HOUSE BILL NO. 790

INTRODUCED BY MESSMORE, S. RICE, THOMAS, THAYER,
FRANKLIN, J. RICE, T. NELSON, GILBERT,
FELAND, MERCER, LEE, PETERSON, FOSTER,
KASTEN, TUNBY, STICKNEY, FAGG, COBB

BY REQUEST OF THE GOVERNOR

IN THE HOUSE

FEBRUARY 12, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
FEBRUARY 13, 1991	FIRST READING.
MARCH 23, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 25, 1991	PRINTING REPORT.
APRIL 3, 1991	SECOND READING, DO PASS.
	ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, PASSED. AYES, 100; NOES, 0.
APRIL 4, 1991	ENGROSSING REPORT.
	TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 12, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 15, 1991	SECOND READING, CONCURRED IN.
APRIL 16, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 18, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 19, 1991	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 790

INTRODUCED BY Messmore Thomas Gilbert Mercer Foster Cobb

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX CREDIT FOR ELDERLY FAMILY MEMBERS; LOWERING THE QUALIFYING AGE LIMIT TO 65 YEARS; DELETING THE PHYSICAL REQUIREMENT FOR AFFLICTION WITH ALZHEIMER'S DISEASE AND SUBSTITUTING THAT THE INDIVIDUAL MUST BE DETERMINED DISABLED FOR SOCIAL SECURITY PURPOSES; ESTABLISHING A HIGHER INCOME QUALIFICATION FOR A MARRIED INDIVIDUAL; PROVIDING THAT PAYMENTS FOR CARE IN A LICENSED LONG-TERM HEALTH CARE FACILITY ARE A QUALIFYING EXPENSE; ALLOWING PREMIUMS PAID FOR LONG-TERM HEALTH CARE INSURANCE AS A QUALIFYING EXPENSE; AMENDING SECTION 15-30-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. 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 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 ~~70~~ 65 years of age; or

(ii) ~~is--diagnosed--by--a--physician--as--having--senile dementia-of-the-Alzheimer-type~~ 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 year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the adjusted gross income of the individual or, in the case of a married individual, the adjusted gross 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--provided--by--an--organization--certified--by--the federal-health-care-financing-administration~~ personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, 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

INTRODUCED BILL
HB 790

(iii) not compensated for by insurance or otherwise;

(b) ~~subject--to--the--limitations-in-subsection-(4)(a), payments-by--the--taxpayer--for--nursing--home--care--of--an individual--who-is-diagnosed-by-a-physician-as-having-senile dementia-of-the-Alzheimer-type~~ 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 adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose 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 thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each

contribute to qualified elderly care expenses of the same qualified family member in a taxable 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."

NEW SECTION. **Section 2.** **Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0790, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the Montana individual income tax credit for elderly family members; lowering the qualifying age limit to 65 years; deleting the physical requirement for affliction with alzheimers disease and substituting that the individual must be determined disabled for social security purposes; establishing a higher income qualification for a married individual; providing that payments for care in a licensed long-term care health care facility are a qualifying expense; allowing premiums paid for long-term health care insurance as a qualifying expense; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. There are 63,000 individuals in Montana between the age of 55 and 64; 62,000 individuals between the age of 65-74; 34,000 between the age of 75-84; and 11,000 who are 85 years or older (U.S. Census estimate, 1989).
2. There are 2.0% of all individuals between the ages of 65-74 residing in long-term care facilities, 7.0% of individuals between the ages of 75-84, and 22% of all individuals 85 years or older (What Legislators Need to Know About Long-Term Care Insurance, National Conference of State Legislatures, 1987).
3. Nationwide, approximately 52.2% of all persons 65 years and older have an income of less than $15,000 (U.S. Census estimate, 1987).
4. The average private cost of long-term care in Montana is $62 per day (SRS).
5. Medicaid currently pays for 62% of all long-term care expenditures in Montana (SRS).
6. There are 11,080 individuals in Montana who are under 65 years of age and are considered disabled by the Social Security Administration (State Statistics, U.S. Social Security Administration, 1990).
7. There are 6,800 licensed long-term care beds in Montana with a daily occupancy rate of at least 92% (SRS).
8. There are 7,000 individuals regularly receiving personal home health care in Montana (HES).
9. The average private cost for personal care in Montana is $6 per hour (SRS).
10. The average number of hours of personal care required are 1,080 per year (SRS).
11. The average value of medical supplies and equipment required by individuals receiving home health care is $2,600 per year (SRS).
12. Approximately 1% of the individuals between the age of 55 and 79 purchase long-term care insurance policies (HIAA,1990).
13. The annual cost of long-term care insurance policies are $363 for 50-55 age groups; $535 for the 55-64 age group; $1,413 for the 65-74 age group; and $2,480 for the 75-79 age group.

Continued on next page.

Rod Sundsted 2-18-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

CHARLOTTE K. (CHAR) MESSMORE, PRIMARY SPONSOR DATE

HB 790

ASSUMPTIONS (cont'd):

14. Personal income tax receipts are $311,176,000 and $327,201,000 in FY92 and FY93 respectively (OBPP).
15. Per current law, 100% of personal income tax receipts are deposited in the general fund.
16. Based on experience with the current credit, it is estimated that only 2% of all taxpayers potentially eligible for the credit will claim the credit in the first two years of implementation.

FISCAL IMPACT:

Expenditures:

There is no additional department administrative expenditure required to expand the credit under the proposed legislation.

	FY '92			FY '93		
Revenues:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Individual Income Tax (01)	311,176,000	311,118,000	(58,000)	327,201,000	327,143,000	(58,000)
Impact to General Fund			(58,000)			(58,000)

HB 790

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1. There are 63,000 individuals in Montana between the age of 55 and 64; 62,000 individuals between the age of 65-74; 34,000 between the age of 75-84 and 11,000 who are 85 years or older (U.S. Census estimate, 1989).
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(continued on next page)

Rod Sundsted 4-13-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Rep Char Messmore 4/15/91

CHARLOTTE K. (CHAR) MESSMORE, PRIMARY SPONSOR DATE

HB 790 #2

ASSUMPTIONS (cont'd):

14. Personal income tax receipts are $311,176,000 and $327,201,000 in FY92 and FY93 respectively (OBPP).
15. Per current law, 100% of personal income tax receipts are deposited in the general fund.
16. Based on experience with the current credit, it is estimated that only 2% of all taxpayers potentially eligible for the credit will claim the credit in the first two years of implementation.

FISCAL IMPACT:

Expenditures:

There is no additional department administrative expenditure required to expand the credit under the proposed legislation.

Revenues:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Individual Income Tax (01)	311,176,000	311,117,000	(59,000)	327,201,000	327,142,000	(59,000)
Impact to General Fund (decrease)			(59,000)			(59,000)

HB 790. #2

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 790

INTRODUCED BY MESSMORE, S. RICE, THOMAS, THAYER, FRANKLIN, J. RICE, T. NELSON, GILBERT, FELAND, MERCER, LEE, PETERSON, FOSTER, KASTEN, TUNBY, STICKNEY, FAGG, COBB

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX CREDIT FOR ELDERLY FAMILY MEMBERS; LOWERING THE QUALIFYING AGE LIMIT TO 65 YEARS; DELETING THE PHYSICAL REQUIREMENT FOR AFFLICTION WITH ALZHEIMER'S DISEASE AND SUBSTITUTING THAT THE INDIVIDUAL MUST BE DETERMINED DISABLED FOR SOCIAL SECURITY PURPOSES; ESTABLISHING A HIGHER INCOME QUALIFICATION FOR A MARRIED INDIVIDUAL; PROVIDING THAT PAYMENTS FOR CARE IN A LICENSED LONG-TERM HEALTH CARE FACILITY ARE A QUALIFYING EXPENSE; ALLOWING PREMIUMS PAID FOR LONG-TERM HEALTH CARE INSURANCE AS A QUALIFYING EXPENSE; AMENDING SECTION 15-30-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

(b) (i) is at least ~~70~~ 65 years of age; or

(ii) ~~is--diagnosed--by--a--physician--as--having--senile dementia-of-the-Alzheimer-type~~ 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 year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the ~~adjusted~~ gross income, INCLUDING ALL NONTAXABLE INCOME, of the individual or, in the case of a married individual, the ~~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--provided--by--an--organization--certified--by--the federal-health-care--financing--administration~~ HOME HEALTH AGENCY SERVICES, personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, homemaker services, adult day care,

SECOND READING

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) ~~subject-to-the-limitations--in--subsection--(4)(a),~~ ~~payments--by--the--taxpayer--for--nursing--home--care--of-an individual-who-is-diagnosed-by-a-physician-as-having--senile dementia--of--the-Alzheimer-type~~ 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 adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose 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 thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable 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."

NEW SECTION. **Section 2. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

-End-

HOUSE BILL NO. 790

INTRODUCED BY MESSMORE, S. RICE, THOMAS, THAYER, FRANKLIN, J. RICE, T. NELSON, GILBERT, FELAND, MERCER, LEE, PETERSON, FOSTER, KASTEN, TUNBY, STICKNEY, FAGG, COBB

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

(b) (i) is at least ~~70~~ 65 years of age; or

(ii) ~~is--diagnosed--by--a--physician--as--having--senile dementia-of-the-Alzheimer-type~~ 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 year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the ~~adjusted~~ gross income, INCLUDING ALL NONTAXABLE INCOME, of the individual or, in the case of a married individual, the ~~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--provided--by--an--organization--certified--by--the federal-health-care--financing--administration~~ HOME HEALTH AGENCY SERVICES, personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, homemaker services, adult day care,

THIRD READING

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) ~~subject-to-the-limitations--in--subsection--(4)(a),-payments--by--the--taxpayer--for--nursing--home--care--of-an individual-who-is-diagnosed-by-a-physician-as-having--senile dementia--of--the-Alzheimer-type~~ premiums paid for long-term care insurance coverage for a qualifying family member.

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

(b) for a taxpayer whose 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 thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable 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."

NEW SECTION. **Section 2.** **Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

-End-

MR. PRESIDENT:
We, your committee on Taxation having had under consideration House Bill No. 790 (third reading copy -- blue), respectfully report that House Bill No. 790 be amended and as so amended be concurred in:

1. Title, line 18.
Following: line 17
Insert: "CLARIFYING THAT A CHARITABLE INSTITUTION HAS AN INSURABLE INTEREST IN CERTAIN INDIVIDUALS;"
Strike: "SECTION"
Insert: "SECTIONS 15-30-121,"
Following: "15-30-128,"
Insert: "AND 33-15-201,"

2. Page 4, line 21.
Following: line 20
Insert: "Section 2. Section 15-30-121, MCA, is amended to read:
"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:
(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:
(a) items provided for in 15-30-123;
(b) state income tax paid;
(2) federal income tax paid within the taxable year;
(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:
(a) expenses for household and dependent care services necessary for gainful employment incurred for:
(i) a dependent under 15 years of age for whom an exemption can be claimed;
(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and
(iii) a spouse who is unable to care for himself because of physical or mental illness;
(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:
(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);
(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;
(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:
(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;
(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:
(A) $2,400 in the case of one qualifying individual;
(B) $3,600 in the case of two qualifying individuals; and
(C) $4,800 in the case of three or more qualifying individuals;
(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;
(f) for purposes of this subsection (3):
(i) married couples shall file a joint return or file separately on the same form;
(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:
(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or
(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);
(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;
(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;
(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable

SENATE
HB 790

under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; and

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156."

Section 3. Section 33-15-201, MCA, is amended to read:

"**33-15-201. Restrictions on contracting for personal insurance -- insurable interests -- violation.** (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

<u>(5) A charitable institution has an insurable interest in an individual if:</u>

<u>(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and</u>

<u>(b) the insurance is purchased with contributions made by the individual.</u>""

Renumber: subsequent section

Signed: Mike Halligan
Mike Halligan, Chairman

4-12-91
Amd. Coord.

SB 4-12-91 12:55
Sec. of Senate

HOUSE BILL NO. 790

INTRODUCED BY MESSMORE, S. RICE, THOMAS, THAYER, FRANKLIN, J. RICE, T. NELSON, GILBERT, FELAND, MERCER, LEE, PETERSON, FOSTER, KASTEN, TUNBY, STICKNEY, FAGG, COBB

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX CREDIT FOR ELDERLY FAMILY MEMBERS; LOWERING THE QUALIFYING AGE LIMIT TO 65 YEARS; DELETING THE PHYSICAL REQUIREMENT FOR AFFLICTION WITH ALZHEIMER'S DISEASE AND SUBSTITUTING THAT THE INDIVIDUAL MUST BE DETERMINED DISABLED FOR SOCIAL SECURITY PURPOSES; ESTABLISHING A HIGHER INCOME QUALIFICATION FOR A MARRIED INDIVIDUAL; PROVIDING THAT PAYMENTS FOR CARE IN A LICENSED LONG-TERM HEALTH CARE FACILITY ARE A QUALIFYING EXPENSE; ALLOWING PREMIUMS PAID FOR LONG-TERM HEALTH CARE INSURANCE AS A QUALIFYING EXPENSE; CLARIFYING THAT A CHARITABLE INSTITUTION HAS AN INSURABLE INTEREST IN CERTAIN INDIVIDUALS; AMENDING ~~SECTION~~ SECTIONS 15-30-121, 15-30-128, AND 33-15-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. 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 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 ~~70~~ 65 years of age; or

(ii) ~~is--diagnosed--by--a--physician--as--having--senile dementia--of--the--Alzheimer--type~~ 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 year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the ~~adjusted~~ gross income, INCLUDING ALL NONTAXABLE INCOME, of the individual or, in the case of a married individual, the ~~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--provided--by--an--organization--certified--by--the federal--health--care--financing--administration~~ HOME HEALTH AGENCY SERVICES, personal care attendant services and care

REFERENCE BILL
AS AMENDED

in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, 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) ~~subject--to--the--limitations-in-subsection-(4)(a), payments-by--the--taxpayer--for--nursing--home--care--of--an individual--who-is-diagnosed-by-a-physician-as-having-senile dementia-of-the-Alzheimer-type~~ 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 adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose 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 thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

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(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable 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 2. SECTION 15-30-121, MCA, IS AMENDED TO READ:

"15-30-121. Deductions allowed in computing net income.

In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred

to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must

be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; and

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156."

SECTION 3. SECTION 33-15-201, MCA, IS AMENDED TO READ:

"**33-15-201. Restrictions on contracting for personal insurance -- insurable interests -- violation.** (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a

closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual."

NEW SECTION. **Section 4. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

-End-