

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.

FEBRUARY 18, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 19, 1991 PRINTING REPORT.

FEBRUARY 21, 1991 SECOND READING, DO PASS.

FEBRUARY 22, 1991 ENGROSSING REPORT.

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

 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.

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.

1 Senate BILL NO. 280
2 INTRODUCED BY Bob 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
23 state -- penalty and interest. (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
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, 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 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

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 (5) The department of revenue may enforce collection by

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:

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
 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.

1 (2) (a) When a deficiency is determined and the tax
 2 becomes final, the department shall mail a notice and demand
 3 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
 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
 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 --
 14 waiver. (1) License taxes due under this chapter become
 15 delinquent 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 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
 21 computed from the date the license taxes were due to the
 22 date of payment.

23 (2) The 10% penalty may be waived by the department if
 24 reasonable cause for the failure or neglect to file the
 25 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:

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 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
 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.

20 (2) The owner or operator shall report to the
 21 department of revenue, at the end of each calendar quarter,
 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

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)."

4 **Section 6.** Section 15-65-115, MCA, is amended to read:

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
9 collected during the calendar quarter. 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
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 tax 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 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

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.
 5 The assessments shall be collected by the department of
 6 revenue and remitted to the state special revenue fund by on
 7 or before December 31 of each year for the previous fiscal
 8 year.

9 (2) [(a) If the department of revenue determines that
 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 to be assessed. Within 30
 13 days after mailing of the notice, the operator may file with
 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
 17 protest an oral hearing or an opportunity to present
 18 additional evidence relating to his assessment liability. If
 19 a protest is not filed, the amount of the additional
 20 assessment proposed to be assessed becomes final upon
 21 expiration of 30-day period. If a protest is filed, the
 22 department of revenue shall reconsider the proposed
 23 assessment and, if the operator has so requested, shall
 24 grant the operator an oral hearing. After consideration of
 25 the protest and the evidence presented at an oral hearing,

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 delinquent. A 10% penalty
 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
 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

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:

4 "69-1-225. Computation and collection of fee in absence
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 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 addition to any other~~
17 ~~penalty provided by law, 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~~
25 ~~assessed. Within 30 days after mailing of the notice, the~~

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) ~~The department of revenue shall mail to the~~
7 ~~regulated company a letter setting forth the amount of the~~
8 ~~fee, penalty, and interest 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 the regulated 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
25 the statement is provided to the department."

1 **Section 10.** Section 69-1-226, MCA, is amended to read:

2 "69-1-226. Failure to pay fee -- penalty and interest
3 -- collection of fee. (1) If a regulated company or an
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
7 department of revenue may after the time for payment has
8 expired add to the fee due, in addition to any other penalty
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 15 10 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 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.

12 NEW SECTION. **Section 12.** Credit for overpayment --
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.

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

1 crediting of the overpayment.

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.

7 (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.

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

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

1 and the balance refunded to the taxpayer, to the taxpayer's
2 successor through reorganization, merger, or consolidation,
3 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.

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

24 NEW SECTION. **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
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.

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

9 NEW SECTION. Section 16. Statute of limitations. (1)
 10 Except as provided in subsection (3), a deficiency may not
 11 be assessed or collected with respect to the year for which
 12 a return is filed unless the notice of the additional fee
 13 proposed to be assessed is mailed within 5 years from the
 14 date the return was filed. For purposes of this section, a
 15 return filed before the last day prescribed for filing is
 16 considered as filed on the last day. If the taxpayer, before
 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.

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
 4 writing under the provisions of subsection (1) to extend the
 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
 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.

16 NEW SECTION. Section 17. Penalty and interest for
 17 delinquency -- 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 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

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

3 NEW SECTION. Section 18. 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
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
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
20 action upon the protest is final when it mails notice of its
21 action to the taxpayer.

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

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

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

8 NEW SECTION. 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].

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

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

LC 0311/01

1 codified as an integral part of Title 35, chapter 18, part
2 5, and the provisions of Title 35, chapter 18, part 5, apply
3 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-

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:

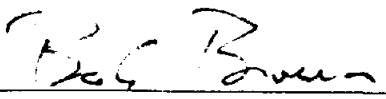
The proposed legislation is solely for the purpose of improving administrative and taxpayer understanding of penalties and interest associated with delinquent taxes and fees.

FISCAL IMPACT:

None.



ROD SUNDSTED, BUDGET DIRECTOR 2-11-91 DATE
Office of Budget and Program Planning



BOB BROWN, PRIMARY SPONSOR 2/12/91 DATE
Fiscal Note for SB0280, as introduced.

SB 280

APPROVED BY COMMITTEE
ON TAXATION

1 *Senate* BILL NO. *280*
2 INTRODUCED BY *Bob 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
23 state -- penalty and interest. (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
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, 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 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

additional liability. If a protest is not filed, the amount of the additional fee proposed to be assessed becomes final upon expiration of the 30-day period. If a protest is filed, the department of revenue shall reconsider the proposed assessment and, if the provider has so requested, shall grant the provider an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department of revenue's action upon the protest is final when it mails notice of its action to the provider.]

(b) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. 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.

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

(4) The 10% penalty provided for in subsection (3)(c) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(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."

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

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

1 (2) (a) When a deficiency is determined and the tax
 2 becomes final, the department shall mail a notice and demand
 3 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
 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
 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 --
 14 waiver. (1) License taxes due under this chapter become
 15 delinquent 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 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
 21 computed from the date the license taxes were due to the
 22 date of payment.

23 (2) The 10% penalty may be waived by the department if
 24 reasonable cause for the failure or neglect to file the
 25 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:

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 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
 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.

20 (2) The owner or operator shall report to the
 21 department of revenue, at the end of each calendar quarter,
 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

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)."

4 **Section 6.** Section 15-65-115, MCA, is amended to read:

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
9 collected during the calendar quarter. 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
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 tax 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 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

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.
 5 The assessments shall be collected by the department of
 6 revenue and remitted to the state special revenue fund by on
 7 or before December 31 of each year for the previous fiscal
 8 year.

9 (2) [(a) If the department of revenue determines that
 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 to be assessed. Within 30
 13 days after mailing of the notice, the operator may file with
 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
 17 protest an oral hearing or an opportunity to present
 18 additional evidence relating to his assessment liability. If
 19 a protest is not filed, the amount of the additional
 20 assessment proposed to be assessed becomes final upon
 21 expiration of 30-day period. If a protest is filed, the
 22 department of revenue shall reconsider the proposed
 23 assessment and, if the operator has so requested, shall
 24 grant the operator an oral hearing. After consideration of
 25 the protest and the evidence presented at an oral hearing,

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 delinquent. A 10% penalty
 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
 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

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:

4 *69-1-225. Computation and collection of fee in absence
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 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 addition to any other~~
17 ~~penalty provided by law, 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~~
25 ~~assessed. Within 30 days after mailing of the notice, the~~

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) ~~The department of revenue shall mail to the~~
7 ~~regulated company a letter setting forth the amount of the~~
8 ~~fee, penalty, and interest 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 the regulated 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
25 the statement is provided to the department."

1 **Section 10.** Section 69-1-226, MCA, is amended to read:

2 "69-1-226. Failure to pay fee -- penalty and interest
3 -- collection of fee. (1) If a regulated company or an
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
7 department of revenue may after the time for payment has
8 expired add to the fee due, in addition to any other penalty
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 15 10 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 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.

12 NEW SECTION. **Section 12.** Credit for overpayment --
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.

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

1 crediting of the overpayment.

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.

7 (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.

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

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

1 and the balance refunded to the taxpayer, to the taxpayer's
2 successor through reorganization, merger, or consolidation,
3 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.

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

24 NEW SECTION. 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
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.

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

9 NEW SECTION. Section 16. Statute of limitations. (1)

10 Except as provided in subsection (3), a deficiency may not
 11 be assessed or collected with respect to the year for which
 12 a return is filed unless the notice of the additional fee
 13 proposed to be assessed is mailed within 5 years from the
 14 date the return was filed. For purposes of this section, a
 15 return filed before the last day prescribed for filing is
 16 considered as filed on the last day. If the taxpayer, before
 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.

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
 4 writing under the provisions of subsection (1) to extend the
 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
 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.

16 NEW SECTION. Section 17. Penalty and interest for

17 delinquency -- 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 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

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

3 NEW SECTION. Section 18. 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
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
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
20 action upon the protest is final when it mails notice of its
21 action to the taxpayer.

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

1 notice and demand were mailed. Interest on any deficiency
2 assessment bears interest until paid, at the rate of 1% a
3 month or fraction of a month, computed from the original due
4 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 NEW SECTION. 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].

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

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

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1 codified as an integral part of Title 35, chapter 18, part
2 5, and the provisions of Title 35, chapter 18, part 5, apply
3 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-

1 *Senate* BILL NO. 280
 2 INTRODUCED BY Bob 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:

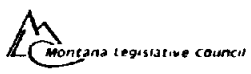
21 **Section 1.** Section 10-4-211, MCA, is amended to read:
 22 "10-4-211. Provider required to hold fee in trust for
 23 state -- penalty and interest. (1) Every provider required
 24 to collect the fee imposed by 10-4-201 holds it in trust for
 25 the state of Montana and for the payment thereof to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

1 department of revenue in the manner and at the time provided
 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, 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 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



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 1½ 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 (5) The department of revenue may enforce collection by

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:

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
 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.

1 (2) (a) When a deficiency is determined and the tax
 2 becomes final, the department shall mail a notice and demand
 3 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
 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
 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 --
 14 waiver. (1) License taxes due under this chapter become
 15 delinquent 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 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
 21 computed from the date the license taxes were due to the
 22 date of payment.

23 (2) The 10% penalty may be waived by the department if
 24 reasonable cause for the failure or neglect to file the
 25 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:

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 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
 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.

20 (2) The owner or operator shall report to the
 21 department of revenue, at the end of each calendar quarter,
 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

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)."

4 **Section 6.** Section 15-65-115, MCA, is amended to read:

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
9 collected during the calendar quarter. 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
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 tax 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 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

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.
 5 The assessments shall be collected by the department of
 6 revenue and remitted to the state special revenue fund by on
 7 or before December 31 of each year for the previous fiscal
 8 year.

9 (2) [(a) If the department of revenue determines that
 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 to be assessed. Within 30
 13 days after mailing of the notice, the operator may file with
 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
 17 protest an oral hearing or an opportunity to present
 18 additional evidence relating to his assessment liability. If
 19 a protest is not filed, the amount of the additional
 20 assessment proposed to be assessed becomes final upon
 21 expiration of 30-day period. If a protest is filed, the
 22 department of revenue shall reconsider the proposed
 23 assessment and, if the operator has so requested, shall
 24 grant the operator an oral hearing. After consideration of
 25 the protest and the evidence presented at an oral hearing,

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 delinquent. A 10% penalty
 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
 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

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:

4 "69-1-225. Computation and collection of fee in absence
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 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 addition to any other~~
17 ~~penalty provided by law, 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~~
25 ~~assessed. Within 30 days after mailing of the notice, the~~

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) The department of revenue shall mail to the~~
7 ~~regulated company a letter setting forth the amount of the~~
8 ~~fee, penalty, and interest 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 the regulated 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
25 the statement is provided to the department."

1 **Section 10.** Section 69-1-226, MCA, is amended to read:

2 "69-1-226. Failure to pay fee -- penalty and interest
3 -- collection of fee. (1) If a regulated company or an
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
7 department of revenue may after the time for payment has
8 expired add to the fee due, in addition to any other penalty
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 15 10 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 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.

12 NEW SECTION. **Section 12.** Credit for overpayment --
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.

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

1 crediting of the overpayment.

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.

7 (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.

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

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

1 and the balance refunded to the taxpayer, to the taxpayer's
2 successor through reorganization, merger, or consolidation,
3 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.

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

24 NEW SECTION. **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
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.

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

9 NEW SECTION. Section 16. Statute of limitations. (1)
 10 Except as provided in subsection (3), a deficiency may not
 11 be assessed or collected with respect to the year for which
 12 a return is filed unless the notice of the additional fee
 13 proposed to be assessed is mailed within 5 years from the
 14 date the return was filed. For purposes of this section, a
 15 return filed before the last day prescribed for filing is
 16 considered as filed on the last day. If the taxpayer, before
 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.

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
 4 writing under the provisions of subsection (1) to extend the
 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
 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.

16 NEW SECTION. Section 17. Penalty and interest for
 17 delinquency -- 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 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

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

3 NEW SECTION. Section 18. 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
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
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
20 action upon the protest is final when it mails notice of its
21 action to the taxpayer.

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

1 notice and demand were mailed. Interest on any deficiency
2 assessment bears interest until paid, at the rate of 1% a
3 month or fraction of a month, computed from the original due
4 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 NEW SECTION. 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].

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

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

1 codified as an integral part of Title 35, chapter 18, part
2 5, and the provisions of Title 35, chapter 18, part 5, apply
3 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-

HOUSE STANDING COMMITTEE REPORT

March 22, 1991
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March 22, 1991

Page 1 of 2

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

Signed: 

Dan Harrington, Chairman

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
4. Page 22, line 9.
Page 22, line 12.
Page 22, line 13.
Page 22, line 16.
Strike: "12 and 16"
Insert: "11 and 15"
5. Page 22, line 17.
Page 22, line 20.
Strike: "13"
Insert: "12"
6. Page 22, line 21.
Page 22, line 24.

Strike: "11, 14, and 15"
Insert: "10, 13, and 14"

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"

SENATE BILL NO. 280

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT 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 OVERPAYMENTS 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; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 15-55-108, 15-65-112, 15-65-115, 23-2-715, 35-18-503, 69-1-225, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 10-4-211, MCA, is amended to read:

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

department of revenue in the manner and at the time provided 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 fee, 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 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, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his



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 (5) The department of revenue may enforce collection by

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:

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
 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.

1 (2) (a) When a deficiency is determined and the tax
 2 becomes final, the department shall mail a notice and demand
 3 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
 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
 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 --**
 14 **waiver.** (1) License taxes due under this chapter become
 15 delinquent 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 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
 21 computed from the date the license taxes were due to the
 22 date of payment.

23 (2) The 10% penalty may be waived by the department if
 24 reasonable cause for the failure or neglect to file the
 25 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:

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 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
 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.

20 (2) The owner or operator shall report to the
 21 department of revenue, at the end of each calendar quarter,
 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

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)."

4 **Section 6.** Section 15-65-115, MCA, is amended to read:

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
9 collected during the calendar quarter. 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
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 tax 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 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~~

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.~~
 5 ~~The assessments shall be collected by the department of~~
 6 ~~revenue and remitted to the state special revenue fund by on~~
 7 ~~or before December 31 of each year for the previous fiscal~~
 8 ~~year.~~

9 ~~(2) (a) If the department of revenue determines that~~
 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 to be assessed. Within 30~~
 13 ~~days after mailing of the notice, the operator may file with~~
 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~~
 17 ~~protest an oral hearing or an opportunity to present~~
 18 ~~additional evidence relating to his assessment liability. If~~
 19 ~~a protest is not filed, the amount of the additional~~
 20 ~~assessment proposed to be assessed becomes final upon~~
 21 ~~expiration of 30-day period. If a protest is filed, the~~
 22 ~~department of revenue shall reconsider the proposed~~
 23 ~~assessment and, if the operator has so requested, shall~~
 24 ~~grant the operator an oral hearing. After consideration of~~
 25 ~~the protest and the evidence presented at an oral hearing,~~

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 14 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 delinquent. A 10% penalty~~
 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~~
 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

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

3 **Section 8.** 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
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 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 addition to any other~~
17 ~~penalty provided by law, 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~~
25 ~~assessed. Within 30 days after mailing of the notice, the~~

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) ~~The department of revenue shall mail to the~~
7 ~~regulated company a letter setting forth the amount of the~~
8 ~~fee, penalty, and interest 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 the regulated 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
25 the statement is provided to the department."

1 **Section 9.** Section 69-1-226, MCA, is amended to read:

2 ***69-1-226. Failure to pay fee -- penalty and interest**
 3 **-- collection of fee.** (1) If a regulated company or an
 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
 7 department of revenue may after the time for payment has
 8 expired add to the fee due, in addition to any other penalty
 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~~ 10 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 **NEW SECTION. Section 10.** 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.

12 **NEW SECTION. Section 11. Credit for overpayment --**
 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.

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

1 crediting of the overpayment.

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.

7 (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.

16 NEW SECTION. Section 12. 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

1 allowed on overpayments at the same rate as is charged on
2 deficiency assessments from the due date of the return or
3 from the date of overpayment, whichever is later, to the
4 date the department approves refunding or crediting of the
5 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 NEW SECTION. Section 13. 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

1 and the balance refunded to the taxpayer, to the taxpayer's
2 successor through reorganization, merger, or consolidation,
3 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.

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

24 NEW SECTION. **Section 14.** 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
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.

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

9 NEW SECTION. Section 15. Statute of limitations. (1)
 10 Except as provided in subsection (3), a deficiency may not
 11 be assessed or collected with respect to the year for which
 12 a return is filed unless the notice of the additional fee
 13 proposed to be assessed is mailed within 5 years from the
 14 date the return was filed. For purposes of this section, a
 15 return filed before the last day prescribed for filing is
 16 considered as filed on the last day. If the taxpayer, before
 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.

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
 4 writing under the provisions of subsection (1) to extend the
 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
 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.

16 NEW SECTION. Section 16. Penalty and interest for
 17 delinquency -- 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 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

1 reasonable cause for the failure or neglect to pay the fee
2 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
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
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
20 action upon the protest is final when it mails notice of its
21 action to the taxpayer.

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

1 notice and demand were mailed. Interest on any deficiency
2 assessment bears interest until paid, at the rate of 1% a
3 month or fraction of a month, computed from the original due
4 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 NEW SECTION. Section 18. Codification instruction. (1)
9 [~~Sections 12-and-16~~ 11 AND 15] 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~~ 11 AND 15].

13 (2) [~~Sections 12-and-16~~ 11 AND 15] 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 ~~13~~ 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 ~~13~~ 12].

21 (4) [~~Sections 17--147--and--15~~ 10, 13, AND 14] are
22 intended to be codified as an integral part of Title 23,
23 chapter 2, part 7, and the provisions of Title 23, chapter
24 2, part 7, apply to [~~sections 17-147-and--15~~ 10, 13, AND
25 14].

1 (5) [Sections ~~127-167-177-and-18~~ 11 AND 15 THROUGH 17]
2 are intended to be codified as an integral part of Title 35,
3 chapter 18, part 5, and the provisions of Title 35, chapter
4 18, part 5, apply to [sections ~~127-167-177-and-18~~ 11 AND 15
5 THROUGH 17].

6 NEW SECTION. Section 19. Coordination instruction. If
7 ~~---Bill No-----{5E-98+}~~ SENATE BILL NO. 445 is passed and
8 approved and if it includes a section adopting a uniform tax
9 appeal procedure, the bracketed language contained in
10 [sections 1, 6, 7, and 9 8] is void, and the provisions of
11 ~~---Bill No-----{5E-98+}~~ SENATE BILL NO. 445 govern
12 taxpayer appeal procedures.

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

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

-End-