

SENATE BILL NO. 338  
INTRODUCED BY J. TROPILA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF INDIVIDUAL INCOME, INCLUDING THAT OF PASS-THROUGH ENTITIES, PARTNERSHIPS, SUBCHAPTER S. CORPORATIONS, TRUSTS, AND ESTATES, BY PROVIDING THAT THE INCOME TAX BE A PERCENTAGE OF THE CALCULATED FEDERAL INCOME TAX PAID BY THE TAXPAYER; DELETING MOST DEDUCTIONS USED IN DETERMINING MONTANA TAXABLE INCOME; PROVIDING THAT FEDERAL TAX MAY BE REQUIRED TO BE RECALCULATED IF CERTAIN MONTANA-SPECIFIC ITEMS ARE TO BE INCLUDED OR EXCLUDED FROM THE MONTANA INCOME TAX; AMENDING SECTIONS 2-18-1312, 7-13-308, 7-14-1133, 7-14-1636, 7-34-2416, 13-37-218, 15-30-101, 15-30-125, 15-30-128, 15-30-145, 15-30-149, 15-30-162, 15-30-163, 15-30-164, 15-30-166, 15-30-180, 15-30-181, 15-30-189, 15-30-192, 15-30-241, 15-30-303, 15-30-323, 15-30-603, 15-30-1112, 15-30-1113, 15-31-131, 15-32-303, 15-32-402, 15-33-106, 15-61-202, 15-62-207, 15-62-208, 15-63-202, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 37-4-104, 53-2-211, 67-11-303, 87-2-102, AND 87-2-105, MCA; REPEALING SECTIONS 15-30-103, 15-30-105, 15-30-106, 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, 15-30-126, 15-30-131, 15-30-132, 15-30-135, 15-30-136, 15-30-137, 15-30-142, 15-30-143, 15-30-156, 15-30-157, 19-17-407, AND 80-12-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. State income tax as percentage of federal income tax.** (1) A state income tax is imposed and must be paid and collected for each tax year upon:

(a) the adjusted federal taxable income derived from sources within and outside of Montana of each resident and fiduciary required to make a return and to pay federal income taxes under the Internal Revenue Code; and

(b) the adjusted federal taxable income derived from sources within Montana of each nonresident and fiduciary required to make a return and pay federal income taxes under the Internal Revenue Code.

(2) "Adjusted federal taxable income" means the taxpayer's taxable income, as determined for federal income taxes under the provisions of the Internal Revenue Code, with the following additions and deductions:

- (a) The following income must be deducted:
- (i) income exempted from state taxation under the laws or the constitution of the United States;
  - (ii) all payments under veterans' bonus laws;
  - (iii) the salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;
  - (iv) unemployment compensation included in federal adjusted gross income under the provisions of section 85 of the Internal Revenue Code, 26 U.S.C. 85;
  - (v) all tips covered by section 3402(k) of the Internal Revenue Code, 26 U.S.C. 3402(k), that are received by persons for services rendered by them to patrons of premises licensed to provide food, beverages, or lodging.
- (b) The interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of another state or territory must be added to arrive at adjusted federal taxable income.
- (c) A shareholder of a corporation for which the election provided for under subchapter S. of the Internal Revenue Code is in effect but for which the election provided under 15-30-1101 is not in effect may deduct from the shareholder's federal taxable income any part of the corporation's undistributed taxable income, net operating loss, capital or other gains, profits, or losses required to be included in the shareholder's federal taxable income by reason of the election under subchapter S. However, distributions received from the corporation to the extent that the distributions would be treated as taxable dividends if the subchapter S. election were not in effect must be added to the shareholder's federal taxable income.
- (d) Qualified contributions to and principal and income in a medical care savings account established in accordance with Title 15, chapter 61, a family education savings program account established in accordance with Title 15, chapter 62, and a first-time home buyer savings account established in accordance with Title 15, chapter 63, and money withdrawn from any of those accounts for qualified expenses may be deducted from federal taxable income to the extent that it was not deducted when determining federal income taxes.
- (3) (a) Except as provided in subsection (3)(b), a nonresident's federal income tax liability for purposes of determining the nonresident's state income tax liability pursuant to [section 2] is the nonresident's federal tax liability multiplied by the percentage derived from dividing the taxpayer's Montana adjusted gross income by the taxpayer's federal adjusted gross income.
- (b) If a nonresident's federal adjusted gross income is zero or a loss, then the nonresident's federal income tax liability for purposes of determining state income tax liability pursuant to [section 2] is the full amount of the nonresident's federal tax liability.

**NEW SECTION. Section 2. Rate of tax.** (1) The rate of state income tax is 26% of the sum of a taxpayer's federal income tax liability less federal credits.

(2) If a taxpayer has adjusted the taxpayer's federal taxable income as provided in [section 1(2)], the taxpayer shall recompute federal income tax liability, less credits, before applying the 26% rate.

(3) A taxpayer's federal tax liability includes the tax and penalty on early distributions from individual retirement accounts or qualified retirement plans. A taxpayer's federal income tax liability does not include self-employment tax or the social security tax on tips.

**NEW SECTION. Section 3. Nonresidents -- determination of in-state income.** A nonresident's income from sources within Montana includes income derived from all property owned in this state and from any business, trade, profession, or occupation carried on in this state, including gain and interest received from the installment sales of property. In the case of a business, trade, profession, or occupation carried on partly within and partly outside of this state by a nonresident, the income from sources within this state must be determined by apportionment and allocation under rules adopted by the department.

**NEW SECTION. Section 4. Nonresident alternative gross receipts tax.** Pursuant to the provisions of Article III, subsection (2), of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales, who does not own or rent real estate or tangible personal property within Montana, and whose annual gross volume of sales made in Montana during the tax year does not exceed \$100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the tax year. The tax is in lieu of the tax imposed under [section 1]. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, subsections (16) and (17), of the Multistate Tax Compact.

**NEW SECTION. Section 5. Tax return -- contents.** (1) Each individual, married couple filing a joint federal return, or fiduciary mentioned in [section 1(1)] shall file a return with the department, using the same filing status that is used to file the taxpayer's federal return and showing:

(a) the amount of tax due and payable as reported on the taxpayer's federal income tax return or as recomputed as required in [section 2];

(b) the amount of tax due under [section 2], less credits, if any, claimed against the tax; and

(c) a complete copy of the federal individual income tax return and all supporting schedules as filed, a

copy of any amended federal individual income tax return filed, and any other information necessary for administration of the state income tax, as may be prescribed by the department.

(2) If a taxpayer is unable to file the taxpayer's own return, an authorized agent, guardian, or other person charged with the care of the person or property of the taxpayer shall file the return.

**NEW SECTION. Section 6. Payment of state income tax -- refunds -- interest.** (1) A taxpayer required to file a state income tax return shall compute the amount of state income tax due and shall, at the time the return is filed, pay to the department any balance of tax in excess of \$1 remaining unpaid after crediting the amount withheld as provided under 15-30-202 or any payment of estimated tax as provided under 15-30-241.

(2) As soon as practicable after the current year's tax return is filed, the department shall examine and verify the tax. If the withheld tax or the estimated tax paid exceeds the state income tax due by more than \$1, the department shall refund the excess to the taxpayer within 90 days after receiving the return.

(3) If the amount of tax due is greater than the amount paid, the difference must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 10% a year or fraction of the year on the additional tax. There is no penalty because of the underpayment if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(4) Except as provided in 15-30-321, interest at a rate of 10% a year must be added to any state income tax or portion of tax, from the due date until paid, whether the taxpayer has been granted a filing extension or not.

(5) If a joint return is made by husband and wife, the liability with respect to the tax is joint and several.

**Section 7.** Section 2-18-1312, MCA, is amended to read:

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

**Section 8.** Section 7-13-308, MCA, is amended to read:

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

(a) service charges authorized in 7-13-307;

- (b) grants or contributions from the state or federal government; or
- (c) other sources.

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

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

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

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

**Section 9.** 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~~ 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~~ 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 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~~ or this section 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 10.** Section 7-14-1636, MCA, is amended to read:

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

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

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

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

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

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

**Section 11.** 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 12.** Section 13-37-218, MCA, is amended to read:

**"13-37-218. Limitations on receipts from political committees.** (1) A candidate for the state senate may receive no more than \$1,000 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than \$600 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by the inflation factor as defined in ~~15-30-104~~ subsection (2) for the year in which general elections are held. The resulting figure must be rounded off to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

(2) As used in this section, "inflation factor" means a number determined for each year by dividing the consumer price index for June of the year that the general election is held by the consumer price index for June 1980."

**Section 13.** Section 15-30-101, MCA, is amended to read:

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

~~(1) "Base year structure" means the following elements of the income tax structure:~~

~~—— (a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;~~

~~———— (b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;~~

~~———— (c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.~~

~~———— (2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.~~

~~———— (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:~~

~~———— (a) that is treated as an association for federal income tax purposes;~~

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

~~———— (c) that is not a disregarded entity.~~

~~(4)(1) "Department" means the department of revenue.~~

~~(5)(2) "Disregarded entity" means a business entity:~~

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

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

~~———— (6) "Dividend" means:~~

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

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

~~(7)(3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.~~

~~(8)(4) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.~~

~~———— (9) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.~~

~~———— (10) "Inflation factor" means a number determined for each tax year by dividing the consumer price index~~

~~for June of the tax year by the consumer price index for June 1980.~~

(5) "Individual" means a natural person, whether married or unmarried, adult or minor, subject to payment of an income tax under the Internal Revenue Code.

~~(14)(6)~~ "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(12)(7)~~ "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.

~~(13)(8)~~ "Knowingly" ~~is as defined~~ has the meaning provided in 45-2-101.

~~(14)(9)~~ "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.

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

~~(16) "Lottery winnings" means income paid either in lump sum or in periodic payments to:~~

~~(a) a resident taxpayer on a lottery ticket; or~~

~~(b) a nonresident taxpayer on a lottery ticket purchased in Montana.~~

~~(17)(11)~~ (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

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

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

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

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state

or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

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

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

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

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

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

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

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

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

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

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

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

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

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

~~———— (18) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.~~

~~———— (19) "Nonresident" means a natural person who is not a resident.~~

~~———— (20) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~(21)~~(12) "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.

~~(22)~~(13) "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.

~~(23)~~(14) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(24) "Pension and annuity income" means:~~

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

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

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

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

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

(15) (a) "Montana adjusted gross income" means the amount of income a nonresident or part-year resident receives from sources within Montana.

(b) The term does not include income exempted from state taxation under the laws or constitution of the United States.

(16) "Person" means an individual, trust, estate, or partnership.

~~(25)~~(17) "Purposely" is as defined has the meaning provided in 45-2-101.

~~(26) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~(27)~~(18) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(28)~~(19) "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.

~~— (29) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.~~

~~— (30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.~~

~~(31)~~(20) "Taxable year" or "tax "Tax year" means the taxpayer's taxable tax year for federal income tax purposes.

~~(32)~~(21) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

**Section 14.** Section 15-30-125, MCA, is amended to read:

**"15-30-125. Credit for energy-conserving investments.** (1) There is a credit against tax liability under this chapter as provided in 15-32-109.

(2) A temporary resident is allowed the credit that is allowed a resident under 15-32-109 to the extent that the credit was expended in Montana during the course of the temporary residency."

**Section 15.** Section 15-30-128, MCA, is amended to read:

**"15-30-128. Credit for expense of caring for certain elderly family members.** (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the ~~taxable~~ tax year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married individual for the ~~taxable~~ tax year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the federal adjusted gross income, including all nontaxable income, of the individual or, in the case of a married individual, the federal adjusted gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal-care attendant services and care in a long-term care facility, as defined in 50-5-101, that is licensed by the department of public health and human services, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member;

and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose federal adjusted gross income does not exceed \$25,000, 30% of qualified elderly care expenses; or

- (b) for a taxpayer whose federal adjusted gross income exceeds \$25,000, the greater of:
- (i) 20% of qualified elderly care expenses; or
  - (ii) 30% of qualified elderly care expenses, less 1% for each \$2,000 or fraction of \$2,000 by which the federal adjusted gross income of the taxpayer for the taxable tax year exceeds \$25,000.
- (6) The dollar amount of credit allowable under this section is:
- (a) reduced by \$1 for each dollar of the federal adjusted gross income over \$50,000 for a taxpayer whose federal adjusted gross income exceeds \$50,000;
  - (b) limited to \$5,000 ~~per~~ for each qualifying family member in a taxable tax year and to \$10,000 total for two or more family members in a taxable tax year;
  - (c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable tax year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.
- (7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.
- (8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

**Section 16.** Section 15-30-145, MCA, is amended to read:

**"15-30-145. Revision of return by department -- statute of limitations -- examination of records and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return. The department may revise the return to determine the taxpayer's correct adjusted federal taxable income, as defined in [section 1], regardless of whether the internal revenue service has revised the taxpayer's reported adjusted federal taxable income.

(2) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under

this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing. The department may revise the return to determine the taxpayer's correct adjusted federal taxable income within 5 years after the return was made, regardless of whether the federal statute of limitations has run.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to the person or persons. The department may exercise this power regardless of whether the internal revenue service has revised the taxpayer's reported adjusted federal taxable income and regardless of whether the federal statute of limitations has run."

**Section 17.** Section 15-30-149, MCA, is amended to read:

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

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

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

(3) Within 6 months after an amended return, a delinquent return, or a claim for refund is filed, the

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

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

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

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

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

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

**Section 18.** Section 15-30-162, MCA, is amended to read:

**"15-30-162. Investment credit.** (1) There is allowed as a credit against the tax imposed by ~~15-30-103~~ [section 1] a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 38), or as that section may be renumbered or amended. However, rehabilitation costs as set forth under section 46 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 46), or as that section may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 38), as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable tax year is 5% of the amount of credit determined

under section 46 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 46), or as that section may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the ~~taxable tax~~ year may not exceed the taxpayer's tax liability for the ~~taxable tax~~ year or \$500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the ~~taxable tax~~ year ~~that~~ the property was located in Montana and the denominator of which is the number of days during the ~~taxable tax~~ year ~~that~~ the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 47), or as that section may be renumbered or amended."

**Section 19.** 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, corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax credit against taxes imposed by ~~15-30-103~~ [section 1] 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 20.** 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~~ [section 1] 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 21.** Section 15-30-166, MCA, is amended to read:

**"15-30-166. (Temporary) Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by ~~15-30-103~~ [section 1] or 15-31-101 in an amount equal to 30% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$6,600. The credit allowed under this section may not exceed the taxpayer's

income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction ~~under 15-30-121(1) or 15-30-136(2)~~.

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates June 30, 2003--sec. 11(1), Ch. 24, Sp. L. August 2002.)

**15-30-166. (Applicable July 1, 2003) Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by ~~15-30-103~~ [section 1] or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$13,400. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction ~~under 15-30-121(1) or 15-30-136(2)~~.

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates April 30, 2004--sec. 11(2), Ch. 24, Sp. L. August 2002.)

**15-30-166. (Applicable May 1, 2004) Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by ~~15-30-103~~ [section 1] or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction ~~under 15-30-121(1) or 15-30-136(2)~~.

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

**Section 22.** Section 15-30-180, MCA, is amended to read:

**"15-30-180. (Temporary) Credit for preservation of historic property.** (1) There is allowed as a credit against the taxes imposed by ~~15-30-103~~ [section 1] a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) (a) As an alternative to the credit allowed in subsection (1), there is allowed as a credit against the taxes imposed by ~~15-30-103~~ [section 1] an amount equal to 20% of the cost of creating the conservation easement and the diminution in the value of a historically significant property, including buildings and structures, that may result from a contract that places a conservation easement on the property if:

- (i) the conservation easement holder is a qualified private organization as defined in 76-6-104;
- (ii) the owner of the property is obligated by the contract creating the easement to maintain and preserve the property to retain its historical significance and characteristics for a period of not less than 29 years; and
- (iii) the state historic preservation officer, provided for in 2-15-1512, verifies that a property is listed on the national register of historic places or that the property is historically valuable.

(b) For the purposes of this section, property is historically valuable if the property has, as certified by the state historic preservation office, significant qualities reflecting American history, architecture, engineering, or culture that was achieved prior to the last 50 years and the property possesses integrity of location, design, setting, materials, and workmanship and:

- (i) is associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;
- (ii) is associated with the lives of persons significant in our past;
- (iii) embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or
- (iv) has yielded, or may be likely to yield, information important in history.

(c) In addition to any of the tax credit allowed in subsection (2)(a), the owner of a historically significant property, including buildings and structures, that is the subject of a conservation easement contract may take as a credit against the taxes imposed by ~~15-30-103~~ [section 1] an amount equal to 20% of the amount spent by the owner for the direct cost of the protection and the preservation of the property if the preservation efforts are approved as reasonable and necessary by the conservation easement holder. The tax credit may not exceed \$25,000 a year.

(3) The maximum tax credit that may be taken under subsection (2) for each historically significant

property is \$150,000.

(4) The credit allowed by subsection (2) may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsection (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 6 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(5) A person may not take a credit against taxes due in any 1 year under both subsection (1) and (2).

(6) The credit allowed in subsection (1) may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners. (Terminates December 31, 2011--sec. 3, Ch. 538, L. 2001.)

**15-30-180. (Effective January 1, 2012) Credit for preservation of historic buildings.** (1) There is allowed as a credit against the taxes imposed by ~~15-30-103~~ [section 1] a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners."

**Section 23.** Section 15-30-181, MCA, is amended to read:

**"15-30-181. (Temporary) Credit for contributions to affordable housing revolving loan account.**

(1) A taxpayer is allowed a tax credit against the taxes imposed by ~~15-30-103~~ [section 1] or 15-31-101 in an amount equal to 20% of the amount donated by an individual taxpayer or 10% of the amount donated by a taxpayer under Title 15, chapter 31, during the year to the affordable housing revolving loan account established in 90-6-133. The maximum credit that may be claimed by a taxpayer is \$10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction ~~under 15-30-121(1), 15-30-136(2);~~ under federal law or 15-31-114.

(3) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has claimed a credit for a contribution to a qualified endowment under the provisions of 15-30-165 through 15-30-167, 15-31-161, or 15-31-162 for a contribution to the affordable housing revolving loan account.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2004--sec. 7, Ch. 411, L. 2001.)"

**Section 24.** Section 15-30-189, MCA, is amended to read:

**"15-30-189. Tax credit for physician practicing in rural area.** A licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by ~~15-30-103~~ [section 1] in an amount of \$5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain ~~his~~ the physician's practice for at least 9 months of the ~~taxable~~ tax year in which the credit is claimed."

**Section 25.** Section 15-30-192, MCA, is amended to read:

**"15-30-192. Income tax relief -- foreign capital depository assessment distribution.** (1) The assessment payments made on June 15 of each year by foreign capital depositories pursuant to 15-31-803 must be redistributed to taxpayers as income tax relief as provided in this section.

(2) Each year, the department shall determine the June 15 collections under 15-31-803, including any late payments of assessments that should have been paid on any preceding June 15, together with penalty and interest on late payments. The amount of the collections divided by the number of individual state income taxpayers who filed income tax returns pursuant to ~~15-30-103~~ [section 1] for the previous tax year equals the amount of income tax relief to which each taxpayer is entitled.

(3) The department shall include on each Montana state individual income tax form the amount of the income tax relief provided under this section. The form must provide that after the taxpayer's determination of taxes, the amount of the income tax relief is subtracted from the amount of taxes owed by the taxpayer. If the amount of taxes due is exceeded by the amount of income tax relief, the department shall pay the excess amount to the taxpayer, but only if the amount to be paid exceeds \$10.

(4) (a) A return filed using the filing status married filing jointly is considered to have been filed by one taxpayer.

(b) A fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to ~~15-30-135~~ [section 1] is not considered a taxpayer unless a return was filed on behalf of the decedent the previous year."

**Section 26.** Section 15-30-241, MCA, is amended to read:

**"15-30-241. Estimated tax -- payment -- exceptions -- interest.** (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

- (i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or
- (ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

- (i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;
- (ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;
- (iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or
- (iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year

Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount

of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

- (i) the taxpayer pays in full the amount computed on the return as payable; and
- (ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's federal adjusted gross income, ~~as defined in 15-30-101,~~ from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

**Section 27.** Section 15-30-303, MCA, is amended to read:

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

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

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

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

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

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

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

(3) This section does not prohibit:

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

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

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

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

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

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

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

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,

and abuse under the workers' compensation program.

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

(8) The department shall furnish:

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

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

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

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

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

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

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

**Section 28.** Section 15-30-323, MCA, is amended to read:

**"15-30-323. Penalty and interest for deficiency.** (1) If the payment required by ~~15-30-142(6)~~ [section 6] is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment."

**Section 29.** Section 15-30-603, MCA, is amended to read:

**"15-30-603. (Temporary) Montana farm and ranch risk management account -- deposits -- exclusion from income.** (1) An individual or a family farm corporation engaged in an eligible agricultural business may create a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, to use as a risk management tool for the individual's or family farm corporation's agricultural business. The number of risk management accounts that may be created is limited to one for each individual or family farm corporation.

(2) Deposits to the account may be excluded from federal adjusted gross income ~~as provided in 15-30-144~~ in an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business included in federal adjusted gross income or \$20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

(a) during the tax year; or

(b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.

(3) A deposit not distributed within 5 years is considered to have been distributed to the taxpayer as provided in 15-30-605.

(4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in the appropriate year. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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

**"15-30-1112. Composite returns and tax.** (1) A partnership or S. corporation may elect to file a

composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual 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, manager, or member; 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 specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction under [section 1]~~ 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 as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

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

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

(6) The composite tax is in lieu of the tax imposed under ~~15-30-103 and 15-30-105~~ [section 1].

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

**Section 31.** Section 15-30-1113, MCA, is amended to read:

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

- (a) file a composite return with respect to the individual nonresident;
- (b) file an agreement of the individual nonresident to:
  - (i) file a return in accordance with the provisions of ~~15-30-142~~ [section 5];
  - (ii) timely pay all taxes imposed with respect to income of the pass-through entity; and
  - (iii) 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
- (c) remit an amount equal to the highest marginal tax rate in effect under ~~15-30-103~~ section 1 of the Internal Revenue Code, 26 U.S.C. 1, multiplied by the nonresident individual's 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)(c) 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~~ [section 1].

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

**Section 32.** 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 33.** 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~~ corporation 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 34.** 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, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, ~~as amended, 26 U.S.C. 38,~~ 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 90-4-102, is entitled to a tax credit against taxes imposed by ~~15-30-103 [section 1]~~ 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 qualify under section 38 of the Internal Revenue Code of 1954, ~~as amended~~, 26 U.S.C. 38, and 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 35.** 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 36.** Section 15-61-202, MCA, is amended to read:

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

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

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

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

~~(5)~~(4) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

~~(6)~~(5) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

~~(7)~~(6) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

~~(8)~~(7) 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 37.** Section 15-62-207, MCA, is amended to read:

**"15-62-207. Deductions for contributions.** An individual who contributes to an account in a tax year is entitled to reduce the individual's federal adjusted gross income, ~~in accordance with 15-30-111(8)~~, by the amount of the contribution, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, the contributor's child, or the contributor's stepchild if the stepchild is a Montana resident."

**Section 38.** 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 10% tax provided in ~~15-30-103~~ on the recapturable withdrawal of amounts that reduced federal adjusted gross income under ~~15-30-111(8)~~.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced federal 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 federal adjusted gross income, to the extent of those contributions, and then to contributions that reduced federal adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced federal adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce federal 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 and is payable with the income tax payment for 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 federal adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce federal 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 39.** Section 15-63-202, MCA, is amended to read:

**"15-63-202. Tax exemption -- conditions.** (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 federal adjusted gross income of the account holder and is exempt from taxation, in accordance with ~~15-30-111(2)(k)~~ [section 1], 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) 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) 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)~~(3) 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 federal adjusted gross income, in accordance with ~~15-30-111(2)(k)~~ [section 1], in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

~~(5)~~(4) 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. 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)~~(5) 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)~~(6) 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)~~(7) 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)~~(8) 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 40.** Section 19-2-1004, MCA, is amended to read:

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

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

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

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

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

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

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

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

municipal taxation:

~~(2)~~ Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to execution, garnishment, attachment, or any other process."

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

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

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

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

**"19-19-504. Protection of benefits from legal process and taxation.** ~~(1)~~ Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 46.** Section 37-4-104, MCA, is amended to read:

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

(2) A personal representative may not:

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

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

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

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

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

(3) For the purposes of this section:

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

(b) "disabled" ~~has the same meaning as provided for the term "permanently and totally disabled" in 15-30-114~~ means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months; and

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

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

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

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

**Section 47.** 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)(~~e~~)(b).

(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 48.** 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 49.** 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~~ for federal tax purposes, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

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

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

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

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

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

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

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

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

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

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

- (a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.
- (b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.
- (c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.
- (d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this

section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

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

- (a) claims residence in any other state or country for any purpose; or
- (b) is an absentee property owner paying property tax on property in Montana.

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

**Section 50.** Section 87-2-105, MCA, is amended to read:

**"87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a resident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5).

(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed a hunter safety course in any state or province.

(3) 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~~ determined for federal income tax purposes, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of completion of a hunter safety course approved by the department or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) 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 receives proof of completion of a bowhunter education course from the national bowhunter education foundation. 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.

(5) The department shall provide for a youth 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 to youth 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 youth hunter safety and education course to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation 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 the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

(7) The department may develop an adult hunter education course.

(8) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion or achievement."

**NEW SECTION. Section 51. Repealer.** Sections 15-30-103, 15-30-105, 15-30-106, 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, 15-30-126, 15-30-131, 15-30-132, 15-30-135, 15-30-136, 15-30-137, 15-30-142, 15-30-143, 15-30-156, 15-30-157, 19-17-407, and 80-12-211, MCA, are repealed.

**NEW SECTION. Section 52. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through 6].

**NEW SECTION. Section 53. Effective date.** [This act] is effective December 31, 2003.

**NEW SECTION. Section 54. Applicability.** [This act] applies to tax years beginning after December 31, 2003.

- END -

