

1 HOUSE BILL NO. 588

2 INTRODUCED BY A. HERTZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEPARTMENT OF REVENUE LAWS REGARDING
5 EXAMINATION AND COLLECTION OF TAXES, INTEREST, AND PENALTIES; PROVIDING INCOME TAX
6 TAXPAYERS WITH AN OPPORTUNITY FOR A FRESH START; REVISING THE TAXPAYER BILL OF RIGHTS
7 AND PROVIDING FOR CORRESPONDING TAXPAYER RESPONSIBILITIES; REQUIRING TRAINING FOR
8 CERTAIN DEPARTMENT OF REVENUE EMPLOYEES; PROVIDING INCOME TAX COLLECTION
9 ALTERNATIVES, INCLUDING INSTALLMENT PLANS, OFFERS IN COMPROMISE, AND AUDIT
10 RECONSIDERATION; PROVIDING FOR ECONOMIC HARDSHIP STATUS; PROVIDING RECOVERY
11 PROCEDURES FOR UNCLAIMED INCOME TAX FUNDS; REVISING DUTIES OF THE OFFICE OF TAXPAYER
12 ASSISTANCE; REVISING WARRANT OF DISTRRAINT PROCEDURES AND THE PROCESS FOR
13 WITHDRAWAL OF LIENS; REVISING INNOCENT SPOUSE RELIEF PROCEDURES; PROVIDING
14 RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-207, 15-1-221, 15-1-222, 15-1-223, 15-1-702,
15 15-1-706, 15-1-708, 15-30-2646, AND 25-13-212, MCA; AND PROVIDING AN APPLICABILITY DATE."

16

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

18

19 **NEW SECTION. Section 1. Taxpayer responsibilities.** In enjoying the taxpayer bill of rights, taxpayers
20 have corresponding responsibilities. The following responsibilities help taxpayers understand what Montana's
21 tax laws require of them:

22 (1) The taxpayer has the responsibility to be truthful in preparing tax returns and in all other dealings with
23 the department.

24 (2) The taxpayer has the responsibility to answer all relevant questions completely and honestly, to
25 provide all required information on a timely basis, and to explain all relevant facts and circumstances when
26 seeking guidance from the department.

27 (3) The taxpayer has the responsibility to maintain adequate books and records to fulfill tax obligations,
28 preserve books and records during the time they may be subject to department inspection, and provide the
29 department with access to those books and records when asked so the department can examine tax liabilities
30 to the extent required by law.

1 (4) The taxpayer has the responsibility to pay the full amount of taxes owed by the due date and to pay
2 any legally correct additional assessments in full, but no more. If a taxpayer cannot pay in full, the taxpayer has
3 a responsibility to comply with all terms of any full or partial payment plans the department agrees to accept.

4 (5) The taxpayer has the responsibility to treat department personnel politely and with respect.
5

6 **NEW SECTION. Section 2. Collection of income taxes -- voluntary compliance -- employee**
7 **training.** (1) Collection of the revenue to provide for schools, public health and safety, and all the benefits
8 Montana citizens expect of their government is one of the most difficult and important responsibilities of the
9 department. The department is expected to collect income taxes owed the state in a manner that encourages
10 Montana citizens to voluntarily pay their income taxes and to ensure that citizens who intentionally underpay
11 income taxes or commit fraud are detected and pay the income taxes owed to the state.

12 (2) The department shall provide training to revenue officers that will enable them to provide quality
13 customer service to taxpayers that are delinquent in income tax compliance. The training must pertain to
14 principles, methods, and techniques that can be used to assist taxpayers understand notices, liens, and levies,
15 while at the same time providing taxpayers with an understanding of the tools that are available to address tax
16 delinquencies through the use of an installment payment plan, offer in compromise, and economic hardship relief.
17 The ultimate goal of the training is to address individual circumstances while encouraging taxpayers to work with
18 the department and become long-term voluntary taxpayers.

19 (3) The department may partner with government, private, and nonprofit entities to help educate
20 taxpayers in the areas of household and small business budgeting and management.
21

22 **NEW SECTION. Section 3. Individual income and withholding -- installment payment plans.** (1)
23 The department shall provide taxpayers that are unable to pay their individual income and withholding tax
24 obligations in full, including associated penalties and interest, with the ability to make periodic payments over
25 time. The department shall inform taxpayers that interest will continue to accrue over the duration of the payment
26 plan and that income tax refunds will continue to be offset until the debt is satisfied.

27 (2) (a) A taxpayer may apply for a streamlined installment payment plan without filing a collection
28 information statement if the taxpayer:

29 (i) has an obligation of \$25,000 or less in individual income tax or withholding tax, including any
30 associated penalties and interest;

- 1 (ii) has filed all required Montana tax returns; and
- 2 (iii) can satisfy the obligation within 6 years.
- 3 (b) A business taxpayer that owes \$25,000 or less in combined payroll taxes, penalties, and interest that
- 4 meets the requirements of subsection (2)(a) qualifies for a streamlined installment payment plan.
- 5 (3) A taxpayer may determine the amount to be paid each month under a streamlined payment plan. A
- 6 default agreement is equal to the balance due divided by 72 months.
- 7 (4) A taxpayer satisfying the requirements of subsection (2) that makes payments through a direct debit
- 8 agreement may request that the department withdraw a warrant for distraint after at least 2 months of regular
- 9 installment payments.
- 10 (5) The department shall require taxpayers that do not qualify for a streamlined payment plan under
- 11 subsection (2) to complete and return internal revenue service form 433-A or 433-B, a relevant internal revenue
- 12 service collection information statement, or a collection information statement form prepared by the department,
- 13 in addition to submitting an application for installment payments.
- 14 (6) The department may approve a partial payment plan that is 6 years in duration, with a renewal for
- 15 an additional 6 years or until the obligation is satisfied.
- 16 (7) The department shall provide taxpayers with a collection information statement and an application
- 17 for installment payments on the department's website, by telephone, by mail, or in person at a local department
- 18 office.
- 19 (8) The department shall accept payments by direct debit, payroll deduction, electronic funds transfer,
- 20 or credit or debit card, through the mail, or delivered in person at the department's Helena office.
- 21 (9) The department shall verify a taxpayer's collection information statement in the least intrusive manner
- 22 possible and consult its third-party financial databases.
- 23 (10) In negotiating an appropriate installment payment plan, the department may not require payments
- 24 that make the taxpayer unable to meet reasonable living expenses. In making this determination, the department
- 25 shall use the current guidelines and standards used by the internal revenue service for allowable national and
- 26 local living expenses and provide a hyperlink on the department's website to the standards on the application for
- 27 installment payments.
- 28 (11) If a taxpayer is unable to make a scheduled payment due to an unforeseen event, including but not
- 29 limited to health issues of the taxpayer or a dependent, a death in the family, a disability of the taxpayer or a
- 30 dependent, divorce of the taxpayer, or a natural disaster that directly impacts the taxpayer, the department shall

1 endeavor to keep the taxpayer in an installment payment plan.

2 (12) If a taxpayer desires to modify a payment plan due to a change in circumstances, the taxpayer may
3 seek modification of the plan in the same manner as establishing the plan, unless the plan will exceed the
4 standard limit of full payment within 6 years.

5 (13) If a taxpayer defaults on a payment plan, the department shall reinstate the warrant for distraint
6 within 30 days and take further collection action.

7 (14) If a taxpayer is unable to pay an obligation through installments, the department shall refer the
8 taxpayer to the offer in compromise program provided in [section 4] or consider an economic hardship
9 determination as provided in [section 6].

10 (15) The department shall suspend collection actions while considering a taxpayer's application for
11 installment payments. If the department denies a taxpayer's request, it shall notify the taxpayer and suspend
12 further collection action for 30 days.

13 (16) A taxpayer may appeal the denial of an application for installment payments to the dispute resolution
14 office under 15-1-211 within 30 days of receiving the department's determination. Collection action must be
15 suspended until 30 days after the dispute resolution office has issued a finding.

16
17 **NEW SECTION. Section 4. Offer in compromise.** (1) An offer in compromise is an agreement between
18 the taxpayer and the department to accept less than the balance due on individual income and withholding tax
19 obligations, including associated penalties and interest, from a taxpayer as full payment of the taxpayer's
20 outstanding tax liability. An offer in compromise provides eligible taxpayers with a path toward paying off tax debt
21 and getting a fresh start.

22 (2) The department may accept an offer in compromise if:

23 (a) the tax liability may not be accurate or there is a lack of evidence or documentation to support the
24 taxpayer's tax liability or assessment;

25 (b) the department's lien or statutory timeframe for collections has expired;

26 (c) the taxpayer has a limited ability or inability to pay the full amount due; or

27 (d) paying the full amount due would cause an economic hardship for the taxpayer or be unjust.

28 (3) The goals for an offer in compromise are to:

29 (a) collect as much of the taxpayer's tax liability as possible;

30 (b) serve the best interests of both taxpayer and the department;

1 (c) resolve the taxpayer's current liability and bring the taxpayer into compliance with all filing and
2 reporting requirements; and

3 (d) encourage future compliance.

4 (4) The department shall suspend collection actions while considering a taxpayer's offer in compromise
5 and for 30 days after making its determination. If the department denies a taxpayer's request, it shall notify a
6 taxpayer and suspend further collection action for 30 days.

7 (5) The taxpayer shall submit internal revenue service form 656, a relevant internal revenue service offer
8 in compromise form, or an offer in compromise form prepared by the department to the department for
9 consideration. The department must consult department and third-party financial databases to verify the
10 taxpayer's financial condition in the least intrusive manner possible and obtain internal revenue service form
11 433-A or 433-B, a relevant internal revenue service collection information statement, or a collection information
12 statement form prepared by the department.

13 (6) When calculating a taxpayer's reasonable collection potential, the department shall consider:

14 (a) 1 year of future income for offers in compromise that request payment in 5 or fewer months from the
15 date the department accepts the offer; and

16 (b) 2 years of future income for offers in compromise that request payment within 24 months from the
17 date the department accepts the offer.

18 (7) The department may not accept an offer in compromise if it determines a taxpayer is able to pay the
19 obligation in full or through an installment payment agreement unless the taxpayer meets one of the criteria in
20 subsection (2).

21 (8) The department may not reject an offer in compromise solely based on the dollar amount.

22 (9) The department shall provide an offer in compromise calculator on its website that enables taxpayers
23 to determine whether the program is a realistic option to resolve their balance due, or provide a hyperlink to the
24 internal revenue service calculator. If the department creates a calculator, it shall use the same criteria and
25 formulas as the internal revenue service calculator.

26 (10) A taxpayer may appeal the denial of an offer in compromise to the dispute resolution office under
27 15-1-211 within 30 days of receiving the department's determination. Collection actions will be suspended for
28 30 days after the dispute resolution office has reached its finding in the matter.

29 (11) An offer in compromise must include all of the taxpayer's tax liability and may be paid in a lump sum
30 or in installments.

1 (12) A taxpayer shall timely file any required tax returns and pay all future tax liabilities for 5 years
2 following acceptance of the offer in compromise, or the agreement defaults.

3
4 **NEW SECTION. Section 5. Individual income and withholding -- audit reconsideration process.**

5 (1) A taxpayer may request that the department reconsider an audit or the underlying cause of a collection action
6 if the taxpayer has new information that the department did not consider when it made its determination. The
7 purpose of reconsideration is to ensure that the amount of individual income tax assessed by the department is
8 correct.

9 (2) In order to request an audit reconsideration:

10 (a) the taxpayer must have filed an income tax return;

11 (b) the income tax assessment must remain unpaid, or the department must reverse tax credits that the
12 taxpayer is disputing;

13 (c) the taxpayer shall identify which adjustments the taxpayer is disputing; and

14 (d) if the taxpayer was previously audited for the same income tax assessment, the taxpayer shall
15 provide new information for the audited issue or issues that were not considered during the original examination.

16 (3) A taxpayer alleging that the department made a computational or processing error in assessing the
17 tax shall satisfy the provisions of subsection (2), in addition to identifying the computational or processing error.

18 (4) The department shall accept a request for reconsideration if the:

19 (a) taxpayer requests the abatement of an income tax assessment based on new information for the
20 audited issue or issues that were not previously considered which, if considered, would have resulted in a change
21 to the assessment;

22 (b) taxpayer files an original delinquent income tax return after the department has estimated the
23 taxpayer's return; or

24 (c) department has made a computational or processing error in assessing the tax.

25 (5) A taxpayer may not request an audit reconsideration if the:

26 (a) taxpayer has already been afforded an audit reconsideration request and did not provide any
27 additional information with the current request that would change the audit results;

28 (b) taxpayer has previously signed an offer in compromise as provided in [section 4] that addressed the
29 issue; or

30 (c) audit has previously been considered by the dispute resolution office or appealed to the state tax

1 appeal board.

2 (6) The audit reconsideration process does not provide for review of individual income tax returns that
3 the department has estimated on behalf of the taxpayer. A taxpayer shall file an amended income tax return if
4 the taxpayer disputes an estimated return.

5 (7) If the department concludes that a taxpayer is not eligible for audit consideration under this section,
6 the department shall issue a denial of eligibility decision. The taxpayer may appeal the denial of eligibility decision
7 to the dispute resolution office provided in 15-1-211.

8

9 **NEW SECTION. Section 6. Individual income tax -- economic hardship.** (1) The department may
10 not take an enforcement action when collection of individual income and withholding tax obligations, including
11 associated penalties, would create a hardship on a taxpayer or a taxpayer's family by leaving the taxpayer unable
12 to meet necessary living expenses. The department shall consider economic hardship as a factor in determining
13 an appropriate payment plan, an offer in compromise, or the writing off of a tax debt under 15-1-207.

14 (2) The department shall provide a form for taxpayers to apply for economic hardship status, provide a
15 statement of its availability, and provide a hyperlink to the form in all compliance and enforcement notices and
16 actions.

17 (a) Receipt of the economic hardship application by the department from a taxpayer must be considered
18 a request for economic hardship relief. The department may accept and complete the form on behalf of a
19 taxpayer over the telephone.

20 (b) The department shall request a copy of a taxpayer's internal revenue service form 433-A or 433-B,
21 a relevant internal revenue service collection information statement, or a collection information statement form
22 prepared by the department when determining hardship and collectability of the tax liability.

23 (c) The department shall suspend collection actions while it considers a request for economic hardship
24 status.

25 (3) In determining necessary living expenses, the department shall use the current guidelines and
26 standards used by the internal revenue service for allowable national and local living expenses. The department
27 shall reference the standards on any collection information statement forms prepared by the department and
28 provide a hyperlink to the standards on the department's website.

29 (4) In determining economic hardship the department shall consider the taxpayer's special circumstances
30 such as:

- 1 (a) age;
- 2 (b) employment status and seasonal employment;
- 3 (c) financial expenditures for dependents and the special circumstances of the dependents, including
- 4 the number of dependents, the age of dependents, and the health of dependents; and
- 5 (d) long-term illness and extraordinary circumstances such as a medical event or natural disaster.
- 6 (5) In making its determination the department shall verify the financial condition of the taxpayer in the
- 7 least intrusive manner possible and consult its third-party financial condition databases. The department may not
- 8 place additional requirements or barriers on a taxpayer's eligibility for an economic hardship determination.
- 9 (6) The department shall inform a taxpayer of its determination and if economic hardship status is denied.
- 10 The taxpayer may appeal a denial to the dispute resolution office provided in 15-1-211.
- 11 (7) The department may write off a taxpayer's tax debt under 15-1-207 after the taxpayer has remained
- 12 in hardship status for 3 consecutive years.

13

14 **NEW SECTION. Section 7. Certain unclaimed income tax funds.** (1) Unclaimed property includes

15 estimated income tax payments, income tax refunds, including refunds carried forward as future payments on

16 income tax returns, and income tax overpayments held within the department and not claimed by the taxpayer

17 as a refund on an income tax return prior to the expiration of the period of limitations in 15-30-2609, or as a refund

18 of an overpayment prior to the statutory deadline in 15-1-503.

19 (2) At the expiration of the statute of limitations for unclaimed income tax refunds, estimated income tax

20 payments, and income tax overpayments, the department shall report this money as unclaimed property subject

21 to the provisions of Title 70, chapter 9, part 8. However, the department may, at any time prior to the expiration

22 of the statute of limitations and the reporting of the money as unclaimed property, locate and notify taxpayers of

23 the availability of the unclaimed money and advise taxpayers how to claim a refund. The department may use

24 third-party databases or any other available data sources to locate and notify eligible taxpayers.

25

26 **NEW SECTION. Section 8. Rulemaking authority.** (1) The department shall adopt rules that are

27 necessary to implement and administer [sections 2 through 7] and this section. The department shall consider

28 relevant rules and procedures of the internal revenue services during the rulemaking process.

29 (2) The department may adopt rules to:

- 30 (a) increase the monetary limit for a streamlined installment plan, not to exceed \$50,000; and

1 (b) extend the duration of installment payment plans, not to exceed 15 years.

2

3 **Section 9.** Section 15-1-207, MCA, is amended to read:

4 **"15-1-207. Writeoff of collection of tax, penalty, or interest -- rules.** (1) The department of revenue
5 may write off the collection of any tax, penalty, or interest due to the state under this title when the department
6 determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest, or after
7 a taxpayer has remained in economic hardship status as provided in [section 6(7)]. The department shall
8 establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest. If the
9 department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's
10 file a written justification for the writeoff that includes a determination that attempted collection is not
11 cost-effective, or a determination of continued economic hardship as provided in [section 6].

12 (2) The department shall prescribe rules to establish the procedures to carry out the purposes of this
13 section."

14

15 **Section 10.** Section 15-1-221, MCA, is amended to read:

16 **"15-1-221. Short title.** Sections 15-1-221 through 15-1-223 and [section 1] may be cited as the
17 "Montana Taxpayer Bill of Rights"."

18

19 **Section 11.** Section 15-1-222, MCA, is amended to read:

20 **"15-1-222. Taxpayer bill of rights.** A taxpayer is guaranteed the rights provided to all citizens in Article
21 II of the Montana constitution and the department of revenue has the obligation to protect those rights, especially
22 the inalienable rights, the rights of individual dignity, to participation, to know, to privacy, to due process, and the
23 interaction of these rights as the department interacts with taxpayers. The department of revenue shall in the
24 course of performing its duties in the administration and collection of the state's taxes promote the voluntary
25 compliance on which its tax system is built. In complying with the constitution, the department shall ensure that:

26 (1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other
27 representatives of the department and to be treated politely and with respect by department personnel;

28 (2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's
29 interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at
30 any time, except that the selection of a representative may not be used to unreasonably delay a field audit that

1 is in progress. The representative must have ~~written~~ authorization from the taxpayer to receive from the
2 department confidential information concerning the taxpayer. The department shall provide electronic copies to
3 the authorized representative of all information sent to the taxpayer and shall notify the authorized representative
4 concerning contacts with the taxpayer.

5 (3) except as provided in ~~subsection~~ subsections (5) and (16), the taxpayer has the right to be treated
6 by the department in a similar manner as all similarly situated taxpayers regarding the administration and
7 collection of taxes, imposition of penalties and interest, and available taxpayer remedies unless there is a rational
8 basis for the department to distinguish them;

9 (4) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the
10 waiver of penalties and interest, but not taxes, when the taxpayer has relied on written advice provided to the
11 taxpayer by an employee of the department. The taxpayer has the right to pay no more than the correct amount
12 of tax.

13 ~~(5) at the discretion of the department, upon consideration of all facts relevant to the specific taxpayer,~~
14 the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection
15 applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

16 (6) the taxpayer has the right to a complete and accurate written description of the basis for any
17 additional tax assessed by the department;

18 (7) the taxpayer has the right to a review by management level employees of the department for any
19 additional taxes assessed by the department;

20 (8) the taxpayer has the right to a full explanation of the available procedures for review and appeal of
21 additional tax assessments; The taxpayer also has the right to notice and guidance in how to protect their rights
22 and property.

23 (9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have
24 the state tax appeal board or a court, or both, review any final decision of the department assessing an additional
25 tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney
26 fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

27 (10) the taxpayer has the right to expect that the department will adhere to the same tax appeal and
28 response deadlines as are required of the taxpayer unless otherwise provided by law;

29 (11) the taxpayer has the right to a full explanation of the department's authority to collect delinquent
30 taxes, including the procedures and notices that are required to protect the taxpayer; The taxpayer has the right

1 to have all of the department's rules, procedures, and policies readily available on the internet and in printed form
 2 and a clearly written summary in everyday language of all of the department's audit, collections, withholding, and
 3 property tax processes.

4 (12) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title
 5 25, chapter 13, part 6, and any other applicable provisions in Montana law; This means that the department is
 6 prohibited from taking certain exempt property such as social security benefits, and that a percentage of a
 7 taxpayer's discretionary earnings are exempt when the department levies a taxpayer's bank accounts or
 8 garnishes the taxpayer's wages.

9 (13) the taxpayer has the right to the immediate release and withdrawal of any lien the department has
 10 placed on property when the tax is ~~paid~~ satisfied or when the lien is the result of an error by the department; The
 11 taxpayer may also request a withdrawal upon entering into a direct debit installment payment agreement.

12 (14) the taxpayer has the right to assistance from the department in complying with state and local tax
 13 laws that the department administers; and

14 (15) the taxpayer has the right to be guaranteed that an employee of the department is not paid,
 15 promoted, or in any way rewarded on the basis of assessments or collections from taxpayers; and

16 (16) the taxpayer has the right to have the department use its compliance authorities to help a taxpayer
 17 in economic hardship return to voluntary compliance with tax obligations as provided in [section 6]."

18

19 **Section 12.** Section 15-1-223, MCA, is amended to read:

20 **"15-1-223. Office of taxpayer assistance.** (1) (a) The department of revenue shall establish and
 21 maintain an office of taxpayer assistance. The director of the office shall:

22 (i) report directly to the director of the department;

23 (ii) be independent of the department's divisions;

24 (iii) have complete access to the department's tax databases including use of its third-party databases
 25 in handling a taxpayer case and to information technology reports on revenue received by assessment notices,
 26 warrants for distraint, offsets, installment payment plans, levies of all kinds, offers in compromise, and the writeoff
 27 of debt;

28 (iv) review department correspondence, procedures, and regulations on behalf of taxpayer rights;

29 (v) have the discretionary authority of a department administrator in resolving taxpayer issues, but not
 30 the authority to address issues of fact or law that are considered by the department's dispute resolution office;

1 and

2 (vi) forward cases to the director of the department for final resolution when there is disagreement
3 between the office of taxpayer assistance and a division administrator.

4 (b) The office of taxpayer assistance must have the assistance of a senior auditor, collector, information
5 technologist, legal counsel, property tax assessor, and other experts as needed. When advising the office of
6 taxpayer assistance, the office is the advisers' client.

7 (2) The office shall assist taxpayers by:

8 (a) providing easily understandable tax information on audits and corrections and review procedures of
9 the department;

10 (b) providing easily understandable information on appeal procedures;

11 (c) answering questions regarding preparing and filing of returns and reports with the department; ~~and~~

12 (d) locating documents or payments filed with or submitted to the department; and

13 (e) identifying systemic taxpayer problems in the department's administration and collection of taxes and
14 maintaining an electronic form on its website that enables taxpayers to report systemic and other problems they
15 have identified in working with the department.

16 (3) The office of taxpayer assistance shall also:

17 (a) receive and evaluate complaints related to improper or abusive behavior or inefficient service
18 provided by employees of the department and recommend appropriate action to the director of the department
19 to resolve the complaints;

20 (b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken
21 to resolve complaints;

22 (c) conduct a random, substantive survey of taxpayers at least twice a year to obtain their evaluation of
23 the quality of service provided by the department; especially concerning the use of hardship and innocent spouse
24 determinations and each of the department's collection authorities. The surveys must be confidential and handled
25 in a fashion that does not allow repression or retribution by the department.

26 (d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the
27 director of the department;

28 (e) monitor the department's collection activities to:

29 (i) report any abuses in collection activities by the department to the director;

30 (ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer

1 has not had an adequate opportunity to discuss alternative means of payment; and
 2 (f) prepare annually for the director of the department a summary of its activities and the trends and
 3 issues identified by both the surveys it conducts under subsection (3)(c) and taxpayer issues reported on its
 4 website under subsection (2)(e). If the review identifies specific taxpayer problems, the report must include the
 5 office's recommended administrative and legislative changes with respect to each problem. The department shall
 6 provide the reports to the revenue and transportation interim committee biennially and include a summary of the
 7 disposition of those recommendations; and

8 (f)(g) perform any other functions that the director may assign to assist taxpayers in complying with
 9 Montana's tax laws.

10 (4) The department may charge a fee of \$1 for processing a complaint."
 11

12 **Section 13.** Section 15-1-702, MCA, is amended to read:

13 **"15-1-702. Issuance of warrant.** (1) If a tax administered and collected by the department is not paid
 14 within 30 days of the due date, the department ~~may~~ shall notify the taxpayer of the taxpayer's debt. After issuing
 15 two notices, the department shall issue a 30-day notice to the taxpayer that unless payment is received within
 16 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the
 17 department may issue a warrant if payment is not received.

18 (2) The 30-day notice shall inform a taxpayer with delinquent income taxes under Title 15, chapter 30,
 19 that the taxpayer:

20 (a) may be eligible for a streamlined installment payment plan of up to 6 years when the taxpayer is
 21 unable to pay the income tax obligation in full and the taxpayer's obligation is less than \$25,000; and

22 (b) that in special circumstances, the taxpayer may qualify for an economic hardship designation or an
 23 offer in compromise.

24 (3) When the delinquency pertains to income taxes under Title 15, chapter 30:

25 (a) the department shall conduct a case-by-case review of a taxpayer's circumstances. The review must
 26 be conducted in the least intrusive manner possible and include an analysis of the department's databases,
 27 addresses databases, and relevant private financial information.

28 (b) the department may not issue a warrant for distraint and shall withdraw a previously issued warrant
 29 for distraint when a taxpayer has no property or assets, or the taxpayer's financial condition qualifies the taxpayer
 30 for economic hardship status as provided in [section 6];

1 (c) the department shall initiate an economic hardship designation when a review under this subsection
 2 (3) identifies a taxpayer that qualifies for the designation; and

3 (d) a taxpayer meeting the criteria of subsection (3)(b) may appeal the issuance of a warrant for distraint
 4 to the dispute resolution office under 15-1-211.

5 ~~(2)~~(4) Use of the procedure to issue a warrant under this section does not preclude use of the procedure
 6 under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703."

7

8 **Section 14.** Section 15-1-706, MCA, is amended to read:

9 **"15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the
 10 department by electronic or other means that the applicable hearing provisions have been complied with, the
 11 sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as
 12 prescribed for execution upon a judgment.

13 (2) A notice of levy may be made by means of a certified letter or, upon written consent of the recipient,
 14 by electronic means by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation
 15 in excess of actual expenses incurred in enforcing the warrant.

16 (3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon
 17 earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. A levy is
 18 satisfied when a taxpayer pays the tax debt in full or enters into an installment payment plan or an offer in
 19 compromise. The levy applies to all pay periods beginning during the 120-day period.

20 (4) (a) The department shall establish an administrative process to identify and resolve all taxpayer
 21 claims as quickly as possible when wages or property are exempt or partially exempt from levy under Title 25,
 22 chapter 13, part 6.

23 (b) If possible, taxpayer claims for an exemption from levy must be resolved before the employer,
 24 financial institution, or other levy source has forwarded any seized assets to the department. The department's
 25 process must be periodically updated to make the best use of advances in technology and communications.

26 (c) The department's notice of a wage levy to an employer must be accompanied by the department's
 27 garnishment formula worksheet.

28 (d) The department's notice of a funds levy to a taxpayer must include directions for filing a claim and
 29 a claim request form that enables the taxpayer to identify, calculate, and claim wages and property that may be
 30 exempt. The department may provide a self-calculating form on the department's website that a taxpayer may

1 submit to the department for consideration of an exemption.

2 (e) Evidence that supports a claim for an exemption must be reviewed by the department and accepted
 3 as liberally and favorable to the taxpayer as reasonably possible under the circumstances. Evidence includes but
 4 is not limited to a statement from an employer, a statement by a financial institution, or other relevant and
 5 creditable sources. Evidence must be considered in any written or electronic format and in some cases by verbal
 6 confirmation.

7 (f) The department shall promptly return exempt funds or provide the taxpayer with the information and
 8 forms necessary to appeal the department's decision to the dispute resolution office under 15-1-211.

9 (g) The department shall consult with financial institutions and other partners to maximize the ability of
 10 the department and a taxpayer to identify and exclude from the levy the taxpayer's exempt property within the
 11 10-business-day period between the institution's receipt of a levy and the institution's forwarding of the seized
 12 property to the department under 25-13-402(3).

13 ~~(4)~~(5) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date
 14 of the warrant.

15 ~~(5)~~(6) If the warrant is returned not satisfied in full, the department has the same remedies to collect the
 16 deficiency as are available for any civil judgment.

17 ~~(6)~~(7) The department shall adopt rules to define and implement service of process by electronic means
 18 where authorized by law."

19

20 **Section 15.** Section 15-1-708, MCA, is amended to read:

21 **"15-1-708. Release and withdrawal of lien.** (1) Upon payment in full of the unpaid tax plus accumulated
 22 penalty, if any, and accumulated interest or when the department has issued a warrant for distraint without a legal
 23 basis, the department shall release and withdraw the lien acquired by filing the warrant for distraint within 30 days.

24 (2) Upon partial payment or whenever the department determines that a release or partial release of the
 25 lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may
 26 partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it
 27 determines that the lien is unenforceable.

28 (3) (a) The department may voluntarily withdraw a notice of lien and declare it void from the date of filing
 29 until withdrawal.

30 (b) The department shall withdraw a lien when:

- 1 (i) the taxpayer has entered into an offer in compromise;
 2 (ii) the taxpayer is determined to satisfy economic hardship criteria;
 3 (iii) the department has written off a debt under 15-1-207; or
 4 (iv) requested by a taxpayer under [section 3(4)].
 5 (c) A withdrawal of lien notice must be filed at the same office as the notice of lien. A copy of the
 6 withdrawal of lien notice must be provided to the taxpayer.
 7 (4) (a) The department may initiate reasonable efforts to notify credit reporting agencies and any other
 8 financial institution or creditor when a notice of lien is withdrawn.
 9 (b) The department shall initiate the notification provided for in subsection (4)(a) within 30 days of
 10 receiving a written request from a taxpayer. The taxpayer may request that the department notify specific financial
 11 institutions or creditors.
 12 ~~(5)~~ (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes
 13 and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is
 14 uncollectible, the department may proceed as provided in 17-4-104.
 15 (b) Reasonable fees or costs of collection incurred by the department may be added to the amount of
 16 the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or
 17 costs added pursuant to this subsection. All money collected must be applied to the debt, except that all fees or
 18 costs collected must be retained by the department. If less than the full amount of the debt is collected, the
 19 department shall retain only a proportionate share of the collection fees or costs."
 20
 21 **Section 16.** Section 15-30-2646, MCA, is amended to read:
 22 **"15-30-2646. Relief Innocent spouse relief from joint and several liability on joint return --**
 23 **limitations -- rules.** (1) A taxpayer who has obtained relief from joint and several liability under section 6015 of
 24 the Internal Revenue Code, 26 U.S.C. 6015, may apply to the department for relief from joint and several liability
 25 of the tax imposed by this chapter. The taxpayer must have filed a Montana joint return for each of the tax years
 26 for which relief is sought under this section.
 27 (2) In applying for relief under this section, the taxpayer shall provide the department with the following:
 28 (a) the tax years for which relief is sought;
 29 (b) complete copies of all correspondence sent to and received from the internal revenue service;
 30 (c) any court order stating that the taxpayer's spouse or former spouse is responsible for paying the

1 Montana individual income tax liability; and

2 (d) other information demonstrating that it would be unfair to hold the taxpayer responsible for the tax,
3 penalty, and interest.

4 (3) If the department determines, after consideration of the facts and circumstances presented by the
5 taxpayer, that it would be unfair to hold the taxpayer responsible for some or all of the tax, penalty, and interest,
6 the department shall grant the taxpayer relief from joint and several liability. The relief from joint and several
7 liability granted by the department:

8 (a) must be based on the same circumstances for which relief was granted the taxpayer by the internal
9 revenue service; and

10 (b) may not exceed the relief granted by the internal revenue service.

11 (4) The department shall also grant relief from joint and several liability to a taxpayer that is subject to
12 a department audit or collection action when it determines the taxpayer is an innocent spouse for the tax years
13 in question.

14 (5) Innocent spouse relief from a department audit or collection action must:

15 (a) be based on internal revenue service procedure 2013-34, or the internal revenue service guidance
16 that supersedes it, except that innocent spouse relief also includes collection actions;

17 (b) require that the taxpayer has filed a Montana joint return for each of the tax years for which relief is
18 sought under this section;

19 (c) be based on the guidance, documents, and correspondence developed by the internal revenue
20 service for the federal innocent spouse program, with the exception that the department may decide to not send
21 a letter notifying the nonrequesting spouse of the review if the department verifies that a letter may pose a danger
22 to the applicant; and

23 (d) be administered by the office of taxpayer assistance.

24 (6) The department shall suspend collection actions from the date of the taxpayer's request until 90 days
25 after a determination is issued.

26 (7) A taxpayer may appeal the denial of innocent spouse relief to the dispute resolution office under
27 15-1-211. The department's collection action must be suspended until 30 days after the dispute resolution office
28 has reached a finding in the matter.

29 ~~(4)~~(8) The department shall adopt rules to implement and administer this section, including but not limited
30 to establishing procedures for applying for relief allowed under this section."

1

2 **Section 17.** Section 25-13-212, MCA, is amended to read:

3 **"25-13-212. Claiming exemption -- process -- time for hearing.** (1) ~~For~~ Subject to subsection (5), to
 4 claim an exemption from execution, a judgment debtor shall file a written request for a hearing with the court that
 5 issued the execution accompanied by a written statement that describes the property that the judgment debtor
 6 claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any
 7 documentation upon which the judgment debtor is relying for the exemption claim. A copy of the request,
 8 statement, and any documentation must be mailed by the judgment debtor on the date of filing to the judgment
 9 creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request, statement, and any
 10 documentation must be filed within 10 days, excluding weekends and holidays, of the date of:

11 (a) the judgment debtor's receipt of notification of execution if notification was by personal service; or

12 (b) the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).

13 (2) If the judgment debtor does not file the request, statement, and any documentation claiming an
 14 exemption within the period provided for in subsection (1), the judgment debtor may not claim an exemption in
 15 the seized property.

16 (3) A court that receives a request for an exemption hearing, along with the statement and any
 17 documentation, shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of
 18 receipt of the request.

19 (4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff
 20 or levying officer.

21 (5) When the judgment creditor is the department of revenue, the department may establish an
 22 administrative process in lieu of the court system for judgment debtors to claim property that is exempt from levy.
 23 The administrative process may use contemporary communication practices to meet or exceed the standards
 24 of this section to assist judgment debtors in recovering exempt property in as simple and prompt a manner as
 25 is reasonably possible under the circumstances."

26

27 NEW SECTION. **Section 18. Codification instruction.** (1) [Section 1] is intended to be codified as
 28 an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

29 (2) [Sections 2 through 8] are intended to be codified as an integral part of Title 15, chapter 30, part 26,
 30 and the provisions of Title 15, chapter 30, part 26, apply to [sections 2 through 8].

1

2 **NEW SECTION.** **Section 19. Applicability.** [This act] applies to all tax liabilities, penalties, and interest
3 obligations covered by [this act], regardless of the tax year at issue.

4

- END -