

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

8           (b) A person who refuses or neglects to furnish any information within 60 days after receiving written  
9 notice from the department that the information must be furnished is liable for a penalty for the refusal or neglect  
10 in an amount equal to the greater of \$50 or 20% of any deficiency assessment made for any tax year to which  
11 the requested information relates. The department may bring an action in the name of the state to recover the  
12 penalty and any delinquent taxes.

13           (c) A person who files a fraudulent return is liable for a penalty of not more than \$5,000. The department  
14 may bring an action in the name of the state to recover the penalty and any delinquent taxes.

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

18           (i) For individual income taxes not paid when due, including delinquent taxes and deficiency  
19 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the  
20 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code,  
21 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

22           (ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and  
23 deficiency assessments, the interest rate is 12%.

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

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

29           (b) This section does not apply to:

30           (i) property taxes; or

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

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

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

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

7 (9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or  
8 delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the  
9 interest rate determined in subsection (4)(a)(†). (Bracketed language in subsection (5)(a) terminates June 30,  
10 2020--sec. 18, Ch. 288, L. 2005.)"

11

12 **Section 11.** Section 15-1-402, MCA, is amended to read:

13 **"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a  
14 property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay  
15 under written protest that portion of the property tax or fee protested.

16 (b) The protested payment must:

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

18 (ii) specify the grounds of protest; and

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

22 (c) If the protested property tax or fee is on property that is subject to central assessment pursuant to  
23 15-23-101, the person shall:

24 (i) report to the department the grounds of the protest and the amount of the protested payment for each  
25 county in which a protested payment was made; and

26 (ii) if the aggregate statewide protested amount on valuation grounds exceeds \$100,000, attach a  
27 qualified appraisal supporting the protested amount.

28 (d) By November 1 of each year, the department shall mail a notice stating the requirements of this  
29 subsection ~~(4)(e)~~ (1)(d) to owners of property subject to central assessment under 15-23-101(1) and (2) who have  
30 filed a timely appeal under 15-1-211.

1 (2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing  
2 a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay  
3 the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when  
4 due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

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

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

18 (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to  
19 15-23-101 must be remitted by the county treasurer to the department.

20 (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant  
21 to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the  
22 funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue  
23 fund.

24 (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited  
25 in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special  
26 revenue fund.

27 (5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by  
28 the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved  
29 may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion  
30 of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the

1 protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does  
2 not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the  
3 first-year protest amount.

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

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

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

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

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

27 (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the  
28 protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which  
29 local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the  
30 treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction

1 is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state  
2 treasurer as provided in subsection (6)(b).

3 (ii) For an adverse protest action against the state for centrally assessed property, the department shall  
4 refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and  
5 from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an  
6 adverse protested action from the centrally assessed property tax state special revenue fund may not exceed  
7 the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii)  
8 and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred  
9 to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested  
10 action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments  
11 to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder  
12 of the refund proportionally from the state general fund and from money deposited in the state special revenue  
13 fund levied pursuant to 15-10-107.

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

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

- 22 (a) imposition of a property tax to be collected by a special tax protest refund levy;  
23 (b) the general fund or any other funds legally available to the governing body; and  
24 (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving  
25 revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or  
26 school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be  
27 issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

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

30 (9) As used in this section, "qualified appraisal" means a written appraisal that complies with the uniform

1 standards of professional appraisal practice of the appraisal standards board of the appraisal foundation, as  
2 defined in 37-54-102."

3

4 **Section 12.** Section 15-2-301, MCA, is amended to read:

5 **"15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail  
6 a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If  
7 the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the  
8 state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state  
9 board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the  
10 decision of the county board. The notice must specify the action complained of and the reasons assigned for the  
11 complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax  
12 appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat  
13 as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest.  
14 The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place  
15 of the hearing.

16 (2) At the time of giving notice of acceptance of an appeal, the state board may require the county board  
17 to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its  
18 proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a  
19 copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear  
20 further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its  
21 members or to a designated hearings officer. The board member or hearings officer may exercise all the powers  
22 of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings,  
23 together with a transcript or a ~~tape~~ recording of the hearing, to the board. The state board shall determine the  
24 appeal on the record.

25 (3) On all hearings at county seats throughout the state, the state board or the member or hearings  
26 officer designated to conduct a hearing may employ a competent person to electronically record the testimony  
27 received. The cost of electronically recording testimony may be paid out of the general appropriation for the  
28 board.

29 (4) (a) In connection with any appeal under this section, the state board;

30 (i) is not bound by common law and statutory rules of evidence or rules of discovery ~~and~~ but may not

1 admit a contingent fee appraisal in evidence;

2 (ii) may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the  
 3 Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board;

4 (iii) may not amend or repeal any administrative rule of the department. The state tax appeal board; and

5 (iv) shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or  
 6 otherwise unlawful.

7 (b) To the extent that this section is in conflict with the Montana Administrative Procedure Act, this  
 8 section supersedes that act.

9 (c) As used in this subsection (4), a contingent fee appraisal is any appraisal, opinion of value, or other  
 10 assignment:

11 (i) for which any part of the compensation for the appraisal is contingent on:

12 (A) the reporting of a predetermined result;

13 (B) a direction in assignment results that favors the cause of the client;

14 (C) the amount of a value opinion;

15 (D) the attainment of a stipulated result; or

16 (E) the occurrence of a subsequent event directly related to an appraiser's opinion and specific to the  
 17 assignment's purpose; or

18 (ii) that was prepared at the direction of or provided to any person who is compensated by the taxpayer  
 19 in whole or in part on a contingent fee basis.

20 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless  
 21 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board  
 22 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the  
 23 extent that it does not conflict with 15-2-303.

24 (6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing  
 25 an order to change the valuation of property."  
 26

27 **Section 13.** Section 15-2-302, MCA, is amended to read:

28 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A  
 29 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

30 (a) property centrally assessed under chapter 23;

- 1 (b) classification of property as new industrial property;
- 2 (c) any other tax, other than the property tax, imposed under this title; or
- 3 (d) any other matter in which the appeal is provided by law.
- 4 (2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of
- 5 the department's final decision. The complaint must set forth the grounds for relief and the nature of relief
- 6 demanded. The board shall immediately transmit a copy of the complaint to the department.
- 7 (3) The department shall file with the board an answer within 30 days following filing of a complaint.
- 8 (4) (a) The Subject to subsection (4)(b), the board shall conduct the appeal in accordance with the
- 9 contested case provisions of the Montana Administrative Procedure Act.
- 10 (b) The board may not admit a contingent fee appraisal in evidence. As used in this subsection (4)(b),
- 11 contingent fee appraisal has the meaning provided in 15-2-301.
- 12 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
- 13 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
- 14 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the
- 15 extent that it does not conflict with 15-2-303."

- 16
- 17 **Section 14.** Section 15-30-145, MCA, is amended to read:
- 18 **"15-30-145. Revision of return by department -- statute of limitations -- examination of records**
- 19 **and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect,
- 20 it may revise the return.
- 21 (2) If a taxpayer does not file a return as required under this chapter, the department may, at any time,
- 22 audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and,
- 23 based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.
- 24 (3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be
- 25 determined by the department within 5 years after the return was filed, regardless of whether the return was filed
- 26 on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under
- 27 this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day
- 28 prescribed for filing.
- 29 (4) (a) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return
- 30 that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is

1 filed and the tax may be collected at any time after it becomes due.

2 (b) If the department finds that a return or report reflects the use of a listed transaction, as defined in  
 3 [section 1], and that use of the listed transaction results in a deficiency in tax paid, notice of that deficiency may  
 4 be given at any time within 10 years after the return is filed.

5 (5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of  
 6 making an estimate of taxable income of any person where information has been obtained, may also examine  
 7 or cause to have examined by any agent or representative designated by it for that purpose any books, papers,  
 8 or records of memoranda bearing upon the matters required to be included in the return and may require the  
 9 attendance of the person rendering the return or any officer or employee of the person or the attendance of any  
 10 person having knowledge in the premises and may take testimony and require proof material for its information,  
 11 with power to administer oaths to the person or persons."

12

13 **Section 15.** Section 15-31-509, MCA, is amended to read:

14 **"15-31-509. Periods of limitation.** (1) Except as otherwise provided in 15-31-544, [section 6, section  
 15 7], and this section, a deficiency may not be assessed or collected with respect to the year for which a return is  
 16 filed unless the notice of additional tax proposed to be assessed is mailed within ~~3~~ 5 years from the date that the  
 17 return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is  
 18 considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the  
 19 tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior  
 20 to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment  
 21 of additional tax may not apply when:

22 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of  
 23 federal tax if the suspension of the limitation set forth in this section lasts:

24 (i) only as long as the suspension of the federal statute of limitation; or

25 (ii) until 1 year after the federal changes have become final or an amended federal return is filed as a  
 26 result of the suspension of the federal statute, whichever is the latest in time; or

27 (b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until ~~3~~ 5 years  
 28 after the federal changes become final or the amended federal return was filed, whichever the case may be.

29 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after  
 30 ~~3~~ 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,

1 whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the  
 2 refund or credit or the department has determined the existence of the overpayment and has approved the refund  
 3 or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within  
 4 which the department may propose an additional assessment, the period within which a claim for refund or credit  
 5 may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

6 (3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback  
 7 adjustment as provided in 15-31-119, ~~in lieu of the 3-year period provided for in subsection (1), the period must~~  
 8 ~~be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of~~  
 9 ~~the net loss that results in the carryback~~ the overpayment may be refunded or credited within the period that  
 10 expires on the 15th day of the 41st month following the close of the tax year of the net operating loss if that period  
 11 expires later than 5 years from the due date of the return for the year to which the net operating loss is carried  
 12 back.

13 (4) If the year of the net operating loss is open under either state or federal waivers, the year to which  
 14 the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the  
 15 expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."  
 16

17 **NEW SECTION. Section 16. Codification instruction.** (1) [Sections 1 through 5] are intended to be  
 18 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 5].

19 (2) [Sections 6 and 7] are intended to be codified as an integral part of Title 15, chapter 31, part 5, and  
 20 the provisions of Title 15, chapter 31, part 5, apply to [sections 6 and 7].  
 21

22 **NEW SECTION. Section 17. Effective date.** [This act] is effective on passage and approval.  
 23

24 **NEW SECTION. Section 18. Retroactive applicability.** (1) (a) Except as provided in subsection (1)(b),  
 25 [sections 1, 4, and 5] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December  
 26 31, 1998.

27 (b) The penalty imposed in [section 4] applies retroactively, within the meaning of 1-2-109, to listed  
 28 transaction understatements discovered or reported after December 31, 2008.

29 (2) The penalties imposed in [sections 3 and 5] apply retroactively, within the meaning of 1-2-109, to tax  
 30 years beginning after December 31, 2008.

1 (3) [Sections 6 and 14] apply retroactively, within the meaning of 1-2-109, to tax years for which the  
2 statute of limitations on assessment has not expired as of [the effective date of this act].

3 (4) [Sections 7, 8, and 11] apply retroactively, within the meaning of 1-2-109, to tax years beginning after  
4 December 31, 2008.

5 (5) (a) Except as provided in subsection (5)(b), [section 10] applies retroactively, within the meaning of  
6 1-2-109, to tax years beginning after December 31, 2008.

7 (b) The provisions of [section 10(9)] apply retroactively, within the meaning of 1-2-109, to tax years  
8 beginning after December 31, 2006.

9 (6) The provisions extending the periods from 3 to 5 years in [section 15] apply retroactively, within the  
10 meaning of 1-2-109, to tax years beginning after December 31, 2005.

11

12 **NEW SECTION. Section 19. Applicability.** (1) [Section 9] applies after [the effective date of this act].

13 (2) The provisions of [sections 13 and 14] prohibiting the introduction of contingent fee appraisals as  
14 evidence apply to hearings held on or after [the effective date of this act].

15

- END -