SENATE BILL NO. 280

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

FEBRUARY 5, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.

FIRST READING.

PRINTING REPORT.

ENGROSSING REPORT.

- FEBRUARY 18, 1991
- FEBRUARY 19, 1991
- FEBRUARY 21, 1991 SECOND READING, DO PASS.
- FEBRUARY 22, 1991

THIRD READING, PASSED. AYES, 49; NOES, 0.

COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.

FIRST READING.

MARCH 23, 1991 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

APRIL 11, 1991 SECOND READING, CONCURRED IN.

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APRIL 12, 1991

THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 17, 1991

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 18, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Sente BILL NO. 280 1 INTRODUCED BY 5.5 (Tom 2 3 BY REQUEST OF THE DEPARTMENT OF REVENUE 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN 6 7 TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR 8 UNIFORM DEFICIENCY ASSESSMENTS. UNIFORM STATUTES OF 9 LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE 10 COMPANY 13 LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE 12 LODGING FACILITY USE TAX, THE PASSENGER TRAMWAY ASSESSMENT, 13 THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE 14 ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER 15 COUNSEL; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 16 15-55-108, 15-65-112, 15-65-115, 23-2-715, 35-18-503, 17 69-1-225; AND 69-1-226; MCA; AND PROVIDING AN IMMEDIATE 18 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

21 Section 1. Section 10-4-211, MCA, is amended to read: 22 "10-4-211. Provider required to hold fee in trust for 23 state <u>-- penalty and interest</u>. (1) Every provider required 24 to collect the fee imposed by 10-4-201 holds it in trust for 25 the state of Montana and for the payment thereof to the

entana Legislative Council

department of revenue in the manner and at the time provided 1 2 by 10-4-204. (2) (a) If a provider required to collect the fee fails 3 to remit any amount held in trust for the state of Montana 4 or if a subscriber fails to pay the feet-the on or before 5 the last day of the month following the end of each calendar 6 guarter, the department of revenue shall add to the amount 7 8 of the delinguent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent 9 fee plus interest at the rate of 1% a month or fraction of a 10 11 month computed on the amount of the delinquent fee plus any 12 unpaid penalties and interest. Interest is computed from the 13 date the fee is due until the date of payment. 14 (b) The department of revenue may waive the penalty if 15 the provider establishes that the failure to pay on time was 16 due to reasonable cause and was not due to neglect. 17 (3) [(a) If the department of revenue determines that 18 the amount of fee due is greater than the amount reported, 19 it shall mail to the provider a notice of the additional fee 20 proposed to be assessed. Within 30 days after mailing of the 21 notice, the provider may file with the department of revenue 22 a written protest against the proposed additional fee, 23 setting forth the grounds upon which the protest is based, 24 and may request in his protest an oral hearing or an 25 opportunity to present additional evidence relating to his

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(a) A set of the se

1	additional liability. If a protest is not filed, the amount
2	of the additional fee proposed to be assessed becomes final
3	upon expiration of the 30-day period. If a protest is filed,
4	
5	assessment and, if the provider has so requested, shall
6	grant the provider an oral hearing. After consideration of
7	the protest and the evidence presented at an oral hearing,
8	the department of revenue's action upon the protest is final
9	when it mails notice of its action to the provider.]
10	(b) When a deficiency is determined and the additional
11	fee becomes final, the department of revenue shall mail a
12	notice and demand for payment to the provider. The fee is
13	due and payable at the expiration of 10 days after the
14	notice and demand were mailed. Interest on any deficiency
15	assessment bears interest until paid, at the rate of 1% a
16	month or fraction of a month, computed from the original due
17	date of the return.
18	(c) If payment is not made within 10 days, the amount
19	of the deficiency is considered delinguent. A 10% penalty
20	must be added to the amount of the deficiency.
21	(4) The 10% penalty provided for in subsection (3)(c)
22	may be waived by the department of revenue if the provider
23	establishes that the failure to pay the proper amount of

1 the issuance of a warrant for distraint for the collection 2 of the delinquent amount and all penalties, interest, and 3 collection charges accrued thereon. The warrant is governed 4 by the provisions of Title 15, chapter 1, part 7."

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5 Section 2. Section 15-53-105, MCA, is amended to read: 6 "15-53-105. Deficiency assessment -- hearing -- penalty 7 -- interest. (1) When If the department of revenue 8 determines that the amount of tax due is greater than the 9 amount disclosed-by-a-return reported, it shall mail to the 10 taxpayer a notice of the additional tax proposed to be 11 assessed. Within 30 days after mailing of the notice, the 12 taxpayer may file with the department a written protest

12 taxpayer may file with the department a written protest 13 against the proposed additional tax, setting forth the 14 grounds upon which the protest is based, and may request in 15 his protest an oral hearing or an opportunity to present 16 additional evidence relating to his tax liability. If no a 17 protest is not filed, the amount of the additional tax 18 proposed to be assessed becomes final upon the expiration of 19 the 30-day period. If a protest is filed, the department 20 must shall reconsider the proposed assessment and, if the 21 taxpayer has so requested, must shall grant the taxpayer an 22 oral hearing. After consideration of the protest and the 23 evidence presented at any an oral hearing, the department's 24 action upon the protest is final when it mails notice of its 25 action to the taxpayer.

fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by

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(2) (a) When a deficiency is determined and the tax 1 2 becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at 3 4 the expiration of 10 days from-the-date-of--such after the 5 notice and demand were mailed. Interest on any deficiency assessment shall-bear bears interest until paid, at the rate 6 of 1% a month or fraction thereof of a month, computed from 7 the original due date of the return. 8

9 (b) If payment is not made within 10 days, the amount 10 of the deficiency is considered delinquent. A 10% penalty 11 must be added to the amount of the deficiency."

12 Section 3. Section 15-53-111, MCA, is amended to read: 13 "15-53-111. Penalty and interest for delinguency --14 waiver, (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each 15 calendar quarter. The department of revenue shall add to the 16 17 amount of all delinquent telephone company license taxes a 18 penalty of 10% of the amount of license taxes plus interest 19 at the rate of 1% per month or fraction thereof computed on 20 the total amount of license taxes and-penalty. Interest is computed from the date the license taxes were due to the 21 22 date of payment.

(2) The 10% penalty may be waived by the department if
reasonable calle for the failure or neglect to file the
statement regired by 15-53-102 or pay the tax due is

provided to the department."

Section 4. Section 15-55-108, MCA, is amended to read: 2 "15-55-108. Penalty and interest for delinquency ---3 waiver. (1) License taxes due under this chapter become 4 delinquent if not paid by March 1. The department shall add 5 to the amount of all delinguent freight line company license 6 7 taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof 8 9 computed on the total amount of license taxes and-penalty. 10 Interest is computed from the date the license taxes were 11 due to the date of payment.

12 (2) The 10% penalty may be waived by the department if 13 reasonable cause for the failure or neglect to file the 14 statement required by 15-55-103 or pay the tax due is 15 provided to the department."

16 Section 5. Section 15-65-112, MCA, is amended to read:

17 "15-65-112. Collection and reporting. (1) The owner or
18 operator of a facility shall collect the tax imposed by
19 15-65-111.

(2) The owner or operator shall report to the
department of revenue, at the end of each calendar quarter,
the gross receipts collected during that quarter
attributable to accommodation charges for the use of the
facility. The report is due within-30-days on or before the
last day of the month following the end of the calendar

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1 quarter and must be accompanied by a payment in an amount 2 equal to the tax required to be collected under subsection 3 (1)."

Section 6. Section 15-65-115, MCA, is amended to read: 4 5 "15-65-115. Failure to pay or file -- penalty --6 interest. (1) An owner or operator of a facility who fails 7 to file the report as required by 15-65-112 must be assessed 8 a penalty of 2% 10% of the tax that should have been collected during the calendar quarter. Upon a showing of 9 good cause, the department of revenue may waive the penalty. 10 11 (2) An owner or operator of a facility who fails to 12 make payment or fails to report and make payment as required by 15-65-112 must be assessed a penalty of 2% 10% of the 13 14 amount that was not paid. Upon a showing of good cause, the 15 department may waive the penalty.

(3) (a) If an owner or operator of a facility fails to
file the report required by 15-65-112 or if the department
of revenue determines that the report understates the amount
of tax due, the department may determine the amount of the
tax due and assess that amount against the owner or
operator.

22 [(b) If the department of revenue determines that the 23 amount of tak due is greater than the amount reported or 24 that the owner or operator of a facility failed to file a 25 report, it shall mail to the owner or operator a notice of LC 0311/01

1	the additional tax proposed to be assessed. Within 30 days
2	after mailing of the notice, the owner or operator may file
3	with the department a written protest against the proposed
4	additional tax, setting forth the grounds upon which the
5	protest is based, and may request in his protest an oral
6	hearing or an opportunity to present additional evidence
7	relating to his tax liability. If a protest is not filed,
8	the amount of the additional tax proposed to be assessed
9	becomes final upon expiration of the 30-day period.]
10	(c) When a deficiency is determined and the tax becomes
11	final, the department shall mail a notice and demand for
12	payment to the owner or operator. The tax is due and payable
13	at the expiration of 10 days after the notice and demand
14	were mailed. Interest on any deficiency assessment bears
15	interest until paid, at the rate of 1% a month or fraction
16	of a month, computed from the original due date of the
17	return.
18	(4) The amount required to be paid under 15-65-112
19	accrues interest at the rate of 1% a month or part thereof
20	from delinquency until paid."
21	Section 7. Section 23-2-715, MCA, is amended to read:
22	"23-2-715. Assessment on passenger tramway receipts
23	penalty and interest. (1) The board is hereby authorized to
24	impose an assessment of up to 1/4 of 1% on the gross
25	receipts of all passenger tramways operated in the state of

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Montana. A minimum of \$100 shall be collected annually from 1 the owner of a passenger tranway facility. The assessment 2 shall be calculated upon gross receipts received during the 3 period July 1 of any year to July 1 of the following year. 4 5 The assessments shall be collected by the department of revenue and remitted to the state special revenue fund by on б 7 or before December 31 of each year for the previous fiscal 8 year.

(2) [(a) If the department of revenue determines that 9 10 the amount of assessment due is greater than the amount reported, it shall mail to the operator a notice of the 11 12 additional assessment proposed to be assessed. Within 30 days after mailing of the notice, the operator may file with 13 14 the department of revenue a written protest against the 15 proposed additional assessment, setting forth the grounds 16 upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present 17 additional evidence relating to his assessment liability. If 18 19 a protest is not filed, the amount of the additional assessment proposed to be assessed becomes final upon 20 21 expiration of 30-day period. If a protest is filed, the department of revenue shall reconsider the proposed 22 23 assessment and, if the operator has so requested, shall grant the operator an oral hearing. After consideration of 24 the protest and the evidence presented at an oral hearing, 25

the department of revenue's action upon the protest is final 1 2 when it mails notice of its action to the operator.] 3 (b) When a deficiency is determined and the assessment 4 becomes final, the department of revenue shall mail a notice 5 and demand for payment to the operator. The assessment is due and payable at the expiration of 10 days after the 6 7 notice and demand were mailed. Interest on any deficiency 8 assessment bears interest until paid, at the rate of 1% a 9 month or fraction of a month, computed from the original due 10 date of the return. (c) If payment is not made within 10 days, the amount 11 of the deficiency is considered delinquent. A 10% penalty 12 13 must be added to the amount of the deficiency. 14 {2}(3) All proceeds of the gross receipts assessment 15 and the fees collected under 23-2-714 shall be used only to support the duties of the board set forth in this part." 16 17 Section 8. Section 35-18-503, MCA, is amended to read: 18 "35-18-503, Annual fee to department of revenue ---19 exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to 20 the provisions of this chapter shall pay annually on or 21 22 before July 1, to the department of revenue a fee of \$10 for each 100 persons or fractions thereof to whom electricity or 23 telephone service is was supplied during the previous 24 25 calendar year within the state but and, except as provided

1 in 10-4-201, shall be exempt from all other excise and 2 income taxes of whatsoever kind or nature."

3 Section 9. Section 69-1-225, MCA, is amended to read: "69-1-225. Computation and collection of fee in absence 4 5 of statement -- penalty and interest. (1) If a regulated 6 company or an officer or employee of a regulated company 7 fails, neglects, or refuses to file the statement required 8 by 69-1-223(2), the department of revenue may after the time 9 for filing has expired proceed to inform itself, as best it 10 may, regarding the regulated company's gross operating 11 revenue from all activities regulated by the commission 12 within the state for the calendar guarter, guarters, or 13 portion thereof and may determine and fix the amount of the 14 consumer counsel fee due.

15 (2) The-department-may-add-to-the--amount--of--the--fee 16 computed--under--subsection--(1),--in--adc tion-to-any-other 17 penalty-provided-by-law7--a--penalty--of--10%--thereof--plus 18 interest--at---the--rate-of-1%-per-month-or-fraction-of-month 19 computed-on-the-total-amount-of-fee-and-penalty--Interest-is 20 computed-from-the-date--the--fee--is--due--to--the--date--of 21 payment. [If the department of revenue determines that the 22 amount of fee due is greater than the amount reported or 23 makes an estimate pursuant to subsection (1), it shall mail 24 to the regulated company a notice of the fee proposed to be assessed. Within 30 days after mailing of the notice, the 25

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1	regulated company may file with the department a written
2	protest against the proposed fee, setting forth the grounds
3	upon which the protest is based, and may request in its
4	protest an oral hearing or an opportunity to present
5	additional evidence relating to its liability.]
6	(3) Thedepartmentofrevenueshallmailtothe
7	regulated-company-a-letter-setting-forth-the-amountofthe
8	fee;penalty;andinterest-and-notifying-the-company-that
9	payment-of-the-full-amount-of-the-fee;-penalty;-and-interest
10	must-be-remitted-within-15-days-of-theregulatedcompany's
11	receiptoftheletter;otherwisealienmay-be-filed-
12	(a) When a deficiency is determined and the fee becomes
13	final, the department shall mail a notice and demand for
14	payment to the regulated company. The fee is due and payable
15	at the expiration of 10 days after the notice and demand
16	were mailed. Interest on any deficiency assessment bears
17	interest until paid, at the rate of 1% a month or fraction
18	of a month, computed from the original due date of the
19	return.
20	(b) If payment is not made within 10 days, the amount
2 1	of the deficiency is considered delinguent. A 10% penalty
22	must be added to the amount of the deficiency.
23	(4) The 10% penalty may be waived by the department of
24	revenue if reasonable cause for failure and neglect to file
25	the statement is provided to the department."

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Section 10. Section 69-1-226, MCA, is amended to read: 1 "69-1-226. Failure to pay fee -- penalty and interest 2 -- collection of fee. (1) If a regulated company or an 3 officer or employee of a regulated company files the 4 statement required by 69-1-223(2) but fails, neglects, or 5 refuses to pay the fee due within the time required, the 6 department of revenue may after the time for payment has 7 expired add to the fee due, in addition to any other penalty 8 provided by law, a penalty of 10% thereof plus interest at 9 the rate of 1% per month or fraction of month computed on 10 the total amount of the fee and--penalty. Interest is 11 computed from the date the fee is due to the date of 12 13 payment.

14 (2) The department of revenue shall mail to the 15 regulated company a letter setting forth the amount of the 16 fee, penalty, and interest and notifying the company that 17 payment of the full amount of the fee, penalty, and interest 18 must be remitted within 15 10 days of the regulated 19 company's receipt of the letter; otherwise a warrant for 20 distraint may be filed.

(3) The 10% penalty may be waived by the department of
revenue if reasonable cause for failure and neglect to make
payment is provided to the department."

24 NEW SECTION. Section 11. Penalty and interest for 25 delinquency -- waiver. (1) Assessments due under this 1 chapter are delinquent if not paid on or before December 31.
2 The department of revenue shall add to the amount of each
3 delinquent assessment a penalty of 10% of the amount of the
4 assessment plus interest at the rate of 1% per month or
5 fraction of a month computed on the total amount of
6 assessment. Interest is computed from the date the
7 assessment was due to the date of payment.

8 (2) The 10% penalty may be waived by the department of 9 revenue if reasonable cause is established for the failure 10 or neglect to file the return required by 23-2-715 or to pay 11 the assessment due to the department of revenue.

NEW SECTION. Section 12. Credit for overpayment --12 interest on overpayment. (1) If the department of revenue 13 14 determines that the amount of fee, penalty, or interest paid 15 for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or 16 interest then due from the taxpayer and the balance refunded 17 to the taxpayer or the taxpayer's successor 18 through 19 reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution. 20

(2) Except as provided in subsection (3), interest is
allowed on overpayments at the same rate as is charged on
deficiency assessments from the due date of the return or
from the date of overpayment, whichever date is later, to
the date the department of revenue approves refunding or

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1 crediting of the overpayment.

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2 (3) (a) Interest does not accrue during any period in 3 which the processing of a claim for a refund is delayed more 4 than 30 days by reason of failure of the taxpayer to furnish 5 information requested by the department of revenue for the 6 purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

12 (c) Only a payment made incident to a bona fide and
13 orderly discharge of actual tax liability or one reasonably
14 assumed to be imposed by this chapter is considered an
15 overpayment with respect to which interest is allowable.

NEW SECTION. Section 13. Credit for overpayment --16 17 interest on overpayment. (1) If the department of revenue 18 determines that the amount of tax, penalty, or interest paid 19 for any year is more than the amount due, the amount of the 20 overpayment must be credited against any tax, penalty, or 21 interest then due from the taxpayer and the balance refunded 22 the taxpayer, to the taxpayer's successor through to 23 reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution. 24

25 (2) Except as provided in subsection (3), interest is

allowed on overpayments at the same rate as is charged on
 deficiency assessments from the due date of the return or
 from the date of overpayment, whichever is later, to the
 date the department approves refunding or crediting of the
 overpayment.

6 (3) (a) Interest does not accrue during any period in 7 which the processing of a claim for refund is delayed more 8 than 30 days by reason of failure of the taxpayer to furnish 9 information requested by the department for the purpose of 10 verifying the amount of the overpayment.

11 (b) Interest is not allowed:

12 (i) if the overpayment is refunded within 6 months from
13 the date the return is due or from the date the return is
14 filed, whichever is later; or

15 (ii) if the amount of interest is less than \$1.

16 (c) Only a payment made incident to a bona fide and
17 orderly discharge of actual tax liability or one reasonably
18 assumed to be imposed by this chapter is considered an
19 overpayment with respect to which interest is allowable.

20 <u>NEW SECTION.</u> Section 14. Credit for overpayment --21 interest on overpayment. (1) If the department of revenue 22 determines that the amount of the assessment, penalty, or 23 interest paid for any year is more than the amount due, the 24 amount of the overpayment must be credited against any 25 assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's
 successor through reorganization, merger, or consolidation,
 or to the taxpayer's shareholders upon dissolution.

4 (2) Except as provided in subsection (3), interest is 5 allowed on overpayments at the same rate as is charged on 6 deficiency assessments provided in 23-2-715(2) from the due 7 date of the return or from the date of overpayment, 8 whichever is later, to the date the department of revenue 9 approves refunding or crediting of the overpayment.

10 (3) (a) Interest does not accrue during any period in 11 which the processing of a claim for refund is delayed more 12 than 30 days by reason of failure of the taxpayer to furnish 13 information requested by the department of revenue for the 14 purpose of verifying the amount of the overpayment.

15 (b) Interest is not allowed:

16 (i) if the overpayment is refunded within 6 months from
17 the date the return is due or from the date the return is
18 filed, whichever is later; or

19 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

24 <u>NEW SECTION.</u> Section 15. Statute of limitations. (1)
 25 Except as provided in subsection (3), a deficiency may not

be assessed or collected with respect to the year for which 1 a statement of gross receipts is filed unless the notice of 2 3 the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For 4 purposes of this section, a statement of gross receipts 5 filed before the last day prescribed for filing is 6 7 considered as filed on the last day. If the taxpayer, before 8 the expiration of the period prescribed for assessment, consents in writing to an extended time, the assessment may Э be made at any time prior to the expiration of the period 10 agreed upon. 11

12 (2) A refund or credit may not be allowed or paid with 13 respect to the year for which a statement of gross receipts is filed after 5 years from the last day prescribed for 14 15 filing the statement of gross receipts or after 1 year from 16 the date of the overpayment, whichever period expires later, 17 unless before the expiration of the period the taxpayer 18 files a claim or the department of revenue determines the existence of the overpayment and approves the refund or 19 20 credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which 21 22 the department of revenue may propose an additional 23 assessment, the period within which a claim for refund or 24 credit may be filed or a credit or refund allowed if no claim is filed is automatically extended. 25

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1 (3) If a statement of gross receipts is required to be 2 filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect 3 the tax may be brought at any time. If a statement of gross 4 receipts is required to be filed and the taxpayer files a 5 fraudulent statement of gross receipts, the 5-year period 6 7 provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue. 8

NEW SECTION. Section 16. Statute of limitations. (1) 9 Except as provided in subsection (3), a deficiency may not 10 be assessed or collected with respect to the year for which 11 a return is filed unless the notice of the additional fee 12 proposed to be assessed is mailed within 5 years from the 13 date the return was filed. For purposes of this section, a 14 15 return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before 16 the expiration of the period prescribed for assessment of 17 the fee, consents in writing to an assessment after that 18 time, the fee may be assessed at any time prior to the 19 expiration of the period agreed upon. 20

(2) A refund or credit may not be allowed or paid with
respect to the year for which a return is filed after 5
years from the last day prescribed for filing the return or
after 1 year from the date of the overpayment, whichever
period expires later, unless before the expiration of the

period the taxpayer files a claim or the department of 1 revenue determines the existence of the overpayment and 2 ٦ approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the 4 time within which the department of revenue may propose an 5 additional assessment, the period within which a claim for 6 refund or credit may be filed or a credit or refund allowed 7 if no claim is filed is automatically extended. 8

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9 (3) If a return is required to be filed and the 10 taxpayer fails to file the return, the tax may be assessed 11 or an action to collect the tax may be brought at any time. 12 If a return is required to be filed and the taxpayer files a 13 fraudulent return, the 5-year period provided for in 14 subsection (1) does not begin until discovery of the fraud 15 by the department of revenue.

NEW SECTION. Section 17. Penalty and interest for 16 17 delinguency -- waiver. (1) Fees due under this chapter 18 become delinquent if not paid on or before July 1 for the 19 previous calendar year. The department of revenue shall add 20 to the amount of each delinguent fee a penalty of 10% of the 21 amount of the fee plus interest at the rate of 1% per month 22 or fraction of a month computed on the total fee. Interest 23 is computed from the date the fees were due to the date of 24 payment.

25 (2) The 10% penalty may be waived by the department if

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reasonable cause for the failure or neglect to pay the fee
 required by 35-18-503 is provided to the department.

NEW SECTION. Section 18. Deficiency assessment 3 4 hearing -- interest. (1) If the department of revenue 5 determines that the amount of fee due is greater than the б amount reported, it shall mail to the taxpayer a notice of 7 the additional fee proposed to be assessed. Within 30 days 8 after mailing of the notice, the taxpayer may file with the 9 department a written protest against the proposed additional 10 fee, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an 11 12 opportunity to present additional evidence relating to his additional liability. If a protest is not filed, the amount 13 of the additional fee proposed to be assessed becomes final 14 15 upon expiration of the 30-day period. If a protest is filed, 16 the department shall reconsider the proposed assessment and, 17 if the taxpayer has requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the 18 19 evidence presented at an oral hearing, the department's 20 action upon the protest is final when it mails notice of its 21 action to the taxpayer.

(2) (a) When a deficiency is determined and the
additional fee becomes final, the department shall mail a
notice and demand for payment to the taxpayer. The fee is
due and payable at the expiration of 10 days after the

notice and demand were mailed. Interest on any deficiency
 assessment bears interest until paid, at the rate of 1% a
 month or fraction of a month, computed from the original due
 date of the return.

b) If payment is not made within 10 days, the amount
of the deficiency is considered delinquent. A 10% penalty
7 must be added to the amount of the deficiency.

8 <u>NEW SECTION.</u> Section 19. Codification instruction. (1) 9 [Sections 12 and 16] are intended to be codified as an 10 integral part of Title 69, chapter 1, part 2, and the 11 provisions of Title 69, chapter 1, part 2, apply to 12 [sections 12 and 16].

13 (2) [Sections 12 and 16] are intended to be codified as 14 an integral part of Title 10, chapter 4, part 2, and the 15 provisions of Title 10, chapter 4, part 2, apply to 16 [sections 12 and 16].

17 (3) [Section 13] is intended to be codified as an 18 integral part of Title 15, chapter 65, part 1, and the 19 provisions of Title 15, chapter 65, part 1, apply to 20 [section 13].

(4) [Sections 11, 14, and 15] are intended to be
codified as an integral part of Title 23, chapter 2, part 7,
and the provisions of Title 23, chapter 2, part 7, apply to
[sections 11, 14, and 15].

25 (5) [Sections 12, 16, 17, and 18] are intended to be

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codified as an integral part of Title 35, chapter 18, part
 5, and the provisions of Title 35, chapter 18, part 5, apply
 to [sections 12, 16, 17, and 18].

NEW SECTION. Section 21. Applicability. [This act]
applies to all returns or statements due on or after July 1,
1991.

13 NEW SECTION. Section 22. Effective date. [This act] is

14 effective on passage and approval.

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STATE OF MONTANA - FISCAL NOTE Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0280, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to revise and standardize the administration and collection of certain taxes and fees by the Department of Revenue by providing for uniform deficiency assessments, uniform statutes of limitation, and credit for overpayment for the state emergency telephone system fee, the telephone company license tax, the freight line company license tax, the lodging facility use tax, the passenger tramway assessment, the annual fee on rural cooperative utilities, and the fee on regulated companies for the Office of the Consumer Counsel.

ASSUMPTIONS:

The proposed legislation is solely for the purpose of improving administrative and taxpayer understanding of penalties and interest associated with delinquent taxes and fees.

FISCAL IMPACT:

None.

DATE

ROD SUNDSTED, BUDGET DIRECTOR Office of Budget and Program Planning

BOB BROWN, PRIMARY SPONSOR DATE

Fiscal Note for <u>SB0280</u>, as introduced.

52nd Legislature

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	APPROVED BY COMMITTEE ON TAXATION
1	Senate BILL NO. 280
2	INTRODUCED BY Brok Brown
3	BY REQUEST OF THE DEPARTMENT OF REVENUE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND
6	STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN
7	TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR
8	UNIFORM DEFICIENCY ASSESSMENTS, UNIFORM STATUTES OF
9	LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE
10	EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE COMPANY
11	LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE
12	LODGING FACILITY USE TAX, THE PASSENGER TRAMWAY ASSESSMENT,
13	THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE
14	ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER
15	COUNSEL; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111,
16	15-55-108, 15-65-112, 15-65-115, 23-2-715, 35-18-503,
17	69-1-225, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE
18	EFFECTIVE DATE AND AN APPLICABILITY DATE."
19	
20	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21	Section 1. Section 10-4-211, MCA, is amended to read:
22	"10-4-211. Provider required to hold fee in trust for

22 "10-4-211. Provider required to hold fee in trust for
23 state <u>-- penalty and interest</u>. (1) Every provider required
24 to collect the fee imposed by 10-4-201 holds it in trust for
25 the state of Montana and for the payment thereof to the



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by 10-4-204.

(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee7-the on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment. (b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that

department of revenue in the manner and at the time provided

- 18 the amount of fee due is greater than the amount reported,
- 19 it shall mail to the provider a notice of the additional fee
- 20 proposed to be assessed. Within 30 days after mailing of the
- 21 notice, the provider may file with the department of revenue
- 22 a written protest against the proposed additional fee,
- 23 setting forth the grounds upon which the protest is based,
- 24 and may request in his protest an oral hearing or an
- 25 opportunity to present additional evidence relating to his

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SECOND READING

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1	additional liability. If a protest is not filed, the amount
2	of the additional fee proposed to be assessed becomes final
3	upon expiration of the 30-day period. If a protest is filed,
4	the department of revenue shall reconsider the proposed
5	assessment and, if the provider has so requested, shall
6	grant the provider an oral hearing. After consideration of
7	the protest and the evidence presented at an oral hearing,
8	the department of revenue's action upon the protest is final
9	when it mails notice of its action to the provider.]
10	(b) When a deficiency is determined and the additional
11	fee becomes final, the department of revenue shall mail a
1 2	notice and demand for payment to the provider. The fee is
13	due and payable at the expiration of 10 days after the
14	notice and demand were mailed. Interest on any deficiency
15	assessment bears interest until paid, at the rate of 1% a
16	month or fraction of a month, computed from the original due
17	date of the return.
18	(c) If payment is not made within 10 days, the amount
19	of the deficiency is considered delinguent. A 10% penalty
20	must be added to the amount of the deficiency.
21	(4) The 10% penalty provided for in subsection (3)(c)
22	may be waived by the department of revenue if the provider
23	establishes that the failure to pay the proper amount of
24	fees was due to reasonable cause and was not due to neglect.
25	(5) The department of revenue may enforce collection by

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1 the issuance of a warrant for distraint for the collection 2 of the delinquent amount and all penalties, interest, and 3 collection charges accrued thereon. The warrant is governed 4 by the provisions of Title 15, chapter 1, part 7."

5 Section 2. Section 15-53-105, MCA, is amended to read:

*15-53-105. Deficiency assessment -- hearing -- penalty 6 -- interest. (1) When If the department of revenue 7 determines that the amount of tax due is greater than the 8 9 amount disclosed-by-a-return reported, it shall mail to the taxpayer a notice of the additional tax proposed to be 10 11 assessed. Within 30 days after mailing of the notice, the 12 taxpayer may file with the department a written protest 13 against the proposed additional tax, setting forth the 14 grounds upon which the protest is based, and may request in 15 his protest an oral hearing or an opportunity to present 16 additional evidence relating to his tax liability. If no a protest is not filed, the amount of the additional tax 17 proposed to be assessed becomes final upon the expiration of 18 19 the 30-day period. If a protest is filed, the department 20 must shall reconsider the proposed assessment and, if the 21 taxpayer has so requested, must shall grant the taxpayer an 22 oral hearing. After consideration of the protest and the 23 evidence presented at any an oral hearing, the department's 24 action upon the protest is final when it mails notice of its action to the taxpayer. 25

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1 (2) (a) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand 2 з for payment to the taxpayer. The tax is due and payable at 4 the expiration of 10 days from-the-date-of--such after the notice and demand were mailed. Interest on any deficiency 5 assessment shall-bear bears interest until paid, at the rate 6 7 of 1% a month or fraction thereof of a month, computed from 8 the original due date of the return.

9 (b) If payment is not made within 10 days, the amount
10 of the deficiency is considered delinquent. A 10% penalty
11 must be added to the amount of the deficiency."

12 Section 3. Section 15-53-111, MCA, is amended to read: 13 "15-53-111. Penalty and interest for delinquency --waiver, (1) License taxes due under this chapter become 14 15 delinquent if not paid within 60 days after the end of each 16 calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a 17 18 penalty of 10% of the amount of license taxes plus interest 19 at the rate of 1% per month or fraction thereof computed on 20 the total amount of license taxes and-penalty. Interest is 21 computed from the date the license taxes were due to the 22 date of payment.

(2) The 10% penalty may be waived by the department if
reasonable cause for the failure or neglect to file the
statement required by 15-53-102 or pay the tax due is

provided to the department."

2 Section 4. Section 15-55-108, MCA, is amended to read:

3 "15-55-108. Penalty and interest for delinquency -waiver. (1) License taxes due under this chapter become 4 5 delinquent if not paid by March 1. The department shall add 6 to the amount of all delinquent freight line company license 7 taxes a penalty of 10% of the amount of license taxes plus 8 interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and-penalty. 9 10 Interest is computed from the date the license taxes were 11 due to the date of payment.

12 (2) The 10% penalty may be waived by the department if 13 reasonable cause for the failure or neglect to file the 14 statement required by 15-55-103 or pay the tax due is 15 provided to the department."

16 Section 5. Section 15-65-112, MCA, is amended to read:

17 "15-65-112. Collection and reporting. (1) The owner or 18 operator of a facility shall collect the tax imposed by 19 15-65-111.

20 (2) The owner or operator shall report to the 21 department of revenue, at the end of each calendar quarter, 22 gross receipts collected during that the guarter 23 attributable to accommodation charges for the use of the facility. The report is due within-30-days on or before the 24 25 last day of the month following the end of the calendar

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1 guarter and must be accompanied by a payment in an amount 2 equal to the tax required to be collected under subsection 3 (1)."

Section 6. Section 15-65-115, MCA, is amended to read: 4 "15-65-115. Failure to pay or file -- penalty --5 interest. (1) An owner or operator of a facility who fails 6 to file the report as required by 15-65-112 must be assessed 7 a penalty of 2% 10% of the tax that should have been 8 collected during the calendar guarter. Upon a showing of 9 10 good cause, the department of revenue may waive the penalty. 11 (2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required 12 13 by 15-65-112 must be assessed a penalty of 2% 10% of the 14 amount that was not paid. Upon a showing of good cause, the 15 department may waive the penalty. 16

16 (3) (a) If an owner or operator of a facility fails to 17 file the report required by 15-65-112 or if the department 18 of revenue determines that the report understates the amount 19 of tax due, the department may determine the amount of the 20 tax due and assess that amount against the owner or 21 operator.

22 [(b) If the department of revenue determines that the 23 amount of tak due is greater than the amount reported or 24 that the owner or operator of a facility failed to file a 25 report, it shall mail to the owner or operator a notice of

1	the additional tax proposed to be assessed. Within 30 days
2	after mailing of the notice, the owner or operator may file
3	with the department a written protest against the proposed
4	additional tax, setting forth the grounds upon which the
5	protest is based, and may request in his protest an oral
6	hearing or an opportunity to present additional evidence
7	relating to his tax liability. If a protest is not filed,
8	the amount of the additional tax proposed to be assessed
9	becomes final upon expiration of the 30-day period.]
10	(c) When a deficiency is determined and the tax becomes
11	final, the department shall mail a notice and demand for
12	payment to the owner or operator. The tax is due and payable
13	at the expiration of 10 days after the notice and demand
14	were mailed. Interest on any deficiency assessment bears
15	interest until paid, at the rate of 1% a month or fraction
16	of a month, computed from the original due date of the
17	return.
18	(4) The amount required to be paid under 15-65-112
19	accrues interest at the rate of 1% a month or part thereof
20	from delinguency until paid."
2 1	Section 7. Section 23-2-715, MCA, is amended to read:
22	"23-2-715. Assessment on passenger tramway receipts
23	penalty and interest. (1) The board is hereby authorized to
24	impose an assessment of up to 1/4 of 1% on the gross
25	receipts of all passenger tramways operated in the state of

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Montana. A minimum of \$100 shall be collected annually from 1 the owner of a passenger tramway facility. The assessment 2 shall be calculated upon gross receipts received during the 3 period July 1 of any year to July 1 of the following year. 4 The assessments shall be collected by the department of 5 revenue and remitted to the state special revenue fund by on 6 7 or before December 31 of each year for the previous fiscal 8 year.

(2) [(a) If the department of revenue determines that 9 10 the amount of assessment due is greater than the amount reported, it shall mail to the operator a notice of the 11 additional assessment proposed to be assessed. Within 30 12 days after mailing of the notice, the operator may file with 13 the department of revenue a written protest against the 14 proposed additional assessment, setting forth the grounds 15 upon which the protest is based, and may request in his 16 protest an oral hearing or an opportunity to present 17 additional evidence relating to his assessment liability. If 18 a protest is not filed, the amount of the additional 19 assessment proposed to be assessed becomes final upon 20 expiration of 30-day period. If a protest is filed, the 21 department of revenue shall reconsider the proposed 22 assessment and, if the operator has so requested, shall 23 grant the operator an oral hearing. After consideration of 24 the protest and the evidence presented at an oral hearing, 25

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1	the department of revenue's action upon the protest is final
2	when it mails notice of its action to the operator.]
3	(b) When a deficiency is determined and the assessment
4	becomes final, the department of revenue shall mail a notice
5	and demand for payment to the operator. The assessment is
б	due and payable at the expiration of 10 days after the
7	notice and demand were mailed. Interest on any deficiency
8	assessment bears interest until paid, at the rate of 1% a
9	month or fraction of a month, computed from the original due
10	date of the return.
11	(c) If payment is not made within 10 days, the amount
12	of the deficiency is considered delinguent. A 10% penalty
13	must be added to the amount of the deficiency.
14	<pre>t2;(3) All proceeds of the gross receipts assessment</pre>
15	and the fees collected under 23-2-714 shall be used only to
16	support the duties of the board set forth in this part."
17	Section 8. Section 35-18-503, MCA, is amended to read:
18	"35-18-503. Annual fee to department of revenue ~~
19	exemption from other taxes. Cooperatives and foreign
20	corporations transacting business in this state pursuant to
21	the provisions of this chapter shall pay annually on or
22	before July 1, to the department of revenue a fee of \$10 for
23	each 100 persons or fractions thereof to whom electricity or
24	telephone service is was supplied during the previous
25	calendar year within the state but and, except as provided

in 10-4-201, shall be exempt from all other excise and
 income taxes of whatsoever kind or nature."

3 Section 9. Section 69-1-225, MCA, is amended to read:
4 *69-1-225. Computation and collection of fee in absence
5 of statement -- penalty and interest. (1) If a regulated

company or an officer or employee of a regulated company 6 7 fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time 8 for filing has expired proceed to inform itself, as best it 9 may, regarding the regulated company's gross operating 10 11 revenue from all activities regulated by the commission 12 within the state for the calendar quarter, quarters, or 13 portion thereof and may determine and fix the amount of the 14 consumer counsel fee due.

15 (2) The-department-may-add-to-the--amount--of--the--fee 16 computed--under--subsection--(1);--in--ad(tion-to-any-other penalty-provided-by-law7--a--penalty-of--10%--thereof--plus 17 18 interest--at--the--rate-of-1%-per-month-or-fraction-of-month computed-on-the-total-amount-of-fee-and-penalty:-Interest-is 19 computed-from-the-date--the--fee--is--due--to--the--date--of 20 payment. [If the department of revenue determines that the 21 22 amount of fee due is greater than the amount reported or makes an estimate pursuant to subsection (1), it shall mail 23 to the regulated company a notice of the fee proposed to be 24 assessed. Within 30 days after mailing of the notice, the 25

1 regulated company may file with the department a written 2 protest against the proposed fee, setting forth the grounds 1 upon which the protest is based, and may request in its 4 protest an oral hearing or an opportunity to present 5 additional evidence relating to its liability.] 6 (3) The---department--of--revenue--shall--mail--to--the 7 rugulated-company-a-letter-setting-forth-the-amount--of--the 8 feey--penaltyy--and --interest-and-notifying-the-company-that 9 payment-of-the-full-amount-of-the-feer-penalty;-and-interest 10 must-be-remitted-within-15-days-of-the--requiated--company's 11 receipt--of--the--letter;--otherwise--a--lien--may-be-filed; 12 (a) When a deficiency is determined and the fee becomes 13 final, the department shall mail a notice and demand for 14 payment to the regulated company. The fee is due and payable 15 at the expiration of 10 days after the notice and demand 16 were mailed. Interest on any deficiency assessment bears 17 interest until paid, at the rate of 1% a month or fraction 18 of a month, computed from the original due date of the 19 return. 20 (b) If payment is not made within 10 days, the amount 21 of the deficiency is considered delinquent. A 10% penalty 22 must be added to the amount of the deficiency. 23 (4) The 10% penalty may be waived by the department of 24 revenue if reasonable cause for failure and neglect to file

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25 the statement is provided to the department."

Section 10. Section 69-1-226, MCA, is amended to read: 1 *69-1-226. Failure to pay fee -- penalty and interest 2 -- collection of fee. (1) If a regulated company or an 3 officer or employee of a regulated company files the 4 statement required by 69-1-223(2) but fails, neglects, or 5 refuses to pay the fee due within the time required, the 6 department of revenue may after the time for payment has 7 expired add to the fee due, in addition to any other penalty 8 provided by law, a penalty of 10% thereof plus interest at 9 the rate of 1% per month or fraction of month computed on 10 the total amount of the fee and--penalty. Interest is 11 computed from the date the fee is due to the date of 12 payment. 13

14 (2) The department of revenue shall mail to the 15 regulated company a letter setting forth the amount of the 16 fee, penalty, and interest and notifying the company that 17 payment of the full amount of the fee, penalty, and interest 18 must be remitted within 15 10 days of the regulated 19 company's receipt of the letter; otherwise a warrant for 20 distraint may be filed.

(3) The 10% penalty may be waived by the department of
revenue if reasonable cause for failure and neglect to make
payment is provided to the department."

24 NEW SECTION. Section 11. Penalty and interest for 25 delinquency -- waiver. (1) Assessments due under this 1 chapter are delinquent if not paid on or before December 31.
2 The department of revenue shall add to the amount of each
3 delinquent assessment a penalty of 10% of the amount of the
4 assessment plus interest at the rate of 1% per month or
5 fraction of a month computed on the total amount of
6 assessment. Interest is computed from the date the
7 assessment was due to the date of payment.

8 (2) The 10% penalty may be waived by the department of 9 revenue if reasonable cause is established for the failure 10 or neglect to file the return required by 23-2-715 or to pay 11 the assessment due to the department of revenue.

NEW SECTION. Section 12. Credit for overpayment ---12 13 interest on overpayment. (1) If the department of revenue 14 determines that the amount of fee, penalty, or interest paid 15 for any year is more than the amount due, the amount of the 16 overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded 17 18 to the taxpayer or the taxpayer's successor through 19 reorganization, merger, or consolidation or to the 20 taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is
allowed on overpayments at the same rate as is charged on
deficiency assessments from the due date of the return or
from the date of overpayment, whichever date is later, to
the date the department of revenue approves refunding or

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1 crediting of the overpayment.

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2 (3) (a) Interest does not accrue during any period in 3 which the processing of a claim for a refund is delayed more 4 than 30 days by reason of failure of the taxpayer to furnish 5 information requested by the department of revenue for the 6 purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

NEW SECTION. Section 13. Credit for overpayment --16 interest on overpayment. (1) If the department of revenue 17 determines that the amount of tax, penalty, or interest paid 18 19 for any year is more than the amount due, the amount of the 20 overpayment must be credited against any tax, penalty, or 21 interest then due from the taxpayer and the balance refunded 22 the taxpayer, to the taxpayer's successor through to reorganization, merger, or consolidation, or to the 23 24 taxpayer's shareholders upon dissolution.

25 (2) Except as provided in subsection (3), interest is

allowed on overpayments at the same rate as is charged on
 deficiency assessments from the due date of the return or
 from the date of overpayment, whichever is later, to the
 date the department approves refunding or crediting of the
 overpayment.

6 (3) (a) Interest does not accrue during any period in 7 which the processing of a claim for refund is delayed more 8 than 30 days by reason of failure of the taxpayer to furnish 9 information requested by the department for the purpose of 10 verifying the amount of the overpayment.

11 (b) Interest is not allowed:

12 (i) if the overpayment is refunded within 6 months from
13 the date the return is due or from the date the return is
14 filed, whichever is later; or

15 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

20 <u>NEW SECTION.</u> Section 14. Credit for overpayment --21 interest on overpayment. (1) If the department of revenue 22 determines that the amount of the assessment, penalty, or 23 interest paid for any year is more than the amount due, the 24 amount of the overpayment must be credited against any 25 assessment, penalty, or interest then due from the taxpayer

and the balance refunded to the taxpayer, to the taxpayer's
 successor through reorganization, merger, or consolidation,
 or to the taxpayer's shareholders upon dissolution.

4 (2) Except as provided in subsection (3), interest is 5 allowed on overpayments at the same rate as is charged on 6 deficiency assessments provided in 23-2-715(2) from the due 7 date of the return or from the date of overpayment, 8 whichever is later, to the date the department of revenue 9 approves refunding or crediting of the overpayment.

10 (3) (a) Interest does not accrue during any period in 11 which the processing of a claim for refund is delayed more 12 than 30 days by reason of failure of the taxpayer to furnish 13 information requested by the department of revenue for the 14 purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

15

16 (i) if the overpayment is refunded within 6 months from
17 the date the return is due or from the date the return is
18 filed, whichever is later; or

19 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

24 <u>NEW SECTION.</u> Section 15. Statute of limitations. (1)
25 Except as provided in subsection (3), a deficiency may not

1 be assessed or collected with respect to the year for which 2 a statement of gross receipts is filed unless the notice of 3 the proposed additional assessment is mailed within 5 years 4 from the date the statement of gross receipts was filed. For purposes of this section, a statement of gross receipts 5 filed before the last day prescribed for filing is б considered as filed on the last day. If the taxpayer, before 7 8 the expiration of the period prescribed for assessment, 9 consents in writing to an extended time, the assessment may 10 be made at any time prior to the expiration of the period agreed upon. 11

12 (2) A refund or credit may not be allowed or paid with 13 respect to the year for which a statement of gross receipts 14 is filed after 5 years from the last day prescribed for 15 filing the statement of gross receipts or after 1 year from 16 the date of the overpayment, whichever period expires later, 17 unless before the expiration of the period the taxpayer 18 files a claim or the department of revenue determines the 19 existence of the overpayment and approves the refund or 20 credit. If the taxpayer has agreed in writing under the 21 provisions of subsection (1) to extend the time within which 22 the department of revenue may propose an additional 23 assessment, the period within which a claim for refund or 24 credit may be filed or a credit or refund allowed if no 25 claim is filed is automatically extended.

(3) If a statement of gross receipts is required to be 1 2 filed and the taxpayer fails to file the statement of gross ٦ receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross 4 5 receipts is required to be filed and the taxpayer files a fraudulent statement of gross receipts, the 5-year period 6 for in subsection (1) does not begin until 7 provided discovery of the fraud by the department of revenue. 8

NEW SECTION. Section 16. Statute of limitations. (1) 9 Except as provided in subsection (3), a deficiency may not 10 be assessed or collected with respect to the year for which 11 a return is filed unless the notice of the additional fee 12 proposed to be assessed is mailed within 5 years from the 13 date the return was filed. For purposes of this section, a 14 return filed before the last day prescribed for filing is 15 considered as filed on the last day. If the taxpayer, before 16 the expiration of the period prescribed for assessment of 17 the fee, consents in writing to an assessment after that 18 time, the fee may be assessed at any time prior to the 19 expiration of the period agreed upon. 20

21 (2) A refund or credit may not be allowed or paid with 22 respect to the year for which a return is filed after 5 23 years from the last day prescribed for filing the return or 24 after 1 year from the date of the overpayment, whichever 25 period expires later, unless before the expiration of the 1 period the taxpayer files a claim or the department of 2 revenue determines the existence of the overpayment and 3 approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the 4 5 time within which the department of revenue may propose an 6 additional assessment, the period within which a claim for 7 refund or credit may be filed or a credit or refund allowed R if no claim is filed is automatically extended.

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9 (3) If a return is required to be filed and the 10 taxpayer fails to file the return, the tax may be assessed 11 or an action to collect the tax may be brought at any time. 12 If a return is required to be filed and the taxpayer files a 13 fraudulent return, the 5-year period provided for in 14 subsection (1) does not begin until discovery of the fraud 15 by the department of revenue.

NEW SECTION. Section 17. Penalty and interest for 16 17 delinguency -- waiver. (1) Fees due under this chapter 18 become delinguent if not paid on or before July 1 for the 19 previous calendar year. The department of revenue shall add 20 to the amount of each delinquent fee a penalty of 10% of the 21 amount of the fee plus interest at the rate of 1% per month 22 or fraction of a month computed on the total fee. Interest 23 is computed from the date the fees were due to the date of 24 payment.

25 (2) The 10% penalty may be waived by the department if

reasonable cause for the failure or neglect to pay the fee
 required by 35-18-503 is provided to the department.

NEW SECTION. Section 18. Deficiency assessment 3 ---hearing -- interest. (1) If the department of revenue 4 5 determines that the amount of fee due is greater than the 6 amount reported, it shall mail to the taxpayer a notice of the additional fee proposed to be assessed. Within 30 days 7 8 after mailing of the notice, the taxpayer may file with the 9 department a written protest against the proposed additional fee, setting forth the grounds upon which the protest is 10 based, and may request in his protest an oral hearing or an 11 12 opportunity to present additional evidence relating to his additional liability. If a protest is not filed, the amount 13 of the additional fee proposed to be assessed becomes final 14 15 upon expiration of the 30-day period. If a protest is filed, 16 the department shall reconsider the proposed assessment and, 17 if the taxpayer has requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the 18 19 evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its 20 action to the taxpayer. 21

(2) (a) When a deficiency is determined and the
additional fee becomes final, the department shall mail a
notice and demand for payment to the taxpayer. The fee is
due and payable at the expiration of 10 days after the

notice and demand were mailed. Interest on any deficiency
 assessment bears interest until paid, at the rate of 1% a
 month or fraction of a month, computed from the original due
 date of the return.

5 (b) If payment is not made within 10 days, the amount 6 of the deficiency is considered delinquent. A 10% penalty 7 must be added to the amount of the deficiency.

8 <u>NEW SECTION.</u> Section 19. Codification instruction. (1) 9 [Sections 12 and 16] are intended to be codified as an 10 integral part of Title 69, chapter 1, part 2, and the 11 provisions of Title 69, chapter 1, part 2, apply to 12 [sections 12 and 16].

13 (2) [Sections 12 and 16] are intended to be codified as
14 an integral part of Title 10, chapter 4, part 2, and the
15 provisions of Title 10, chapter 4, part 2, apply to
16 [sections 12 and 16].

17 (3) [Section 13] is intended to be codified as an 18 integral part of Title 15, chapter 65, part 1, and the 19 provisions of Title 15, chapter 65, part 1, apply to 20 [section 13].

(4) [Sections 11, 14, and 15] are intended to be
codified as an integral part of Title 23, chapter 2, part 7,
and the provisions of Title 23, chapter 2, part 7, apply to
[sections 11, 14, and 15].

25 (5) (Sections 12, 16, 17, and 18) are intended to be

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codified as an integral part of Title 35, chapter 18, part
 5, and the provisions of Title 35, chapter 18, part 5, apply
 to [sections 12, 16, 17, and 18].

4 NEW SECTION. Section 20. Coordination instruction. If 5 ______ Bill No. _____ [LC 981] is passed and approved and if it 6 includes a section adopting a uniform tax appeal procedure, 7 the bracketed language contained in [sections 1, 6, 7, and 8 9] is void, and the provisions of ______ Bill No. ____ [LC 981] 9 govern taxpayer appeal procedures.

10 NEW SECTION. Section 21. Applicability. [This act]

11 applies to all returns or statements due on or after July 1, 12 1991.

13 NEW SECTION. Section 22. Effective date. [This act] is

14 effective on passage and approval.

-End-

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DENATE BILL NO. 280 1 INTRODUCED BY 2 3 BY REQUEST OF THE DEPARTMENT OF REVENUE 4

5 A BILL FOR AN ACT ENTITLED; "AN ACT TO REVISE AND 6 STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN 7 TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR 8 UNIFORM DEFICIENCY ASSESSMENTS, UNIFORM STATUTES OF 9 LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE 10 EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE COMPANY 11 LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE 12 LODGING FACILITY USE TAX, THE PASSENGER TRAMWAY ASSESSMENT, 13 THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE 14 ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER 15 COUNSEL; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 16 15-55-108, 15-65-112, 15-65-115, 23-2-715, 35-18-503. 17 69-1-225, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE 18 EFFECTIVE DATE AND AN APPLICABILITY DATE."

19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA;

21 Section 1. Section 10-4-211, MCA, is amended to read:
22 "10-4-211. Provider required to hold fee in trust for
23 state <u>-- penalty and interest</u>. (1) Every provider required
24 to collect the fee imposed by 10-4-201 holds it in trust for
25 the state of Montana and for the payment thereof to the



1 department of revenue in the manner and at the time provided by 10-4-204. 2 3 (2) (a) If a provider required to collect the fee fails 4 to remit any amount held in trust for the state of Montana 5 or if a subscriber fails to pay the fee7-the on or before 6 the last day of the month following the end of each calendar 7 quarter, the department of revenue shall add to the amount 8 of the delinquent fee, in addition to any other penalty 9 provided by law, a penalty equal to 10% of the delinquent 10 fee plus interest at the rate of 1% a month or fraction of a 11 month computed on the amount of the delinquent fee plus any 12 unpaid penalties and interest. Interest is computed from the 13 date the fee is due until the date of payment. 14 (b) The department of revenue may waive the penalty if 15 the provider establishes that the failure to pay on time was 16 due to reasonable cause and was not due to neglect. 17 (3) [(a) If the department of revenue determines that 18 the amount of fee due is greater than the amount reported, 19 it shall mail to the provider a notice of the additional fee 20 proposed to be assessed. Within 30 days after mailing of the 21 notice, the provider may file with the department of revenue 22 <u>a written</u> protest against the proposed additional fee, 23 setting forth the grounds upon which the protest is based, 24 and may request in his protest an oral hearing or an 25 opportunity to present additional evidence relating to his

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THIRD READING

1	additional liability. If a protest is not filed, the amount
2	of the additional fee proposed to be assessed becomes final
3	upon expiration of the 30-day period. If a protest is filed,
4	the department of revenue shall reconsider the proposed
5	assessment and, if the provider has so requested, shall
6	grant the provider an oral hearing. After consideration of
7	the protest and the evidence presented at an oral hearing,
8	the department of revenue's action upon the protest is final
9	when it mails notice of its action to the provider.]
10	(b) When a deficiency is determined and the additional
11	fee becomes final, the department of revenue shall mail a
12	notice and demand for payment to the provider. The fee is
13	due and payable at the expiration of 10 days after the
14	notice and demand were mailed. Interest on any deficiency
15	assessment bears interest until paid, at the rate of 1% a
16	month or fraction of a month, computed from the original due
17	date of the return.
18	(c) If payment is not made within 10 days, the amount
19	of the deficiency is considered delinguent. A 10% penalty
20	must be added to the amount of the deficiency.
21	(4) The 10% penalty provided for in subsection (3)(c)
22	may be waived by the department of revenue if the provider
23	establishes that the failure to pay the proper amount of
24	fees was due to reasonable cause and was not due to neglect.
25	(5) The department of revenue may enforce collection by

the issuance of a warrant for distraint for the collection
 of the delinquent amount and all penalties, interest, and
 collection charges accrued thereon. The warrant is governed
 by the provisions of Title 15, chapter 1, part 7."

5 Section 2. Section 15-53-105, MCA, is amended to read: *15-53-105. Deficiency assessment -- hearing -- penalty 6 7 -- interest. (1) When If the department of revenue determines that the amount of tax due is greater than the .8 amount disclosed-by-a-return reported, it shall mail to the 9 10 taxpayer a notice of the additional tax proposed to be 11 assessed. Within 30 days after mailing of the notice, the 12 taxpayer may file with the department a written protest 13 against the proposed additional tax, setting forth the 14 grounds upon which the protest is based, and may request in 15 his protest an oral hearing or an opportunity to present 16 additional evidence relating to his tax liability. If no a 17 protest is not filed, the amount of the additional tax 18 proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department 19 20 must shall reconsider the proposed assessment and, if the 21 taxpayer has so requested, must shall grant the taxpayer an 22 oral hearing. After consideration of the protest and the 23 evidence presented at any an oral hearing, the department's 24 action upon the protest is final when it mails notice of its 25 action to the taxpayer.

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1 (2) (a) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand 2 3 for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of -- such after the 4 5 notice and demand were mailed. Interest on any deficiency 6 assessment shall-bear bears interest until paid, at the rate 7 of 1% a month or fraction thereof of a month, computed from the original due date of the return. 8

9 (b) If payment is not made within 10 days, the amount
10 of the deficiency is considered delinquent. A 10% penalty
11 must be added to the amount of the deficiency."

12 **Section 3.** Section 15-53-111, MCA, is amended to read: 13 "15-53-111. Penalty and interest for delinguency --14 waiver. (1) License taxes due under this chapter become 15 delinguent if not paid within 60 days after the end of each 16 calendar quarter. The department of revenue shall add to the 17 amount of all delinguent telephone company license taxes a 18 penalty of 10% of the amount of license taxes plus interest 19 at the rate of 1% per month or fraction thereof computed on 20 the total amount of license taxes and-penalty. Interest is 21 computed from the date the license taxes were due to the 22 date of payment.

(2) The 10% penalty may be waived by the department if
reasonable cause for the failure or neglect to file the
statement required by 15-53-102 or pay the tax due is

1 provided to the department."

2 Section 4. Section 15-55-108, MCA, is amended to read: "15-55-108. Penalty and interest for delinguency --7 waiver. (1) License taxes due under this chapter become 4 delinquent if not paid by March 1. The department shall add ς to the amount of all delinquent freight line company license 6 7 taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof 8 q computed on the total amount of license taxes and-penalty. 10 Interest is computed from the date the license taxes were 11 due to the date of payment. 12 (2) The 10% penalty may be waived by the department if 13 reasonable cause for the failure or neglect to file the 14 statement required by 15-55-103 or pay the tax due is

15 provided to the department."

16 Section 5. Section 15-65-112, MCA, is amended to read:

17 "15-65-112. Collection and reporting. (1) The owner or 18 operator of a facility shall collect the tax imposed by 19 15-65-111.

20 (2) The owner or operator shall report to the 21 department of revenue, at the end of each calendar guarter, 22 the gross receipts collected during that guarter 23 attributable to accommodation charges for the use of the 24 facility. The report is due within-30-days on or before the 25 last day of the month following the end of the calendar

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quarter and must be accompanied by a payment in an amount
 equal to the tax required to be collected under subsection
 (1)."

Section 6. Section 15-65-115, MCA, is amended to read: 4 *15-65-115. Failure to pay or file -- penalty --5 interest. (1) An owner or operator of a facility who fails 6 to file the report as required by 15-65-112 must be assessed 7 8 a penalty of 2% 10% of the tax that should have been collected during the calendar quarter. Upon a showing of 9 good cause, the department of revenue may waive the penalty. 10 11 (2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required 12 13 by 15-65-112 must be assessed a penalty of 2% 10% of the 14 amount that was not paid. Upon a showing of good cause, the 15 department may waive the penalty.

16 (3) (a) If an owner or operator of a facility fails to
17 file the report required by 15-65-112 or if the department
18 of revenue determines that the report understates the amount
19 of tax due, the department may determine the amount of the
20 tax due and assess that amount against the owner or
21 operator.

22 [(b) If the department of revenue determines that the 23 amount of tak due is greater than the amount reported or 24 that the owner or operator of a famility failed to file a 25 report, it shall mail to the owner or operator a notice of

*

1	the additional tax proposed to be assessed. Within 30 days
2	after mailing of the notice, the owner or operator may file
3	with the department a written protest against the proposed
4	additional tax, setting forth the grounds upon which the
5	protest is based, and may request in his protest an oral
6	hearing or an opportunity to present additional evidence
7	relating to his tax liability. If a protest is not filed,
8	the amount of the additional tax proposed to be assessed
9	becomes final upon expiration of the 30-day period.]
10	(c) When a deficiency is determined and the tax becomes
11	final, the department shall mail a notice and demand for
12	payment to the owner or operator. The tax is due and payable
13	at the expiration of 10 days after the notice and demand
14	were mailed. Interest on any deficiency assessment bears
15	interest until paid, at the rate of 1% a month or fraction
16	of a month, computed from the original due date of the
17	return.
18	(4) The amount required to be paid under 15-65-112
19	accrues interest at the rate of 1% a month or part thereof
20	
20	from delinquency until paid."
21 21	from delinguency until paid." Section 7. Section 23-2~715, MCA, is amended to read:
	• • •
2 1	Section 7. Section 23-2-715, MCA, is amended to read:
21 22	Section 7. Section 23-2-715, MCA, is amended to read: "23-2-715. Assessment on passenger tramway receipts
21 22 23	Section 7. Section 23-2-715, MCA, is amended to read: "23-2-715. Assessment on passenger tramway receipts penalty and interest. (1) The board is hereby authorized to

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1 Montana. A minimum of \$100 shall be collected annually from 2 the owner of a passenger tramway facility. The assessment 3 shall be calculated upon gross receipts received during the 4 period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of 5 revenue and remitted to the state special revenue fund by on 6 or before December 31 of each year for the previous fiscal 7 8 year.

(2) [(a) If the department of revenue determines that 9 the amount of assessment due is greater than the amount 10 reported, it shall mail to the operator a notice of the 11 12 additional assessment proposed to be assessed. Within 30 days after mailing of the notice, the operator may file with 13 14 the department of revenue a written protest against the proposed additional assessment, setting forth the grounds 15 upon which the protest is based, and may request in his 16 protest an oral hearing or an opportunity to present 17 additional evidence relating to his assessment liability. If 18 19 a protest is not filed, the amount of the additional assessment proposed to be assessed becomes final upon 20 expiration of 30-day period. If a protest is filed, the 21 department of revenue shall reconsider the proposed 22 23 assessment and, if the operator has so requested, shall grant the operator an oral hearing. After consideration of 24 the protest and the evidence presented at an oral hearing, 25

1	the department of revenue's action upon the protest is final
2	when it mails notice of its action to the operator.]
3	(b) When a deficiency is determined and the assessment
4	becomes final, the department of revenue shall mail a notice
5	and demand for payment to the operator. The assessment is
6	due and payable at the expiration of 10 days after the
7	notice and demand_were mailed. Interest on any deficiency
8	assessment bears interest until paid, at the rate of 1% a
9	month or fraction of a month, computed from the original due
10	date of the return.
11	(c) If payment is not made within 10 days, the amount
12	of the deficiency is considered delinguent. A 10% penalty
13	must be added to the amount of the deficiency.
14	<pre>(2)(3) All proceeds of the gross receipts assessment</pre>
15	and the fees collected under 23-2-714 shall be used only to
16	support the duties of the board set forth in this part."
17	Section 8. Section 35-18-503, MCA, is amended to read:
18	"35-18-503. Annual fee to department of revenue
19	exemption from other taxes. Cooperatives and foreign
20	corporations transacting business in this state pursuant to
21	the provisions of this chapter shall pay annually on or
22	before July 1, to the department of revenue a fee of \$10 for
23	each 100 persons or fractions thereof to whom electricity or
24	telephone service is was supplied during the previous
25	

25 calendar year w thin the state but and, except as provided

1 in 10-4-201, shall be exempt from all other excise and 2 income taxes of whatsoever kind or nature."

3 Section 9. Section 69-1-225, MCA, is amended to read: "69-1-225. Computation and collection of fee in absence 4 5 of statement -- penalty and interest, (1) If a regulated company or an officer or employee of a regulated company 6 fails, neglects, or refuses to file the statement required 7 by 69-1-223(2), the department of revenue may after the time 8 9 for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating 10 revenue from all activities regulated by the commission 11 within the state for the calendar quarter, quarters, or 12 13 portion thereof and may determine and fix the amount of the 14 consumer counsel fee due.

15 (2) The-department-may-add-to-the--amount--of--the--fee 16 computed--under--subsection--(1);--in--ad: tion-to-any-other penalty-provided-by-law7--a--penalty-of--l0%--thereof--plus 17 interest--at--the--rate-of-1%-per-month-or-fraction-of-month 18 computed-on-the-total-amount-of-fee-and-penalty-Interest-is 19 20 computed-from-the-date--the--fee--is--due--to--the--date--of 21 payment: [If the department of revenue determines that the 22 amount of fee due is greater than the amount reported or makes an estimate pursuant to subsection (1), it shall mail 23 to the regulated company a notice of the fee proposed to be 24 assessed. Within 30 days after mailing of the notice, the 25

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1	regulated company may file with the department a written
2	protest against the proposed fee, setting forth the grounds
3	upon which the protest is based, and may request in its
4	protest an oral hearing or an opportunity to present
5	additional evidence relating to its liability.]
6	(3) Thedepartmentofrevenueshallmailtothe
7	r.gulated-company-a-letter-setting-forth-the-amountofthe
8	fee;penalty;andinterest-and-notifying-the-company-that
9	payment-of-the-full-amount-of-the-fee ₇ -penalty ₇ -and-interest
10	must-be-remitted-within-15-days-of-theregulatedcompany's
11	receiptoftheletter;otherwisealienmay-be-filed;
12	(a) When a deficiency is determined and the fee becomes
13	final, the department shall mail a notice and demand for
14	payment to the regulated company. The fee is due and payable
15	at the expiration of 10 days after the notice and demand
16	were mailed. Interest on any deficiency assessment bears
17	interest until paid, at the rate of 1% a month or fraction
18	of a month, computed from the original due date of the
19	return.
20	(b) If payment is not made within 10 days, the amount
21	of the deficiency is considered delinquent. A 10% penalty
22	must be added to the amount of the deficiency.
23	(4) The 10% penalty may be waived by the department of
24	revenue if reasonable cause for failure and neglect to file
25	the statement is provided to the department."

1 Section 10. Section 69-1-226, MCA, is amended to read; "69-1-226. Failure to pay fee -- penalty and interest 2 3 -- collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the 4 statement required by 69-1-223(2) but fails, neglects, or 5 refuses to pay the fee due within the time required, the 6 7 department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty 8 provided by law, a penalty of 10% thereof plus interest at 9 10 the rate of 1% per month or fraction of month computed on 11. the total amount of the fee and--penalty. Interest is 12 computed from the date the fee is due to the date of 13 payment.

14 (2) The department of revenue shall mail to the 15 regulated company a letter setting forth the amount of the 16 fee, penalty, and interest and notifying the company that 17 payment of the full amount of the fee, penalty, and interest 18 must be remitted within 15 10 days of the regulated 19 company's receipt of the letter; otherwise a warrant for 20 distraint may be filed.

(3) The 10% penalty may be waived by the department of
revenue if reasonable cause for failure and neglect to make
payment is provided to the department."

24 <u>NEW SECTION.</u> Section 11. Penalty and interest for
25 delinquency -- waiver. (1) Assessments due under this

1 chapter are delinquent if not paid on or before December 31.
2 The department of revenue shall add to the amount of each
3 delinquent assessment a penalty of 10% of the amount of the
4 assessment plus interest at the rate of 1% per month or
5 fraction of a month computed on the total amount of
6 assessment. Interest is computed from the date the
7 assessment was due to the date of payment.

B (2) The 10% penalty may be waived by the department of
9 revenue if reasonable cause is established for the failure
10 or neglect to file the return required by 23-2-715 or to pay
11 the assessment due to the department of revenue.

NEW SECTION. Section 12. Credit for overpayment ---12 13 interest on overpayment. (1) If the department of revenue 14 determines that the amount of fee, penalty, or interest paid 15 for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or 16 17 interest then due from the taxpayer and the balance refunded 18 to the taxpayer or the taxpayer's successor through 19 reorganization, merger, or consolidation or to the 20 taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is
allowed on overpayments at the same rate as is charged on
deficiency assessments from the due date of the return or
from the date of overpayment, whichever date is later, to
the date the department of revenue approves refunding or

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crediting of the overpayment.

7

2 (3) (a) Interest does not accrue during any period in 3 which the processing of a claim for a refund is delayed more 4 than 30 days by reason of failure of the taxpayer to furnish 5 information requested by the department of revenue for the 6 purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

8 (i) if the overpayment is refunded within 6 months from
9 the date the return is due or from the date the return is
10 filed, whichever is later; or

11 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

16 NEW SECTION. Section 13. Credit for overpayment --17 interest on overpayment. (1) If the department of revenue 18 determines that the amount of tax, penalty, or interest paid 19 for any year is more than the amount due, the amount of the 20 overpayment must be credited against any tax, penalty, or 21 interest then due from the taxpayer and the balance refunded 22 to the taxpayer, to the taxpayer's successor through 23 reorganization, merger, or consolidation, or to the 24 taxpayer's shareholders upon dissolution.

25 (2) Except as provided in subsection (3), interest is

allowed on overpayments at the same rate as is charged on
 deficiency assessments from the due date of the return or
 from the date of overpayment; whichever is later; to the
 date the department approves refunding or crediting of the
 overpayment.

6 (3) (a) Interest does not accrue during any period in
7 which the processing of a claim for refund is delayed more
8 than 30 days by reason of failure of the taxpayer to furnish
9 information requested by the department for the purpose of
10 verifying the amount of the overpayment.

11 (b) Interest is not allowed:

12 (i) if the overpayment is refunded within 6 months from
13 the date the return is due or from the date the return is
14 filed, whichever is later; or

15 (ii) if the amount of interest is less than \$1.

16 (c) Only a payment made incident to a bona fide and 17 orderly discharge of actual tax liability or one reasonably 18 assumed to be imposed by this chapter is considered an 19 overpayment with respect to which interest is allowable.

20 <u>NEW SECTION</u>. Section 14. Credit for overpayment ---21 interest on overpayment. (1) If the department of revenue 22 determines that the amount of the assessment, penalty, or 23 interest paid for any year is more than the amount due, the 24 amount of the overpayment must be credited against any 25 assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's
 successor through reorganization, merger, or consolidation,
 or to the taxpayer's shareholders upon dissolution.

4 (2) Except as provided in subsection (3), interest is 5 allowed on overpayments at the same rate as is charged on 6 deficiency assessments provided in 23-2-715(2) from the due 7 date of the return or from the date of overpayment, 8 whichever is later, to the date the department of revenue 9 approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in
which the processing of a claim for refund is delayed more
than 30 days by reason of failure of the taxpayer to furnish
information requested by the department of revenue for the
purpose of verifying the amount of the overpayment.

15 (b) Interest is not allowed:

16 (i) if the overpayment is refunded within 6 months from
17 the date the return is due or from the date the return is
18 filed, whichever is later; or

19 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

24 <u>NEW SECTION.</u> Section 15. Statute of limitations. (1)
25 Except as provided in subsection (3), a deficiency may not

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1 be assessed or collected with respect to the year for which 2 a statement of gross receipts is filed unless the notice of ٦ the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For 4 purposes of this section, a statement of gross receipts 5 filed before the last day prescribed for filing is 6 7 considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment, 8 9 consents in writing to an extended time, the assessment may 10 be made at any time prior to the expiration of the period 11 agreed upon.

12 (2) A refund or credit may not be allowed or paid with 13 respect to the year for which a statement of gross receipts 14 is filed after 5 years from the last day prescribed for 15 filing the statement of gross receipts or after 1 year from 16 the date of the overpayment, whichever period expires later, 17 unless before the expiration of the period the taxpayer 18 files a claim or the department of revenue determines the 19 existence of the overpayment and approves the refund or 20 credit. If the taxpayer has agreed in writing under the 21 provisions of subsection (1) to extend the time within which 22 the department of revenue may propose an additional 23 assessment, the period within which a claim for refund or 24 credit may be filed or a credit or refund allowed if no 25 claim is filed is automatically extended.

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(3) If a statement of gross receipts is required to be ł 2 filed and the taxpayer fails to file the statement of gross 3 receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross 4 receipts is required to be filed and the taxpayer files a 5 fraudulent statement of gross receipts, the 5-year period 6 7 provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue. A.

9 NEW SECTION, Section 16. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not 10 11 be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee 12 13 proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a 14 return filed before the last day prescribed for filing is 15 considered as filed on the last day. If the taxpayer, before 16 the expiration of the period prescribed for assessment of 17 the fee, consents in writing to an assessment after that 18 time, the fee may be assessed at any time prior to the 19 20 expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the 1 period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and 2 3 approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the 4 time within which the department of revenue may propose an 5 6 additional assessment, the period within which a claim for 7 refund or credit may be filed or a credit or refund allowed 8 if no claim is filed is automatically extended.

9 (3) If a return is required to be filed and the 10 taxpayer fails to file the return, the tax may be assessed 11 or an action to collect the tax may be brought at any time. 12 If a return is required to be filed and the taxpayer files a 13 fraudulent return, the 5-year period provided for in 14 subsection (1) does not begin until discovery of the fraud 15 by the department of revenue.

NEW SECTION. Section 17. Penalty and interest for 16 17 delinguency -- waiver. (1) Fees due under this chapter 18 become delinguent if not paid on or before July 1 for the 19 previous calendar year. The department of revenue shall add 20 to the amount of each delinguent fee a penalty of 10% of the 21 amount of the fee plus interest at the rate of 1% per month or fraction of a month computed on the total fee. Interest 22 23 is computed from the date the fees were due to the date of 24 payment.

25 (2) The 10% penalty may be waived by the department if

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the failure or neglect to pay the fee 1

reasonable cause for the failure or neglect to pay the fee
 required by 35-18-503 is provided to the department.

1

NEW SECTION. Section 18. Deficiency assessment 3 -----4 hearing -- interest. (1) If the department of revenue 5 determines that the amount of fee due is greater than the amount reported, it shall mail to the taxpayer a notice of 6 7 the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the 8 9 department a written protest against the proposed additional 10 fee, setting forth the grounds upon which the protest is 11 based, and may request in his protest an oral hearing or an 12 opportunity to present additional evidence relating to his 13 additional liability. If a protest is not filed, the amount 14 of the additional fee proposed to be assessed becomes final 15 upon expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, 16 17 if the taxpayer has requested, shall grant the taxpayer an 18 oral hearing. After consideration of the protest and the 19 evidence presented at an oral hearing, the department's 20 action upon the protest is final when it mails notice of its 21 action to the taxpaver.

(2) (a) When a deficiency is determined and the
additional fee becomes final, the department shall mail a
notice and demand for payment to the taxpayer. The fee is
due and payable at the expiration of 10 days after the

notice and demand were mailed. Interest on any deficiency
 assessment bears interest until paid, at the rate of 1% a
 month or fraction of a month, computed from the original due
 date of the return.

5 (b) If payment is not made within 10 days, the amount 6 of the deficiency is considered delinquent. A 10% penalty 7 must be added to the amount of the deficiency.

8 <u>NEW SECTION.</u> Section 19. Codification instruction. (1) 9 [Sections 12 and 16] are intended to be codified as an 10 integral part of Title 69, chapter 1, part 2, and the 11 provisions of Title 69, chapter 1, part 2, apply to 12 [sections 12 and 16].

13 (2) [Sections 12 and 16] are intended to be codified as
14 an integral part of Title 10, chapter 4, part 2, and the
15 provisions of Title 10, chapter 4, part 2, apply to
16 [sections 12 and 16].

17 (3) [Section 13] is intended to be codified as an 18 integral part of Title 15, chapter 65, part 1, and the 19 provisions of Title 15, chapter 65, part 1, apply to 20 [section 13].

(4) [Sections 11, 14, and 15] are intended to be
codified as an integral part of Title 23, chapter 2, part 7,
and the provisions of Title 23, chapter 2, part 7, apply to
[sections 11, 14, and 15].

25 (5) [Sections 12, 16, 17, and 18] are intended to be

codified as an integral part of Title 35, chapter 18, part
 5, and the provisions of Title 35, chapter 18, part 5, apply
 to [sections 12, 16, 17, and 18].

NEW SECTION. Section 20. Coordination instruction. If
Bill No. ____ [LC 981] is passed and approved and if it
includes a section adopting a uniform tax appeal procedure,
the bracketed language contained in [sections 1, 6, 7, and
9) is void, and the provisions of _____ Bill No. ____ [LC 981]
govern taxpayer appeal procedures.

NEW SECTION. Section 21. Applicability. [This act]
applies to all returns or statements due on or after July 1,
12 1991.

13 NEW SECTION. Section 22. Effective date. (This act) is

14 effective on passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

March 22, 1991 Page 1 of 2

Mr. Speaker: We, the committee on <u>Taxation</u> report that <u>Senate</u> <u>Bill 280</u> (third reading copy -- blue) <u>be concurred in as</u> <u>amended</u>.

Signed: Chalirman Dan Harrington,

Carried by: Rep. Fagg

And, that such amendments read:

Senate Bill 41 changed collection of passenger tramway assessments from DOR to Department of Commerce by amending 23-2-715, MCA. It has been enacted as Ch. 34, Laws of 1991. Senate Bill 280 amends the same section by adding standardized collection provisions for use by Department of Revenue. Section 23-2-715 is removed from SB 280 with this amendment.

1. Title, line 12. Strike: "THE PASSENGER TRAMWAY ASSESSMENT,"

2. Title, line 16. Strike: "23-2-715,"

3. Page 8, line 21 through page 10, line 16. Strike: section 7 in its entirety Renumber: subsequent sections

 Page 22, line 9. Page 22, line 12. Page 22, line 13. Page 22, line 16. Strike: "12 and 16" Insert: "11 and 15"
 Page 22, line 17. Page 22, line 20. Strike: "13" Insert: "12"
 Page 22, line 21.

Page 22, line 21. Page 22, line 24. Strike: "11, 14, and 15" Insert: "10, 13, and 14" March 22, 1991 Page 2 of 2

7. Page 22, line 25. Page 23, line 3. Strike: "12, 16, 17, and 18" Insert: "11 and 15 through 17"

8. Page 23, lines 7 and 8. Strike: "7" Strike: "9" Insert: "8"

9. Page 23, lines 5 and 8. Strike: "Bill No. [LC 981]" Insert: "Senate Bill No. 445"

621338SC.HSF

 1
 SENATE BILL NO. 280

 2
 INTRODUCED BY B. BROWN

 3
 BY REQUEST OF THE DEPARTMENT OF REVENUE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND 6 STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN 7 TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR 8 UNIFORM DEFICIENCY ASSESSMENTS, UNIFORM STATUTES OF 9 LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE 10 EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE COMPANY 11 LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE 12 LODGING FACILITY USE TAX, THE-PASSENGER-TRAMWAY--ASSESSMENT, 13 THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE 14 ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER 15 COUNSEL: AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 16 15-55-108, 15-65-112, 15-65-115, 23-2-7157 35-18-503, 17 69-1-275, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE 18 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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4

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

21 Section 1. Section 10-4-211, MCA, is amended to read: 22 "10-4-211. Provider required to hold fee in trust for 23 state <u>-- penalty and interest</u>. (1) Every provider required 24 to collect the fee imposed by 10-4-201 holds it in trust for 25 the state of Montana and for the payment thereof to the

itana Legislative Council

1	department of revenue in the manner and at the time provided
2	by 10-4-204.
3	(2) (a) If a provider required to collect the fee fails
4	to remit any amount held in trust for the state of Montana
5	or if a subscriber fails to pay the fee 7-the on or before
6	the last day of the month following the end of each calendar
7	quarter, the department of revenue shall add to the amount
8	of the delinguent fee, in addition to any other penalty
9	provided by law, a penalty equal to 10% of the delinguent
10	fee plus interest at the rate of 1% a month or fraction of a
11	month computed on the amount of the delinquent fee plus any
12	unpaid penalties and interest. Interest is computed from the
13	data the foc is due watil the data of success
13	date the fee is due until the date of payment.
14	(b) The department of revenue may waive the penalty if
14	(b) The department of revenue may waive the penalty if
14 15	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was
14 15 16	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.
14 15 16 17	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that
14 15 16 17 18	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported,
14 15 16 17 18 19	 (b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the provider a notice of the additional fee
14 15 16 17 18 19 20	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the provider a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the
14 15 16 17 18 19 20 21	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the provider a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the provider may file with the department of revenue
14 15 16 17 18 19 20 21 22	(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect. (3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the provider a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the provider may file with the department of revenue a written protest against the proposed additional fee,

25 opportunity to present additional evidence relating to his

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SB 280 REFERENCE BILL AS AMENDED

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1	additional liability. If a protest is not filed, the amount
2	of the additional fee proposed to be assessed becomes final
3	upon expiration of the 30-day period. If a protest is filed,
4	the department of revenue shall reconsider the proposed
5	assessment and, if the provider has so requested, shall
6	grant the provider an oral hearing. After consideration of
7	the protest and the evidence presented at an oral hearing,
8	the department of revenue's action upon the protest is final
9	when it mails notice of its action to the provider.]
10	(b) When a deficiency is determined and the additional
11	fee becomes final, the department of revenue shall mail a
12	notice and demand for payment to the provider. The fee is
13	due and payable at the expiration of 10 days after the
14	notice and demand were mailed. Interest on any deficiency
15	assessment bears interest until paid, at the rate of 1% a
16	month or fraction of a month, computed from the original due
17	date of the return.
18	(c) If payment is not made within 10 days, the amount
19	of the deficiency is considered delinquent. A 10% penalty
20	must be added to the amount of the deficiency.
21	(4) The 10% penalty provided for in subsection (3)(c)
22	may be waived by the department of revenue if the provider
23	establishes that the failure to pay the proper amount of
24	fees was due to reasonable cause and was not due to neglect.
25	

the issuance of a warrant for distraint for the collection
 of the delinquent amount and all penalties, interest, and
 collection charges accrued thereon. The warrant is governed
 by the provisions of Title 15, chapter 1, part 7."

5 Section 2. Section 15-53-105, MCA, is amended to read:

"15-53-105. Deficiency assessment -- hearing -- penalty 6 -- interest. (1) When If the department of revenue 7 determines that the amount of tax due is greater than the 8 amount disclosed-by-a-return reported, it shall mail to the 9 taxpayer a notice of the additional tax proposed to be 10 assessed. Within 30 days after mailing of the notice, the 11 taxpayer may file with the department a written protest 12 against the proposed additional tax, setting forth the 13 grounds upon which the protest is based, and may request in 14 his protest an oral hearing or an opportunity to present 15 additional evidence relating to his tax liability. If no a 16 protest is not filed, the amount of the additional tax 17 proposed to be assessed becomes final upon the expiration of 18 the 30-day period. If a protest is filed, the department 19 20 must shall reconsider the proposed assessment and, if the taxpayer has so requested, must shall grant the taxpayer an 21 oral hearing. After consideration of the protest and the 22 evidence presented at any an oral hearing, the department's 23 action upon the protest is final when it mails notice of its 24 action to the taxpayer. 25

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1 (2) (a) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand 2 for payment to the taxpayer. The tax is due and payable at 3 the expiration of 10 days from-the-date-of--such after the 4 notice and demand were mailed. Interest on any deficiency 5 6 assessment shall-bear bears interest until paid, at the rate of 1% a month or fraction thereof of a month, computed from 7 8 the original due date of the return.

9 (b) If payment is not made within 10 days, the amount
10 of the deficiency is considered delinquent. A 10% penalty
11 must be added to the amount of the deficiency."

12 Section 3. Section 15-53-111, MCA, is amended to read: "15-53-111. Penalty and interest for delinquency ---13 14 waiver. (1) License taxes due under this chapter become delinguent if not paid within 60 days after the end of each 15 calendar guarter. The department of revenue shall add to the 16 17 amount of all delinguent telephone company license taxes a 18 penalty of 10% of the amount of license taxes plus interest 19 at the rate of 1% per month or fraction thereof computed on 20 the total amount of license taxes and-penalty. Interest is computed from the date the license taxes were due to the 21 date of payment. 22

(2) The 10% penalty may be waived by the department if
reasonable cause for the failure or neglect to file the
statement required by 15-53-102 or pay the tax due is

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provided to the department."

2 Section 4. Section 15-55-108, MCA, is amended to read: 3 "15-55-108, Penalty and interest for delinquency ---4 waiver. (1) License taxes due under this chapter become 5 delinquent if not paid by March 1. The department shall add 6 to the amount of all delinguent freight line company license 7 taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof 8 9 computed on the total amount of license taxes and-penalty. 10 Interest is computed from the date the license taxes were due to the date of payment. 11 12 (2) The 10% penalty may be waived by the department if 13 reasonable cause for the failure or neglect to file the 14 statement required by 15-55-103 or pay the tax due is 15 provided to the department." 16 Section 5. Section 15-65-112, MCA, is amended to read: 17 "15-65-112. Collection and reporting. (1) The owner or 18 operator of a facility shall collect the tax imposed by 19 15-65-111. 20 (2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, 21 22 the gross receipts collected during that quarter 23 attributable to accommodation charges for the use of the 24 facility. The report is due within-30-days on or before the 25 last day of the month following the end of the calendar

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1 quarter and must be accompanied by a payment in an amount 2 equal to the tax required to be collected under subsection 3 (1)."

Section 6. Section 15-65-115, MCA, is amended to read: 4 "15-65-115. Failure to pay or file -- penalty --5 6 interest. (1) An owner or operator of a facility who fails 7 to file the report as required by 15-65-112 must be assessed a penalty of 2% 10% of the tax that should have been 8 9 collected during the calendar guarter. Upon a showing of 10 good cause, the department of revenue may waive the penalty. 11 (2) An owner or operator of a facility who fails to 12 make payment or fails to report and make payment as required 13 by 15-65-112 must be assessed a penalty of 2% 10% of the 14 amount that was not paid. Upon a showing of good cause, the department may waive the penalty. 15

16 (3) (a) If an owner or operator of a facility fails to 17 file the report required by 15-65-112 or if the department 18 of revenue determines that the report understates the amount 19 of tax due, the department may determine the amount of the 20 tax due and assess that amount against the owner or 21 operator.

I (b) If the department of revenue determines that the amount of tax due is greater than the amount reported or that the owner or operator of a facility failed to file a report, it shall mail to the owner or operator a notice of

1	the additional tax proposed to be assessed. Within 30 days
2	after mailing of the notice, the owner or operator may file
3	with the department a written protest against the proposed
4	additional tax, setting forth the grounds upon which the
5	protest is based, and may request in his protest an oral
6	hearing or an opportunity to present additional evidence
7	relating to his tax liability. If a protest is not filed,
8	the amount of the additional tax proposed to be assessed
9	becomes final upon expiration of the 30-day period.]
10	(c) When a deficiency is determined and the tax becomes
11	final, the department shall mail a notice and demand for
12	payment to the owner or operator. The tax is due and payable
13	at the expiration of 10 days after the notice and demand
14	were mailed. Interest on any deficiency assessment bears
15	interest until paid, at the rate of 1% a month or fraction
16	of a month, computed from the original due date of the
17	return.
18	(4) The amount required to be paid under 15-65-112
19	accrues interest at the rate of 1% a month or part thereof
20	from delinquency until paid."
21	Section-7Section-23-2-7157-MCA7-is-amended-to-read:
22	#23-2-7±5Assessmenton-passenger-tramway-receipts
23	penalty_and_interest;-(1)-The-board-is-hereby-authorizedto
24	imposeanassessmentofuptoi/4ofi%-on-the-gross
25	receipts-of-all-passenger-tramways-operated-in-the-stateof

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1	MontanaA-minimum-of-\$100-shall-be-collected-annually-from
2	the-owner-of-a-passenger-tramwayfacilityTheassessment
3	shallbe-calculated-upon-gross-receipts-received-during-the
4	period-July-l-of-any-year-to-July-l-of-thefollowingyear.
5	Theassessmentsshallbecollectedby-the-department-of
6	revenue-and-remitted-to-the-state-special-revenue-fund-by on
7	or-before-Becember-31-of-each-year-for-thepreviousfiscal
8	year.
9	<u> 12111a)-Ifthedepartment-of-revenue-determines-that</u>
10	the amount of assessment due-is-greater - than - the - amount
11	reported it shall mail to the operator - a - notice - of - the
12	additional-assessment-proposed-tobeassessedWithin30
13	days-after-mailing-of-the-motice7-the-operator-may-file-with
14	thedepartmentofrevenueawritten-protest-against-the
15	proposed-additional-assessmenty-settingforththegrounds
16	uponwhichtheprotestisbased;-and-may-request-in-his
17	protest anoralhearingoranopportunitytopresent
18	additional-evidence-relating-to-his-assessment-liabilityIf
19	a-protestisnotfiledytheamountoftheadditional
20	assessmentproposedtobeassessedbecomesfinalupon
21	expirationof30-dayperiodIfa-protest-is-filed,-the
22	departmentofrevenueshallreconsidertheproposed
23	assessmentand;iftheoperatorhas-so-requested;-shall
24	grant-the-operator-an-oral-hearingAfterconsiderationof
25	theprotestand-the-evidence-presented-at-an-oral-hearing,

1	the-department-of-revenue ¹ s-action-upon-the-protest-is-final
2	when-it-mails-notice-of-its-action-to-the-operator.
3	fb)When-a-deficiency-is-determined-and-theassessment
4	becomes-final;-the-department-of-revenue-shall-mail-a-notice
5	anddemandforpayment-to-the-operatorThe-assessment-is
6	due-and-payable-at-theexpirationof10daysafterthe
7	notice-and-demand-were-mailedInterest-on-any-deficiency
8	assessment-bears-interest-until-paidy-at-the-rateof1%a
9	month-or-fraction-of-a-month;-computed-from-the-original-due
10	date-of-the-return-
11	(c)Ifpaymentis-not-made-within-10-days,-the-amount
12	of-the-deficiency-is-considered-delinguentA+0%penalty
13	must-be-added-to-the-amount-of-the-deficiency-
14	(2)<u>(3)</u>Allproceedsofthe-gross-receipts-assessment
15	and-the-fees-collected-under-23-2-714-shall-be-used-onlyto
16	support-the-duties-of-the-board-set-forth-in-this-part-"
17	Section 7. Section 35-18-503, MCA, is amended to read:
18	"35-18-503. Annual fee to department of revenue
19	exemption from other taxes. Cooperatives and foreign
20	corporations transacting business in this state pursuant to
21	the provisions of this chapter shall pay annually on or
22	before July 1, to the department of revenue a fee of \$10 for
23	each 100 persons or fractions thereof to whom electricity or
24	telephone service is was supplied during the previous

25 calendar year within the state but and, except as provided

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in 10-4-201, shall be exempt from all other excise and
 income taxes of whatsoever kind or nature."

3 Section 8. Section 69-1-225, MCA, is amended to read: *69-1-225. Computation and collection of fee in absence 4 5 of statement -- penalty and interest. (1) If a regulated 6 company or an officer or employee of a regulated company 7 fails, neglects, or refuses to file the statement required 8 by 69-1-223(2), the department of revenue may after the time 9 for filing has expired proceed to inform itself, as best it 10 may, regarding the regulated company's gross operating 11 revenue from all activities regulated by the commission 12 within the state for the calendar guarter, guarters, or 13 portion thereof and may determine and fix the amount of the 14 consumer counsel fee due.

15 (2) The-department-may-add-to-the--amount--of--the--fee 16 computed--under--subsection--{1};--in--addition-to-any-other 17 penalty-provided-by-lawy--a--penalty--of--10%--thereof--plus 18 interest--at--the--rate-of-1%-per-month-or-fraction-of-month 19 computed-on-the-total-amount-of-fee-and-penalty--Interest-is 20 computed-from-the-date--the--fee--is--due--to--the--date--of 21 payment: [If the department of revenue determines that the 22 amount of fee due is greater than the amount reported or makes an estimate pursuant to subsection (1), it shall mail 23 24 to the regulated company a notice of the fee proposed to be assessed. Within 30 days after mailing of the notice, the 25

1	regulated company may file with the department a written
2	protest against the proposed fee, setting forth the grounds
3	upon which the protest is based, and may request in its
4	protest an oral hearing or an opportunity to present
5	additional evidence relating to its liability.]
б	(3) Thedepartmentofrevenueshallmailtothe
7	regulated-company-a-letter-setting-forth-the-amountofthe
8	fee,penalty,andinterest-and-notifying-the-company-that
9	payment-of-the-full-amount-of-the-fee7-penalty7-and-interest
10	must-be-remitted-within-15-days-of-theregulatedcompany's
11	receiptoftheletter;otherwisealienmay-be-filed-
12	(a) When a deficiency is determined and the fee becomes
13	final, the department shall mail a notice and demand for
14	payment to the regulated company. The fee is due and payable
15	at the expiration of 10 days after the notice and demand
16	were mailed. Interest on any deficiency assessment bears
17	interest until paid, at the rate of 1% a month or fraction
18	of a month, computed from the original due date of the
19	return.
20	(b) If payment is not made within 10 days, the amount
21	of the deficiency is considered delinguent. A 10% penalty
22	must be added to the amount of the deficiency.
23	(4) The 10% penalty may be waived by the department of
24	revenue if reasonable cause for failure and neglect to file
25	the statement is provided to the department."

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Section 9. Section 69-1-226, MCA, is amended to read: 1 2 *69-1-226. Failure to pay fee -- penalty and interest -- collection of fee. (1) If a regulated company or an 3 4 officer or employee of a regulated company files the 5 statement required by 69-1-223(2) but fails, neglects, or 6 refuses to pay the fee due within the time required, the department of revenue may after the time for payment has 7 expired add to the fee due, in addition to any other penalty 8 9 provided by law, a penalty of 10% thereof plus interest at 10 the rate of 1% per month or fraction of month computed on 11 the total amount of the fee and-penalty. Interest is 12 computed from the date the fee is due to the date of 13 payment.

14 (2) The department of revenue shall mail to the 15 regulated company a letter setting forth the amount of the 16 fee, penalty, and interest and notifying the company that 17 payment of the full amount of the fee, penalty, and interest 18 must be remitted within ± 5 <u>10</u> days of the regulated 19 company's receipt of the letter; otherwise a warrant for 20 distraint may be filed.

21 (3) The 10% penalty may be waived by the department of 22 revenue if reasonable cause for failure and neglect to make 23 payment is provided to the department."

24 <u>NEW SECTION.</u> Section 10. Penalty and interest for
 25 delinguency -- waiver. (1) Assessments due under this

chapter are delinquent if not paid on or before December 31.
The department of revenue shall add to the amount of each
delinquent assessment a penalty of 10% of the amount of the
assessment plus interest at the rate of 1% per month or
fraction of a month computed on the total amount of
assessment. Interest is computed from the date the
assessment was due to the date of payment.

8 (2) The 10% penalty may be waived by the department of 9 revenue if reasonable cause is established for the failure 10 or neglect to file the return required by 23-2-715 or to pay 11 the assessment due to the department of revenue.

NEW SECTION. Section 11. Credit for overpayment --12 13 interest on overpayment. (1) If the department of revenue 14 determines that the amount of fee, penalty, or interest paid 15 for any year is more than the amount due, the amount of the 16 overpayment must be credited against any tax, penalty, or 17 interest then due from the taxpayer and the balance refunded 18 to the taxpayer or the taxpayer's successor through 19 reorganization, merger, or consolidation or to the 20 taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is
allowed on overpayments at the same rate as is charged on
deficiency assessments from the due date of the return or
from the date of overpayment, whichever date is later, to
the date the department of revenue approves refunding or

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1 crediting of the overpayment.

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2 (3) (a) Interest does not accrue during any period in 3 which the processing of a claim for a refund is delayed more 4 than 30 days by reason of failure of the taxpayer to furnish 5 information requested by the department of revenue for the 6 purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

8 (i) if the overpayment is refunded within 6 months from 9 the date the return is due or from the date the return is 10 filed, whichever is later: or

11 (ii) if the amount of interest is less than Sl.

(c) Only a payment made incident to a bona fide and 12 13 orderly discharge of actual tax liability or one reasonably 14 assumed to be imposed by this chapter is considered an 15 overpayment with respect to which interest is allowable.

NEW SECTION. Section 12. Credit for overpayment ---16 17 interest on overpayment. (1) If the department of revenue 18 determines that the amount of tax, penalty, or interest paid 19 for any year is more than the amount due, the amount of the 20 overpayment must be credited against any tax, penalty, or 21 interest then due from the taxpayer and the balance refunded 22 to the taxpayer, to the taxpayer's successor through 23 reorganization, merger, or consolidation, or to the 24 taxpayer's shareholders upon dissolution.

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(2) Except as provided in subsection (3), interest is

allowed on overpayments at the same rate as is charged on 1 deficiency assessments from the due date of the return or 2 from the date of overpayment, whichever is later, to the 3 date the department approves refunding or crediting of the 4 5 overpayment.

(3) (a) Interest does not accrue during any period in б which the processing of a claim for refund is delayed more 7 than 30 days by reason of failure of the taxpayer to furnish 8 information requested by the department for the purpose of 9 verifying the amount of the overpayment. 10

11 (b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from 12 the date the return is due or from the date the return is 13 filed, whichever is later; or 14

(ii) if the amount of interest is less than \$1. 15

(c) Only a payment made incident to a bona fide and 16 orderly discharge of actual tax liability or one reasonably 17 assumed to be imposed by this chapter is considered an 18 overpayment with respect to which interest is allowable. 19

NEW SECTION. Section 13. Credit for overpayment --20 interest on overpayment. (1) If the department of revenue 21 determines that the amount of the assessment, penalty, or 22 interest paid for any year is more than the amount due, the 23 amount of the overpayment must be credited against any 24 assessment, penalty, or interest then due from the taxpayer 25

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and the balance refunded to the taxpayer, to the taxpayer's
 successor through reorganization, merger, or consolidation,
 or to the taxpayer's shareholders upon dissolution.

4 (2) Except as provided in subsection (3), interest is 5 allowed on overpayments at the same rate as is charged on 6 deficiency assessments provided in 23-2-715(2) from the due 7 date of the return or from the date of overpayment, 8 whichever is later, to the date the department of revenue 9 approves refunding or crediting of the overpayment.

10 (3) (a) Interest does not accrue during any period in 11 which the processing of a claim for refund is delayed more 12 than 30 days by reason of failure of the taxpayer to furnish 13 information requested by the department of revenue for the 14 purpose of verifying the amount of the overpayment.

15 (b) Interest is not allowed:

16 (i) if the overpayment is refunded within 6 months from
17 the date the return is due or from the date the return is
18 filed, whichever is later; or

19 (ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and
orderly discharge of actual tax liability or one reasonably
assumed to be imposed by this chapter is considered an
overpayment with respect to which interest is allowable.

24 <u>NEW SECTION.</u> Section 14. Statute of limitations. (1)
25 Except as provided in subsection (3), a deficiency may not

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1 be assessed or collected with respect to the year for which a statement of gross receipts is filed unless the notice of 2 3 the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For 4 5 purposes of this section, a statement of gross receipts 6 filed before the last day prescribed for filing is 7 considered as filed on the last day. If the taxpayer, before 8 the expiration of the period prescribed for assessment. 9 consents in writing to an extended time, the assessment may 10 be made at any time prior to the expiration of the period 11 agreed upon.

12 (2) A refund or credit may not be allowed or paid with 13 respect to the year for which a statement of gross receipts 14 is filed after 5 years from the last day prescribed for 15 filing the statement of gross receipts or after 1 year from 16 the date of the overpayment, whichever period expires later, 17 unless before the expiration of the period the taxpayer 18 files a claim or the department of revenue determines the 19 existence of the overpayment and approves the refund or 20 credit. If the taxpayer has agreed in writing under the 21 provisions of subsection (1) to extend the time within which 22 the department of revenue may propose an additional 23 assessment, the period within which a claim for refund or 24 credit may be filed or a credit or refund allowed if no 25 claim is filed is automatically extended.

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1 (3) If a statement of gross receipts is required to be 2 filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect 3 4 the tax may be brought at any time. If a statement of gross 5 receipts is required to be filed and the taxpaver files a fraudulent statement of gross receipts, the 5-year period 6 provided for in subsection (1) does not begin until 7 discovery of the fraud by the department of revenue. 8

NEW SECTION. Section 15. Statute of limitations. (1) 9 10 Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which 11 12 a return is filed unless the notice of the additional fee 13 proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a 14 15 return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before 16 17 the expiration of the period prescribed for assessment of 18 the fee, consents in writing to an assessment after that 19 time, the fee may be assessed at any time prior to the 20 expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with
respect to the year for which a return is filed after 5
years from the last day prescribed for filing the return or
after 1 year from the date of the overpayment, whichever
period expires later, unless before the expiration of the

period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed

8 if no claim is filed is automatically extended.

9 (3) If a return is required to be filed and the 10 taxpayer fails to file the return, the tax may be assessed 11 or an action to collect the tax may be brought at any time. 12 If a return is required to be filed and the taxpayer files a 13 fraudulent return, the 5-year period provided for in 14 subsection (1) does not begin until discovery of the fraud 15 by the department of revenue.

NEW SECTION. Section 16. Penalty and interest for 16 17 delinguency -- waiver. (1) Fees due under this chapter become delinquent if not paid on or before July 1 for the 18 previous calendar year. The department of revenue shall add 19 20 to the amount of each delinguent fee a penalty of 10% of the amount of the fee plus interest at the rate of 1% per month 21 or fraction of a month computed on the total fee. Interest 22 is computed from the date the fees were due to the date of 23 24 payment.

25 (2) The 10% penalty may be waived by the department if

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reasonable cause for the failure or neglect to pay the fee
 required by 35-18-503 is provided to the department.

3 NEW SECTION. Section 17. Deficiency assessment -----4 hearing -- interest. (1) If the department of revenue 5 determines that the amount of fee due is greater than the 6 amount reported, it shall mail to the taxpayer a notice of the additional fee proposed to be assessed. Within 30 days 7 after mailing of the notice, the taxpayer may file with the 8 9 department a written protest against the proposed additional fee, setting forth the grounds upon which the protest is 10 11 based, and may request in his protest an oral hearing or an 12 opportunity to present additional evidence relating to his 13 additional liability. If a protest is not filed, the amount 14 of the additional fee proposed to be assessed becomes final 15 upon expiration of the 30-day period. If a protest is filed, 16 the department shall reconsider the proposed assessment and, 17 if the taxpayer has requested, shall grant the taxpayer an 18 oral hearing. After consideration of the protest and the 19 evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its 20 21 action to the taxpayer.

(2) (a) When a deficiency is determined and the
additional fee becomes final, the department shall mail a
notice and demand for payment to the taxpayer. The fee is
due and payable at the expiration of 10 days after the

notice and demand were mailed. Interest on any deficiency
 assessment bears interest until paid, at the rate of 1% a
 month or fraction of a month, computed from the original due
 date of the return.

5 (b) If payment is not made within 10 days, the amount
6 of the deficiency is considered delinquent. A 10% penalty
7 must be added to the amount of the deficiency.

8 <u>NEW SECTION.</u> Section 18. Codification instruction. (1) 9 [Sections 12-and-16 <u>11 AND 15</u>] are intended to be codified 10 as an integral part of Title 69, chapter 1, part 2, and the 11 provisions of Title 69, chapter 1, part 2, apply to 12 [sections 12-and-16 <u>11 AND 15</u>].

13 (2) [Sections 12-and-16 <u>11 AND 15</u>] are intended to be
14 codified as an integral part of Title 10, chapter 4, part 2,
15 and the provisions of Title 10, chapter 4, part 2, apply to
16 [sections 12-and-16 11 AND 15].

17 (3) [Section $\pm 3 \pm 12$] is intended to be codified as an 18 integral part of Title 15, chapter 65, part 1, and the 19 provisions of Title 15, chapter 65, part 1, apply to 20 [section $\pm 3 \pm 12$].

(4) [Sections ±17--147--and--15 10, 13, AND 14] are intended to be codified as an integral part of Title 23, chapter 2, part 7, and the provisions of Title 23, chapter 2, part 7, apply to [sections ±17-±47-and--15 10, 13, AND 25 14].

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(5) [Sections 127-167-177-and-10 11 AND 15 THROUGH 17]
 are intended to be codified as an integral part of Title 35,
 chapter 18, part 5, and the provisions of Title 35, chapter
 18, part 5, apply to [sections 127-167-177-and-18 11 AND 15
 THROUGH 17].

13 <u>NEW SECTION.</u> Section 20. Applicability. [This act]
14 applies to all returns or statements due on or after July 1,
15 1991.

16 <u>NEW SECTION.</u> Section 21. Effective date. [This act] is 17 effective on passage and approval.

-End-

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