

SENATE BILL 124

Introduced by Swift, et al.

1/17	Introduced
1/17	Referred to Taxation
1/17	First Reading
1/17	Fiscal Note Requested
1/23	Fiscal Note Received
1/24	Fiscal Note Printed
1/31	Hearing
3/12	Tabled in Committee

1 Senate BILL NO. 124
 2 INTRODUCED BY Swift Cobb, Bernett, Anderson Prof.
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN EXEMPTION
 5 OF \$12,000 FROM TAXATION OF BENEFITS FROM FEDERAL, STATE,
 6 AND PRIVATE RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT
 7 PLANS OR SYSTEMS; AMENDING SECTIONS 15-30-111, 15-30-136,
 8 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
 9 19-9-1005, 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND
 10 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 11 AND A RETROACTIVE APPLICABILITY DATE."
 12

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

14 **Section 1.** Section 15-30-111, MCA, is amended to read:

15 "15-30-111. Adjusted gross income. (1) Adjusted gross
 16 income shall be the taxpayer's federal income tax adjusted
 17 gross income as defined in section 62 of the Internal
 18 Revenue Code of 1954 or as that section may be labeled or
 19 amended and in addition shall include the following:

20 (a) interest received on obligations of another state
 21 or territory or county, municipality, district, or other
 22 political subdivision thereof;

23 (b) refunds received of federal income tax, to the
 24 extent the deduction of such tax resulted in a reduction of
 25 Montana income tax liability;

1 (c) that portion of a shareholder's income under
 2 subchapter S. of Chapter 1 of the Internal Revenue Code of
 3 1954, that has been reduced by any federal taxes paid by the
 4 subchapter S. corporation on the income; and

5 (d) depreciation or amortization taken on a title plant
 6 as defined in 33-25-105(15).

7 (2) Notwithstanding the provisions of the federal
 8 Internal Revenue Code of 1954, as labeled or amended,
 9 adjusted gross income does not include the following which
 10 are exempt from taxation under this chapter:

11 (a) all interest income from obligations of the United
 12 States government, the state of Montana, county,
 13 municipality, district, or other political subdivision
 14 thereof;

15 (b) interest income earned by a taxpayer age 65 or
 16 older in a taxable year up to and including \$800 for a
 17 taxpayer filing a separate return and \$1,600 for each joint
 18 return;

19 (c) all benefits, not in excess of \$3,600 \$12,000,
 20 received:

21 (i) under the Federal Employees' Retirement Act;

22 (ii) under the public employee retirement laws of a
 23 Montana or any other state other-than-Montana; or

24 (iii) as an annuity, pension, or endowment under any
 25 private or corporate retirement plan or system;

1 ~~{d}~~ all benefits paid under the teachers' retirement
 2 law which are specified as exempt from taxation by 19-4-706;
 3 ~~{e}~~ all benefits paid under The Public Employees'
 4 Retirement System Act which are specified as exempt from
 5 taxation by 19-3-105;
 6 ~~{f}~~ all benefits paid under the highway patrol
 7 retirement law which are specified as exempt from taxation
 8 by 19-6-705;
 9 {g}(d) all Montana income tax refunds or credits
 10 thereof;
 11 ~~{h}~~ all benefits paid under 19-11-602, 19-11-604, and
 12 19-11-605 to retired and disabled firefighters, their
 13 surviving spouses and orphans or specified as exempt from
 14 taxation by 19-13-1003;
 15 ~~{i}~~ all benefits paid under the municipal police
 16 officers' retirement system that are specified as exempt
 17 from taxation by 19-9-1005;
 18 {j}(e) gain required to be recognized by a liquidating
 19 corporation under 15-31-113(1)(a)(ii);
 20 {k}(f) all tips covered by section 3402(k) of the
 21 Internal Revenue Code of 1954, as amended and applicable on
 22 January 1, 1983, received by persons for services rendered
 23 by them to patrons of premises licensed to provide food,
 24 beverage, or lodging;
 25 {l}(g) all benefits received under the workers'

1 compensation laws;
 2 {m}(h) all health insurance premiums paid by an
 3 employer for an employee if attributed as income to the
 4 employee under federal law; and
 5 ~~{n}~~ all benefits paid under an optional retirement
 6 program that are specified as exempt from taxation by
 7 19-21-212; and
 8 {o}(i) all money received because of a settlement
 9 agreement or judgment in a lawsuit brought against a
 10 manufacturer or distributor of "agent orange" for damages
 11 resulting from exposure to "agent orange".
 12 (3) In the case of a shareholder of a corporation with
 13 respect to which the election provided for under subchapter
 14 S. of the Internal Revenue Code of 1954, as amended, is in
 15 effect but with respect to which the election provided for
 16 under 15-31-202, as amended, is not in effect, adjusted
 17 gross income does not include any part of the corporation's
 18 undistributed taxable income, net operating loss, capital
 19 gains or other gains, profits, or losses required to be
 20 included in the shareholder's federal income tax adjusted
 21 gross income by reason of the election under subchapter S.
 22 However, the shareholder's adjusted gross income shall
 23 include actual distributions from the corporation to the
 24 extent they would be treated as taxable dividends if the
 25 subchapter S. election were not in effect.

1 (4) A shareholder of a DISC that is exempt from the
2 corporation license tax under 15-31-102(1)(1) shall include
3 in his adjusted gross income the earnings and profits of the
4 DISC in the same manner as provided by federal law (section
5 995, Internal Revenue Code) for all periods for which the
6 DISC election is effective.

7 (5) A taxpayer who, in determining federal adjusted
8 gross income, has reduced his business deductions by an
9 amount for wages and salaries for which a federal tax credit
10 was elected under section 44B of the Internal Revenue Code
11 of 1954 or as that section may be labeled or amended is
12 allowed to deduct the amount of the wages and salaries paid
13 regardless of the credit taken. The deduction must be made
14 in the year the wages and salaries were used to compute the
15 credit. In the case of a partnership or small business
16 corporation, the deduction must be made to determine the
17 amount of income or loss of the partnership or small
18 business corporation.

19 (6) Married taxpayers filing a joint federal return who
20 must include part of their social security benefits or part
21 of their tier 1 railroad retirement benefits in federal
22 adjusted gross income may split the federal base used in
23 calculation of federal taxable social security benefits or
24 federal taxable tier 1 railroad retirement benefits when
25 they file separate Montana income tax returns. The federal

1 base must be split equally on the Montana return.

2 (7) A taxpayer receiving retirement disability benefits
3 who has not attained age 65 by the end of the taxable year
4 and who has retired as permanently and totally disabled may
5 exclude from adjusted gross income up to \$100 per week
6 received as wages or payments in lieu of wages for a period
7 during which the employee is absent from work due to the
8 disability. If the adjusted gross income before this
9 exclusion and before application of the two-earner married
10 couple deduction exceeds \$15,000, the excess reduces the
11 exclusion by an equal amount. This limitation affects the
12 amount of exclusion, but not the taxpayer's eligibility for
13 the exclusion. If eligible, married individuals shall apply
14 the exclusion separately, but the limitation for income
15 exceeding \$15,000 is determined with respect to the spouses
16 on their combined adjusted gross income. For the purpose of
17 this subsection, permanently and totally disabled means
18 unable to engage in any substantial gainful activity by
19 reason of any medically determined physical or mental
20 impairment lasting or expected to last at least 12 months.

21 (8) A person receiving benefits described in
22 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
23 exclude benefits described in subsection (2)(c) from
24 adjusted gross income unless the benefits received under
25 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are

1 less than \$37,600, in which case the person may combine
 2 benefits to exclude up to a total of \$37,600 from adjusted
 3 gross income. (Subsection ~~(2)(k)~~ (2)(f) terminates on
 4 occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

5 **Section 2.** Section 15-30-136, MCA, is amended to read:

6 "15-30-136. Computation of income of estates or trusts
 7 -- exemption. (1) Except as otherwise provided in this
 8 chapter, "gross income" of estates or trusts means all
 9 income from whatever source derived in the taxable year,
 10 including but not limited to the following items:

- 11 (a) dividends;
- 12 (b) interest received or accrued, including interest
 13 received on obligations of another state or territory or a
 14 county, municipality, district, or other political
 15 subdivision thereof, but excluding interest income from
 16 obligations of:
- 17 (i) the United States government or the state of
 18 Montana;
- 19 (ii) a school district; or
- 20 (iii) a county, municipality, district, or other
 21 political subdivision of the state;
- 22 (c) income from partnerships and other fiduciaries;
- 23 (d) gross rents and royalties;
- 24 (e) gain from sale or exchange of property, including
 25 those gains that are excluded from gross income for federal

1 fiduciary income tax purposes by section 641(c) of the
 2 Internal Revenue Code of 1954, as amended;

- 3 (f) gross profit from trade or business; and
- 4 (g) refunds recovered on federal income tax, to the
 5 extent the deduction of such tax resulted in a reduction of
 6 Montana income tax liability.

7 (2) In computing net income, there are allowed as
 8 deductions:

- 9 (a) interest expenses deductible for federal tax
 10 purposes according to section 163 of the Internal Revenue
 11 Code of 1954, as amended;
- 12 (b) taxes paid or accrued within the taxable year,
 13 including but not limited to federal income tax, but
 14 excluding Montana income tax;
- 15 (c) that fiduciary's portion of depreciation or
 16 depletion which is deductible for federal tax purposes
 17 according to sections 167, 611, and 642 of the Internal
 18 Revenue Code of 1954, as amended;
- 19 (d) charitable contributions that are deductible for
 20 federal tax purposes according to section 642(c) of the
 21 Internal Revenue Code of 1954, as amended;
- 22 (e) administrative expenses claimed for federal income
 23 tax purposes, according to sections 212 and 642(g) of the
 24 Internal Revenue Code of 1954, as amended, if such expenses
 25 were not claimed as a deduction in the determination of

1 Montana inheritance tax;

2 (f) losses from fire, storm, shipwreck, or other
3 casualty or from theft, to the extent not compensated for by
4 insurance or otherwise, that are deductible for federal tax
5 purposes according to section 165 of the Internal Revenue
6 Code of 1954, as amended;

7 (g) net operating loss deductions allowed for federal
8 income tax under section 642(d) of the Internal Revenue Code
9 of 1954, as amended, except estates may not claim losses
10 that are deductible on the decedent's final return;

11 (h) all benefits, not in excess of ~~93,600~~ \$12,000,
12 received:

13 (i) as federal employees' retirement;

14 (ii) as retirement from public employment in a Montana
15 or any other state other than Montana; or

16 (iii) as an annuity, pension, or endowment under private
17 or corporate retirement plans or systems;

18 ~~{i}--all--benefits--paid--under--the--Montana--teachers--
19 retirement--system--that--are--specified--as--exempt--from--taxation
20 by--19-4-706;~~

21 ~~{j}--all--benefits--paid--under--the--Montana--Public
22 Employees--Retirement--System--Act--that--are--specified--as
23 exempt--from--taxation--by--19-3-105;~~

24 ~~{k}--all--benefits--paid--under--the--Montana--highway--patrol
25 officers--retirement--system--that--are--specified--as--exempt~~

1 ~~from--taxation--by--19-6-705;~~

2 ~~{i}(i) Montana income tax refunds or credits thereof;~~
3 ~~{m}--all--benefits--paid--under--19-11-602,--19-11-604,--and
4 19-11-605--to--retired--and--disabled--firemen--or--their--surviving
5 spouses--or--children;~~

6 ~~{n}--all--benefits--paid--under--the--municipal--police
7 officers--retirement--system--that--are--specified--as--exempt
8 from--taxation--by--19-9-1005.~~

9 (3) In the case of a shareholder of a corporation with
10 respect to which the election provided for under subchapter
11 S. of the Internal Revenue Code of 1954, as amended, is in
12 effect but with respect to which the election provided for
13 under 15-31-202 is not in effect, net income does not
14 include any part of the corporation's undistributed taxable
15 income, net operating loss, capital gains or other gains,
16 profits, or losses required to be included in the
17 shareholder's federal income tax net income by reason of the
18 election under subchapter S. However, the shareholder's net
19 income shall include actual distribution from the
20 corporation to the extent it would be treated as taxable
21 dividends if the subchapter S. election were not in effect.

22 (4) The following additional deductions shall be
23 allowed in deriving taxable income of estates and trusts:

24 (a) any amount of income for the taxable year currently
25 required to be distributed to beneficiaries for such year;

1 (b) any other amounts properly paid or credited or
2 required to be distributed for the taxable year;

3 (c) the amount of 60% of the excess of the net
4 long-term capital gain over the net short-term capital loss
5 for the taxable year.

6 (5) The exemption allowed for estates and trusts is
7 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

8 ~~{6}--A--trust--or--estate---excluding---benefits---under
9 subsections--(2){i}--through--(2){k},--(2){m},--or--(2){n}--may--not
10 exclude--benefits--described--in--subsection--(2){h}--from--net
11 income--unless--the--benefits--received--under--subsections--(2){i}
12 through--(2){k},--(2){m},--or--(2){n}--are--less--than--\$3,600,--in
13 which--case--the--trust--or--estate--may--combine--benefits--to
14 exclude--up--to--a--total--of--\$3,600--from--net--income--"~~

15 **Section 3.** Section 19-3-105, MCA, is amended to read:

16 "19-3-105. Exemption from taxes and legal process. The
17 right of a person to a retirement allowance or any other
18 benefit under this chapter and the moneys money in the fund
19 created under this chapter ~~is~~ are not:

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

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

24 (a) the amount received in excess of \$12,000; or

25 (b) a refund paid under 19-3-703 of a member's

1 contributions picked up by an employer after June 30, 1985,
2 as provided in 19-3-701; or

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

5 **Section 4.** Section 19-4-706, MCA, is amended to read:

6 "19-4-706. Exemption from taxation and legal process.

7 The pensions, annuities, or any other benefits accrued or
8 accruing to any person under the provisions of the
9 retirement system and the accumulated contributions and cash
10 and securities in the various funds of the retirement system
11 are:

12 (1) exempted from any state, county, or municipal tax
13 of the state of Montana except for:

14 (a) the amount received in excess of \$12,000; or

15 (b) a withdrawal paid under 19-4-603 of a member's
16 contributions picked up by an employer after June 30, 1985,
17 as provided in 19-4-602;

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

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

23 **Section 5.** Section 19-5-704, MCA, is amended to read:

24 "19-5-704. Exemption from taxes and legal process. (1)
25 Any--money Money received or to be paid as a member's

1 annuity, state annuity, or return of deductions or the right
 2 of any of these ~~shall--be~~ is exempt from ~~any--state--or~~
 3 ~~municipal--tax-and-from~~ levy, sale, garnishment, attachment,
 4 or any other process ~~whatsoever~~ and ~~shall-be~~ is unassignable
 5 except as specifically provided in 19-5-705.

6 (2) The first \$12,000 received under this chapter is
 7 exempt from state, county, or municipal taxation."

8 **Section 6.** Section 19-6-705, MCA, is amended to read:

9 "19-6-705. **Exemption from taxes and legal process.** Any
 10 money received or to be paid as a member's annuity, state
 11 annuity, or return of deductions or the right of any of
 12 these is:

13 (1) exempt from any state, county, or municipal tax
 14 except for:

15 (a) the amount received in excess of \$12,000; or

16 (b) a refund paid under 19-6-403 of a member's
 17 contributions picked up by an employer after June 30, 1985,
 18 as provided in 19-6-402;

19 (2) exempt from levy, sale, garnishment, attachment, or
 20 any other process; and

21 (3) unassignable except as specifically provided in
 22 19-6-706."

23 **Section 7.** Section 19-7-705, MCA, is amended to read:

24 "19-7-705. **Exemption from taxes and legal process.** Any
 25 money received or to be paid as a member's annuity, state

1 annuity, or return of deductions or the right of any of
 2 these is:

3 (1) exempt from any state, county, or municipal tax
 4 except for:

5 (a) the amount received in excess of \$12,000; or

6 (b) a refund paid under 19-7-304(1) of a member's
 7 contributions picked up by an employer after June 30, 1985,
 8 as provided in 19-7-403;

9 (2) exempt from levy, sale, garnishment, attachment, or
 10 any other process; and

11 (3) unassignable except as specifically provided in
 12 19-7-706."

13 **Section 8.** Section 19-8-805, MCA, is amended to read:

14 "19-8-805. **Exemption from taxes and legal process.** Any
 15 money received or to be paid as a member's annuity, state
 16 annuity, or return of deductions or the right of any of
 17 these is:

18 (1) exempt from any state, county, or municipal tax
 19 except for:

20 (a) the amount received in excess of \$12,000; or

21 (b) a refund paid under 19-8-503 of the member's
 22 contributions picked up by an employer after June 30, 1985,
 23 as provided in 19-8-502;

24 (2) exempt from levy, sale, garnishment, attachment, or
 25 any other process; and

1 (3) unassignable except as specifically provided in
2 19-8-806."

3 **Section 9.** Section 19-9-1005, MCA, is amended to read:

4 "19-9-1005. Exemption from taxes. Any money paid in
5 accordance with the provisions of this chapter is exempt
6 from any state, county, or municipal tax except for:

7 (1) the amount received in excess of \$12,000; or

8 (2) a refund paid under 19-9-304 of a member's
9 contributions picked up by an employer after June 30, 1985,
10 as provided in 19-9-601."

11 **Section 10.** Section 19-10-504, MCA, is amended to read:

12 "19-10-504. Protection of benefits from legal process
13 and taxation. (1) The benefits provided for in this part are
14 not subject to execution, garnishment, attachment, or the
15 operation of bankruptcy, insolvency, or other process of law
16 and are unassignable except as specifically provided in
17 19-10-505.

18 (2) The first \$12,000 of benefits received under this
19 part are exempt from state, county, and municipal taxation."

20 **Section 11.** Section 19-11-612, MCA, is amended to read:

21 "19-11-612. Protection of benefits from legal process
22 and taxation -- nonassignability. (1) Any payments made or
23 to be made under this chapter are not subject to judgments,
24 garnishment, execution, or other legal process. A person
25 entitled to a pension may not assign the right, and the

1 association and trustees may not recognize any assignment or
2 pay over any sum so assigned.

3 (2) The first \$12,000 of benefits received under this
4 part are exempt from state, county, and municipal taxation."

5 **Section 12.** Section 19-12-407, MCA, is amended to read:

6 "19-12-407. Payment of pension benefits -- exemption
7 from taxation. (1) All payments under the volunteer
8 firefighters' pension plan must be approved by the board and
9 paid by warrants drawn upon the pension trust fund, payable
10 to the order of the individual qualified volunteer
11 firefighter or the beneficiary as provided in 19-12-405(1).

12 (2) The first \$12,000 of benefits received under this
13 part are exempt from state, county, and municipal taxation."

14 **Section 13.** Section 19-13-1003, MCA, is amended to
15 read:

16 "19-13-1003. Exemption from taxes. Any money paid in
17 accordance with the provisions of this chapter is exempt
18 from any state, county, or municipal tax except for:

19 (1) the amount received in excess of \$12,000; or

20 (2) refunds paid under 19-13-602 of the member's
21 contributions picked up by an employer after June 30, 1987,
22 as provided in 19-13-601."

23 **Section 14.** Section 19-21-212, MCA, is amended to read:

24 "19-21-212. Exemption from taxation, legal process, and
25 assessments. All contracts, benefits, and contributions

1 under the optional retirement program and the earnings
2 thereon are:

3 (1) except for the amount received in excess of
4 \$12,000, exempt from any state, county, or municipal tax;

5 (2) not subject to execution, garnishment, attachment,
6 or other process;

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

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

11 NEW SECTION. Section 15. Effective date -- retroactive
12 applicability. [This act] is effective on passage and
13 approval and applies retroactively, within the meaning of
14 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 SB0124, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide an exemption of \$12,000 from taxation of benefits from federal, state, and private retirement, annuity, pension, and endowment plans or systems; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax collections under current law are \$311,176,000 in FY92, and \$327,201,000 in FY93 (OBPP).
2. The proposed \$12,000 exclusion applies to total retirement income, not to each class of retirement separately. (If applied to each, a taxpayer with all three forms of retirement will be allowed to exclude up to \$36,000).
3. Providing for a blanket pension exclusion of \$12,000 for retirees of qualified pension plans increases revenue \$1,550,000 in FY92, and \$1,700,000 in FY93 (DOR income tax simulation model).
4. This proposal applies to taxable years beginning after December 31, 1990.
5. There is no impact on department administrative expenditures.
6. Under current law, all revenue from the individual income tax is deposited in the state general fund.

FISCAL IMPACT:


Revenues:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Individual Income Tax (01)	311,176,000	312,726,000	1,550,000	327,201,000	328,901,000	1,700,000

TECHNICAL NOTE:

Current income tax law does not define retirement income, nor does the bill offer a definition. However, increases in the private retirement exclusion of magnitude proposed by the bill increases the importance of such a definition in order to limit taxpayer conflicts and to accurately determine the likely revenue impact. This fiscal note assumes only those who previously claimed a retirement exclusion would be affected by the bill.

Railroad retirees would be allowed to exclude amounts in excess of the \$12,000 exclusion because a portion of their retirement is exempt from state taxation due to federal law.


 _____ 1-22-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 _____ 1/24/91
 BERNIE A. SWIFT, PRIMARY SPONSOR DATE

Fiscal Note for SB0124, as introduced **SB 124**