

1 *House* BILL NO. *221*  
 2 INTRODUCED BY *Frank Kendrick Menahan Mular*  
 3 *Stainquiller*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 IMPOSITION OF A MONTANA INCOME TAX WHICH IS EQUAL TO  
 6 TWENTY-SEVEN AND ONE HALF PERCENT (27.5%) OF THE FEDERAL  
 7 INCOME TAX PAYABLE ON MONTANA TAXABLE INCOME; AMENDING  
 8 SECTIONS 84-4903.1, 84-4924, AND 84-4939, R.C.M. 1947;  
 9 REPEALING 84-4901, 84-4902, 84-4903, 84-4905, 84-4906,  
 10 84-4907, 84-4908, 84-4909, 84-4910, 84-4912, 84-4914,  
 11 84-4915 AND 84-4917, R.C.M 1847; AND PROVIDING AN EFFECTIVE  
 12 DATE."  
 13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 Section 1. Purpose. It is the purpose and intent of  
 16 this act that Montana income tax rates shall be a flat  
 17 percentage of the federal income tax.  
 18 Section 2. Definitions. As used in this act:  
 19 (1) "Department" means the department of revenue.  
 20 (2) "Taxpayer" includes any person or fiduciary,  
 21 resident, or nonresident, subject to a tax imposed by this  
 22 act, and does not include corporations.  
 23 (3) "Taxable year" means the taxpayer's taxable year  
 24 for federal income tax purposes.  
 25 (4) "Fiduciary" means a guardian, trustee, executor,

1 administrator, receiver, conservator, or any person whether  
 2 individual or corporate, acting in any fiduciary capacity  
 3 for any person, trust, or estate.  
 4 (5) "Resident" applies only to natural persons and  
 5 includes, for the purpose of determining liability to the  
 6 tax imposed by this act with reference to the income of any  
 7 taxable year, any person domiciled in the state of Montana,  
 8 and any other person who maintains a permanent place of  
 9 abode within the state even though temporarily absent from  
 10 the state and has not established a residence elsewhere.  
 11 (6) "Foreign country" or "foreign government" means  
 12 any jurisdiction other than the one embraced within the  
 13 United States, its territories and possessions.  
 14 (7) "Information agents" includes all individuals,  
 15 corporations, associations, and partnerships, in whatever  
 16 capacity acting, including lessees, or mortgagors of real or  
 17 personal property, fiduciaries, employers, and all officers  
 18 and employees of the state, or of any municipal corporation  
 19 or political subdivision of the state, having the control,  
 20 receipt, custody, disposal, or payment of interest, rent,  
 21 salaries, wages, premiums, annuities, compensations,  
 22 remunerations, emoluments, or other fixed or determinable  
 23 annual or periodical gains, profits and income with respect  
 24 to which any person or fiduciary is taxable under this act.  
 25 (8) "Includes" and "including" when used in a

1 definition contained in this act does not exclude other  
2 things otherwise within the meaning of the word defined.

3 (9) "Individual" means a natural person, whether  
4 married or unmarried, adult or minor, subject to payment of  
5 an income tax under the internal revenue code.

6 (10) "Internal revenue code" or "IRC" means the  
7 internal revenue code of 1954 as amended or as hereafter  
8 amended. All amendments shall be operative for the purpose  
9 of this act as of the time they become operative and will  
10 become operative under federal law.

11 (11) "Person" means an individual, a trust or estate,  
12 or partnership.

13 Section 3. Internal revenue code and regulations --  
14 incorporation by reference. (1) Whenever the IRC is  
15 mentioned in this act, the particular portions or provisions  
16 thereof, as now in effect or hereafter amended, which are  
17 referred to, shall be regarded as incorporated in this act  
18 by that reference and shall have effect as though fully set  
19 forth herein.

20 (2) Whenever any portion of the IRC incorporated by  
21 reference as provided in subsection (1) of this section  
22 refers to rules and regulations promulgated by the United  
23 States director of internal revenue, or hereafter so  
24 promulgated, they shall be regarded as regulations  
25 promulgated by the department under and in accord with the

1 provisions of this act, unless and until the department  
2 promulgates specific regulations in lieu thereof conformable  
3 to this act.

4 Section 4. State income tax to be percentage of  
5 federal tax -- exemptions. (1) There is levied and there  
6 shall be collected and paid for each taxable year upon the  
7 adjusted federal taxable income of every resident individual  
8 and fiduciary required to make a return and pay a tax under  
9 the federal income tax law an income tax equal to a flat  
10 percentage of the total income tax that would be payable for  
11 the same taxable year to the United States under the  
12 provisions of chapter 1 of subtitle A of the 1954 Internal  
13 Revenue Code, Public Law 591, 83rd Congress, 2nd session,  
14 upon all adjusted federal taxable income derived from  
15 sources within and without the state of Montana without any  
16 allowance for credits against such tax permitted under the  
17 IRC.

18 (2) There is levied and there shall be collected and  
19 paid for each taxable year upon the adjusted federal taxable  
20 income of every nonresident individual and fiduciary  
21 required to make a return and pay a tax under the federal  
22 income tax law an income tax equal to a flat percentage of  
23 the total income tax that would be payable for the same  
24 taxable year to the United States under the provisions of  
25 chapter 1 of subtitle A of the 1954 Internal Revenue Code,

1 Public Law 591, 83rd Congress, 2nd session, upon all  
2 adjusted federal taxable income derived from sources within  
3 Montana, without any allowance for credits against such tax  
4 permitted under the IRC.

5 (3) The rate of tax imposed by subsections (1) and (2)  
6 of section 5 of this act shall be based on a flat percentage  
7 of federal tax liability irrespective of income, which shall  
8 be twenty-seven and one half percent (27.5%).

9 (4) Federal adjusted taxable income means the  
10 taxpayer's federal income tax taxable income determined  
11 according to the applicable provisions of the IRC and the  
12 rules and regulations pertaining thereto, provided the  
13 taxpayer may make the following modifications:

14 (a) The taxpayer may subtract from federal taxable  
15 income, to the extent included therein:

16 (i) amounts received by a retired person as an  
17 annuity, pension or endowment under a formal private,  
18 municipal, state, or federal retirement plan or system, to  
19 the extent said annuity, pension and endowment would be  
20 exempt under the individual income tax law of Montana in  
21 effect prior to the passage of this act, namely,

22 (1) all benefits received under the Federal Employees  
23 Retirement Act not in excess of three thousand six hundred  
24 dollars (\$3,600);

25 (2) all benefits paid under the Montana Teachers

1 Retirement Act which are specified as exempt from taxation  
2 by section 75-6215;

3 (3) all benefits paid under the Montana Public  
4 Employees Act which are specified as exempt from taxation by  
5 section 68-2502;

6 (4) all benefits paid under the Montana Highway Patrol  
7 Retirement Act which are specified as exempt from taxation  
8 by section 31-221;

9 (ii) Montana income tax refunds or credits thereof;

10 (iii) interest income from obligations of the United  
11 States government to the extent said income is exempt from  
12 state income tax under federal law;

13 (iv) interest received on obligations of any state,  
14 territory, or county, municipality, district, or other  
15 political subdivision thereof.

16 (b) In the case of a shareholder of a corporation with  
17 respect to which the election provided for under subchapter  
18 S of the Internal Revenue Code of 1954 is in effect, but  
19 with respect to which the election provided for under  
20 section 84-1501.2 is not in effect, there may be eliminated  
21 from the shareholder's federal taxable income any part of  
22 the corporation's undistributed taxable income, net  
23 operating loss, capital gains or other gains, profits or  
24 losses required to be included in the shareholder's federal  
25 taxable income by reason of the said election under

1 subchapter S. However, there then shall be added to the  
2 shareholder's federal taxable income, distributions received  
3 from the corporation, to the extent such distributions would  
4 be treated as taxable dividends if the subchapter S election  
5 were not in effect.

6 (c) In the case of nonresidents, if any modification  
7 is made pursuant to this section the itemized deductions and  
8 the personal exemption deductions allowed from federal  
9 adjusted gross income in determining federal taxable income  
10 shall be limited to the percentage adjusted gross income  
11 from sources within Montana bears to the taxpayer's federal  
12 adjusted gross income.

13 (d) If any modification of federal taxable income is  
14 made under the terms of this section, a new computation of  
15 federal income tax payable shall be made for the purposes of  
16 this act properly reflecting such modifications.

17 Section 5. Nonresidents -- determination of in-state  
18 income. A nonresident's income from sources within Montana  
19 includes income derived from all property owned and from  
20 every business, trade, profession, or occupation carried on  
21 in this state, but does not include income from annuities,  
22 interest on bank deposits, interest on notes, bonds or other  
23 interest bearing obligations, or dividends on stock of  
24 corporations, except to the extent to which the same are a  
25 part of the income derived from a business, trade,

1 profession, or occupation carried on in this state. In the  
2 case of a business, trade, profession, or occupation carried  
3 on partly within and partly without this state by a  
4 nonresident, the income from sources within this state shall  
5 be determined by apportionment and allocation under rules  
6 issued by the department.

7 Section 6. Tax return -- contents. Each individual or  
8 fiduciary required to make and file an income tax return  
9 under the provisions of the IRC shall render to the  
10 department a return setting forth:

11 (1) the amount of tax due and payable as reported on  
12 the taxpayer's federal income tax return;

13 (2) the amount of tax due under this act, less credits  
14 claimed against the tax;

15 (3) any other information for the purpose of carrying  
16 out the provisions of this act as may be prescribed by the  
17 department.

18 If a taxpayer is unable to make his own return, the  
19 return shall be made by a duly authorized agent or by a  
20 guardian or other person charged with the care of the person  
21 or property of the taxpayer.

22 Section 7. Payment of the income tax. (1) All  
23 taxpayers including but not limited to those subject to the  
24 provisions of sections 84-4939 and 84-4943 shall compute the  
25 amount of tax payable and shall at the time of filing the

1 return pay to the department any balance of tax remaining  
 2 unpaid after crediting the amount withheld as provided by  
 3 section 84-4943 or any payment of estimated tax as provided  
 4 by section 84-4939; provided, however, the tax so computed  
 5 is greater by one dollar (\$1) than the amount withheld or  
 6 paid as estimated tax. If the amount withheld or paid as  
 7 estimated tax exceeds by more than one dollar (\$1) the  
 8 amount of tax computed, the excess shall be refunded to the  
 9 taxpayer.

10 (2) If a joint return is made by husband and wife, the  
 11 liability with respect to the tax shall be joint and  
 12 several.

13 (3) As soon as practical after the return is filed,  
 14 the department shall examine the return and verify the tax.

15 (4) If the amount of tax as verified is greater than  
 16 the amount theretofore paid, the excess shall be paid by the  
 17 taxpayer to the department within thirty (30) days after  
 18 notice of the amount of the tax as computed.

19 (5) Except as otherwise provided in section 84-4924,  
 20 if any tax, or any part thereof, is not paid when due by  
 21 reason of extension granted or otherwise, interest shall be  
 22 added thereto at the rate of nine percent (9%) a year from  
 23 the due date until paid.

24 Section 8. Section 84-4903.1, R.C.M. 1947, is amended  
 25 to read as follows:

1 "84-4903.1. Collection of tax from nonresidents --  
 2 withholding authorized. In order to insure collection, in  
 3 the manner and to the extent provided by ~~section--84-4907~~  
 4 sections 4 and 5 of this act, of the income tax imposed upon  
 5 the income of nonresidents by section ~~84-4903~~ 4(2) of this  
 6 act, withholding of portions of certain payments to  
 7 nonresidents and payment of the amounts so withheld to the  
 8 state department of revenue as partial payment of such  
 9 nonresidents' income tax in the manner set forth in the  
 10 following sections shall be, and hereby is, required."

11 Section 9. Section 84-4924, R.C.M. 1947, is amended to  
 12 read as follows:

13 "84-4924. Penalties for violations of act. (1) If any  
 14 person, without intent to evade any tax imposed by this act,  
 15 fails to make a return of income at the time required by or  
 16 under the provisions of this act, there shall be imposed a  
 17 minimum penalty of ten dollars (\$10) for such failure, or,  
 18 if a tax in excess of two hundred dollars (\$200) is due, a  
 19 penalty in an amount equal to five ~~(5)---per-centum percent~~  
 20 (5%) thereof, unless it is shown that the failure was due to  
 21 reasonable cause and not due to neglect. If any person,  
 22 without intent to evade any tax imposed by this act, fails  
 23 to pay any tax if one is due at the time required by or  
 24 under the provisions of this act, there shall be added to  
 25 the tax an additional amount equal to ten ~~(10)---per-centum~~

1 percent (10%) thereof, but not less than ten dollars (\$10),  
 2 unless it is shown that the failure was due to reasonable  
 3 cause and not due to neglect. Interest at the rate of nine  
 4 ~~per--centum~~ percent (9%) per annum shall be added to the tax  
 5 for the entire period it remains unpaid.

6 (2) If any person fails with intent to evade any tax  
 7 imposed by this act, to make a return of income or to pay a  
 8 tax if one is due at the time required by or under the  
 9 provisions of this act there shall be added to the tax an  
 10 additional amount equal to twenty-five ~~per--centum~~ percent  
 11 (25%) thereof, but such additional amount shall in no case  
 12 be less than twenty-five dollars (\$25), and interest at one  
 13 ~~fi--per--centum~~ percent (1%) for each month or fraction of a  
 14 month during which the tax remains unpaid.

15 (3) Any individual, corporation or partnership, or any  
 16 officer or employee of any corporation, or member or  
 17 employee of any partnership, who, with intent to evade any  
 18 tax or any requirement of this act or any lawful requirement  
 19 of the department thereunder, fails to pay the tax, or to  
 20 make, render, sign or verify any return, or to supply any  
 21 information, within the time required by or under the  
 22 provisions of this act, or who, with like intent, makes,  
 23 renders, signs, or verifies any false or fraudulent return  
 24 or statement, or supplies any false or fraudulent  
 25 information, shall be liable to a penalty of not more than

1 one thousand dollars ~~(~~\$1,000.00~~)~~ (\$1,000), to be recovered  
 2 by the attorney general, in the name of the state, by action  
 3 in any court of competent jurisdiction, and shall also be  
 4 guilty of a misdemeanor and shall, upon conviction, be fined  
 5 not to exceed one thousand dollars ~~(~~\$1,000.00~~)~~ (\$1,000) or  
 6 be imprisoned in the county jail not to exceed one (1) year,  
 7 or both, at the discretion of the court.

8 (4) The certificate of the department to the effect  
 9 that a tax has not been paid, that a return has not been  
 10 filed, or that information has not been supplied, as  
 11 required by or under the provisions of this act, shall be  
 12 prima facie evidence that such tax has not been paid, that  
 13 such return has not been filed, or that such information has  
 14 not been supplied."

15 Section 10. Section 84-4939, R.C.M. 1947, is amended  
 16 to read as follows:

17 "84-4939. Declaration of estimated tax. (1) Every  
 18 ~~individually, except farmers, ranchers or stockmen,~~ shall, at  
 19 the time prescribed in subsection (3) of this section, make  
 20 a declaration of his estimated tax for the taxable year, if  
 21 ~~his--net--income--from--sources--other--than--wages, salaries,~~  
 22 ~~bonus, or other emolument--can--reasonably--be--expected--to~~  
 23 ~~equal--or--exceed--his--net--income--from--wages, salaries, bonus~~  
 24 ~~or--other--emolument, which wages, salaries,--bonus--or--other~~  
 25 ~~emolument--are--subject--to--withholding~~ he is required to file

1 a declaration of his estimated tax under the provisions of  
2 the Internal Revenue Code.

3 (2) In the declaration required under subsection (1) of  
4 this section the individual shall state:

5 (a) The amount which he estimates as the amount of tax  
6 under section ~~84-4902~~ [4 of this act] for the taxable year;

7 (b) The amount which he estimates will be withheld from  
8 wages paid by his employer if said individual is an  
9 employee.

10 (c) The excess of the amount estimated under  
11 subparagraph (a) over the amount estimated under  
12 subparagraph (b) which excess for purposes of this section  
13 shall be considered the estimated tax for the taxable year.

14 (d) Such other information as may be prescribed in  
15 rules and regulations promulgated by the department.

16 (3) The declaration required under subsection (1) of  
17 this section shall be filed with the department on or before  
18 April ~~fifteenth~~ 15 of the taxable year except that if the  
19 requirements of subsection (1) of this section are first  
20 met:

21 (a) After April ~~first~~ 1 and before October ~~first~~ 1 of  
22 the taxable year the declaration shall be filed on or before  
23 October ~~fifteenth~~ 15 of the taxable year.

24 (b) After October ~~first~~ 1 of the taxable year the  
25 declaration shall be filed on or before February ~~fifteenth~~

1 15 of the succeeding taxable year.

2 ~~Provided that the declaration required to be filed~~  
3 ~~during 1955 may be filed not later than October 15, 1955 if~~  
4 ~~the requirements of subsection (1) of this section are~~  
5 ~~fulfilled at any time prior to October 27, 1955.~~

6 (4) An individual may make amendments of a declaration  
7 filed during the taxable year under subsection (3) of this  
8 section under rules and regulations prescribed by the  
9 department.

10 (5) If on or before February ~~fifteenth~~ 15 of the  
11 succeeding taxable year, the taxpayer files a return for the  
12 taxable year for which the declaration is required and pays  
13 in full the amount computed on their return as payable then  
14 under rules and regulations prescribed by the department.

15 (a) If the declaration is not required to be filed  
16 during the taxable year but is required to be filed on or  
17 before such February ~~fifteenth~~ 15, such return shall for the  
18 purposes of this section be considered as such declaration;  
19 and

20 (b) If the tax shown on the return is greater than the  
21 estimated tax shown in a declaration previously made or in  
22 the last amendments thereof such return shall for the  
23 purposes of this section be considered as the amendment of  
24 the declaration permitted by subsection (4) of this section  
25 to be filed on or before such February ~~fifteenth~~ (15).

1 (6) The department shall promulgate rules and  
2 regulations governing reasonable extensions of time for  
3 filing declarations and paying the estimated tax, except in  
4 the case of taxpayers who are abroad, and no such extension  
5 shall be for more than six (6) months.

6 (7) If the taxpayer is unable to make his own  
7 declaration, the declaration shall be made by a duly  
8 authorized agent or by the guardian or other person charged  
9 with the care of the person or property of such taxpayer."

10 Section 11. Limitation of act. Nothing herein shall  
11 be construed to affect any tax liability, or actions or  
12 causes of action incident thereto, which arose or might have  
13 arisen under Title 84, chapter 49, as it existed prior to  
14 January 1, 1976.

15 Section 12. Repealer. Sections 84-4901, 84-4902,  
16 84-4903, 84-4905, 84-4906, 84-4907, 84-4908, 84-4909,  
17 84-4910, 84-4912, 84-4914, 84-4915 and 84-4917, R.C.M. 1947,  
18 are repealed.

19 Section 13. Effective date. This act is effective  
20 January 1, 1976.

-End-



## FISCAL NOTE

Form BD-15

In compliance with a written request received January 29, 19 75, there is hereby submitted a Fiscal Note for House Bill 221 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 221 provides for the imposition of a Montana income tax which is equal to 27.5% of the federal income tax liability on the adjusted federal taxable income. Declarations of estimated tax must be made under the same provisions as the federal Internal Revenue Code. The effective date is January 1, 1976.

## ASSUMPTIONS:

1. Montana adjusted gross income as defined under current law will be \$2.560 billion in CY 75, \$2.819 billion in CY 76 and \$3.071 billion in CY 77.
2. Federal adjusted gross income is approximately 1.085% of Montana adjusted gross income.
3. Federal income tax averages 12% of federal adjusted gross income.
4. Adjusted federal taxable income under the proposed law excludes the same retirement income refunds, and interest income as under current law except for interest income from other states or political subdivisions. This difference will not materially affect the estimates.
5. The Department of Revenue would continue their existing audit program, thus, no significant decrease in administrative costs will result.

## FISCAL IMPACT:

	CY 76	CY 77
Income tax collections under current law	\$118.47 million	\$139.93 million
Income tax collections under proposed law	<u>100.95</u>	<u>109.96</u>
Decrease in collections	<u>\$ 17.52</u> million	<u>\$ 29.97</u> million

## CONCLUSION:

Enactment of House Bill 221 would result in a revenue loss of \$47.49 million for calendar years 1976 and 1977. In order to raise the same amount of revenue under the proposed law as under current law, the percentage to be applied to federal adjusted taxable income would be 32.3% in 1976 and 35% in 1977. Income tax collections are allocated 64% to the General Fund, 25% to the Public School Equalization, ERA, and 11% to the Long-Range Building Program.

## TECHNICAL NOTE:

Section 4 (4) on page 5, line 10, the words "income tax" should be eliminated.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 8, 1975