

*Senate* BILL NO. *155*  
*Tom Lind*

1  
2 INTRODUCED BY \_\_\_\_\_  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
5 IMPOSITION OF A MONTANA INCOME TAX WHICH IS EQUAL TO A  
6 PERCENTAGE OF THE FEDERAL INCOME TAX PAYABLE ON MONTANA  
7 TAXABLE INCOME; AMENDING SECTIONS 84-4903.1, 84-4924, AND  
8 84-4939, R.C.M. 1947; REPEALING 84-4901 THROUGH 84-4903,  
9 84-4905 THROUGH 84-4910, 84-4912, 84-4914, 84-4915 AND  
10 84-4917, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."  
11

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

13 Section 1. Purpose. It is the purpose and intent of  
14 this act that Montana income tax rates shall be a flat  
15 percentage of the federal income tax.

16 Section 2. Construction. No inference, implication or  
17 presumption of legislative construction shall be drawn or  
18 made by reason of the location or grouping of any particular  
19 section or provision or portion of this act, nor shall the  
20 descriptive matter or heading relating to any part, section,  
21 subsection or paragraph be given any legal effect.

22 Section 3. Definitions. As used in this act:

- 23 (1) "Department" means the department of revenue.
- 24 (2) "Taxpayer" includes any person or fiduciary,  
25 resident or nonresident, subject to a tax imposed by this

1 act, and does not include corporations.

2 (3) "Taxable year" means the taxpayer's taxable year  
3 for federal income tax purposes.

4 (4) "Fiduciary" means a guardian, trustee, executor,  
5 administrator, receiver, conservator, or any person whether  
6 individual or corporate, acting in any fiduciary capacity  
7 for any person, trust or estate.

8 (5) "Resident" applies only to natural persons and  
9 includes, for the purpose of determining liability to the  
10 tax imposed by this act with reference to the income of any  
11 taxable year, any person domiciled in the state of Montana,  
12 and any other person who maintains a permanent place of  
13 abode within the state even though temporarily absent from  
14 the state and has not established a residence elsewhere.

15 (6) "Foreign country" or "foreign government" means  
16 any jurisdiction other than the one embraced within the  
17 United States, its territories and possessions.

18 (7) "Information agents" includes all individuals,  
19 corporations, associations and partnerships, in whatever  
20 capacity acting, including lessees, or mortgagors of real or  
21 personal property, fiduciaries, employers, and all officers  
22 and employees of the state, or of any municipal corporation  
23 or political subdivision of the state, having the control,  
24 receipt, custody, disposal or payment of interest, rent,  
25 salaries, wages, premiums, annuities, compensations,

1 remuneration, emoluments, or other fixed or determinable  
2 annual or periodical gains, profits and income with respect  
3 to which any person or fiduciary is taxable under this act.

4 (8) "Includes" and "including" when used in a  
5 definition contained in this act shall not be deemed to  
6 exclude other things otherwise within the meaning of the  
7 word defined.

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

11 (10) "Internal revenue code" or "IRC" means the  
12 Internal Revenue Code of 1954 as amended or as hereafter  
13 amended, including all amendments thereto subsequent to  
14 December 31, 1970, which amendments shall be operative for  
15 the purpose of this act as of the time they become operative  
16 under federal law.

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

19 Section 4. Internal revenue code and regulations --  
20 incorporation by reference. (1) Whenever the IRC is  
21 mentioned in this act, the particular portions or provisions  
22 thereof, as now in effect or hereafter amended, which are  
23 referred to, shall be regarded as incorporated in this act  
24 by that reference and shall have effect as though fully set  
25 forth herein.

1 (2) Whenever any portion of the IRC incorporated by  
2 reference as provided in subsection (1) of this section  
3 refers to rules and regulations promulgated by the United  
4 States director of internal revenue, or hereafter so  
5 promulgated, they shall be regarded as regulations  
6 promulgated by the department under and in accord with the  
7 provisions of this act, unless and until the department  
8 promulgates specific regulations in lieu thereof conformable  
9 to this act.

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

24 (2) There is levied and there shall be collected and  
25 paid for each taxable year upon the adjusted federal taxable

1 income of every nonresident individual and fiduciary  
 2 required to make a return and pay a tax under the federal  
 3 income tax law an income tax equal to a flat percentage of  
 4 the total income tax that would be payable for the same  
 5 taxable year to the United States under the provisions of  
 6 chapter 1 of subtitle A of the Internal Revenue Code of  
 7 1954, public law 591, 83rd congress, 2nd session, upon all  
 8 adjusted federal taxable income derived from sources within  
 9 Montana, without any allowance for credits against such tax  
 10 permitted under the IRC.

11 (3) The rate of tax imposed by subsections (1) and (2)  
 12 of section 5 of this act shall be based on a flat percentage  
 13 of federal tax liability irrespective of income, which  
 14 percentage shall be twenty seven and one half percent  
 15 (27.5%). A different percentage may be fixed at any time  
 16 the legislature is not in session, if necessary because of a  
 17 change in the IRC or regulations pursuant thereto. This new  
 18 percentage may, if necessary, be retroactive to the previous  
 19 January 1 and the necessary adjustment to the withholding  
 20 tables and estimated tax payments for the remainder of the  
 21 calendar year may also be made by proper department rules.  
 22 The percentage may be stated in tenths of a percentage point  
 23 but the percentage so determined should be computed so that  
 24 the estimated revenue will not be more than five percent  
 25 (5%) in excess of the legislative appropriation.

1 (4) Federal adjusted taxable income means the  
 2 taxpayer's federal income tax taxable income determined  
 3 according to the applicable provisions of the IRC and the  
 4 rules and regulations pertaining thereto, provided the  
 5 taxpayer may make the following modifications:

6 (a) Taxpayer may subtract from federal taxable income,  
 7 to the extent included therein:

8 (i) Amounts received by a retired person as an  
 9 annuity, pension or endowment under a formal private,  
 10 municipal, state or federal retirement plan or system, to  
 11 the extent said annuity, pension and endowment would be  
 12 exempt under the individual income tax law of Montana in  
 13 effect prior to the passage of this act, namely,

14 (A) All benefits received under the Federal Employees  
 15 Retirement Act not in excess of three thousand six hundred  
 16 dollars (\$3,600);

17 (B) All benefits paid under the Montana Teachers'  
 18 Retirement System as exempt from taxation by section  
 19 75-6215, R.C.M. 1947;

20 (C) All benefits paid under the Montana Public  
 21 Employees' Retirement Act which are specified as exempt from  
 22 taxation by section 68-2502, R.C.M. 1947;

23 (D) All benefits paid under the Montana Highway Patrol  
 24 Retirement Act which are specified as exempt from taxation  
 25 by section 31-221, R.C.M. 1947;

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

2 (iii) Interest income from obligations of the United  
3 States government to the extent said income is exempt from  
4 state income tax under federal law;

5 (iv) Interest received on obligations of any state,  
6 territory, or county, municipality, district or other  
7 political subdivisions thereof.

8 (b) In the case of a shareholder of a corporation with  
9 respect to which the election provided for under subchapter  
10 S of the Internal Revenue Code of 1954 is in effect, but  
11 with respect to which the election provided for under  
12 section 84-1501.2 is not in effect, there may be eliminated  
13 from the shareholder's federal taxable income any part of  
14 the corporation's undistributed taxable income, net  
15 operating loss, capital gains or other gains, profits or  
16 losses required to be included in the shareholder's federal  
17 taxable income by reason of the said election under  
18 subchapter S. However, there then shall be added to the  
19 shareholder's federal taxable income, distributions received  
20 from the corporation, to the extent such distributions would  
21 be treated as taxable dividends if the subchapter S election  
22 were not in effect.

23 (c) In the case of nonresidents, if any modification  
24 is made pursuant to this section the itemized deductions and  
25 the personal exemption deductions allowed from federal

1 adjusted gross income in determining federal taxable income  
2 shall be limited to the percentage adjusted gross income  
3 from sources within Montana bears to the taxpayer's federal  
4 adjusted gross income.

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

9 Section 6. Nonresidents -- determination of in-state  
10 income. A nonresident's income from sources within Montana  
11 includes income derived from all property owned and from  
12 every business, trade, profession or occupation carried on  
13 in this state, but does not include income from annuities,  
14 interest on bank deposits, interest on notes, bonds or other  
15 interest bearing obligations, or dividends on stock of  
16 corporations, except to the extent to which the same are a  
17 part of the income derived from a business, trade,  
18 profession, or occupation carried on in this state. In the  
19 case of a business, trade, profession, or occupation carried  
20 on partly within and partly without this state by a  
21 nonresident, the income from sources within this state shall  
22 be determined by apportionment and allocation under rules  
23 issued by the department.

24 Section 7. Tax return -- contents. Every individual  
25 or fiduciary required to make and file an income tax return

1 under the provisions of the IRC shall render to the  
2 department a return setting forth:

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

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

7 (3) any other information for the purpose of carrying  
8 out the provisions of this act as may be prescribed by the  
9 department.

10 If a taxpayer is unable to make his own return, the  
11 return shall be made by a duly authorized agent or by a  
12 guardian or other person charged with the care of the person  
13 or property of the taxpayer.

14 Section 8. Payment of the income tax. (1) All  
15 taxpayers including but not limited to those subject to the  
16 provisions of sections 84-4939 and 84-4943 shall compute the  
17 amount of tax payable and shall at the time of filing the  
18 return pay to the department any balance of tax remaining  
19 unpaid after crediting the amount withheld as provided by  
20 section 84-4943 or any payment of estimated tax as provided  
21 by section 84-4939; provided, however, the tax so computed  
22 is greater by one dollar (\$1) than the amount withheld or  
23 paid as estimated tax. If the amount withheld or paid as  
24 estimated tax exceeds by more than one dollar (\$1) the  
25 amount of tax computed, the excess shall be refunded to the

1 taxpayer.

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

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

7 (4) If the amount of tax as verified is greater than  
8 the amount theretofore paid, the excess shall be paid by the  
9 taxpayer to the department within thirty (30) days after  
10 notice of the amount of the tax as computed.

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

16 Section 9. Section 84-4903.1, R.C.M. 1947, is amended  
17 to read as follows:

18 "84-4903.1. Collection of tax from nonresidents --  
19 withholding authorized. In order to ensure collection, in  
20 the manner and to the extent provided by ~~section~~--84-4907  
21 sections 5 and 6 of this act, of the income tax imposed upon  
22 the income of nonresidents by section ~~84-4903~~ 5 (2) of this  
23 act, withholding of portions of certain payments to  
24 nonresidents and payment of the amounts so withheld to the  
25 state department of revenue as partial payment of such

1 nonresidents' income tax in the manner set forth in the  
 2 following sections shall be, and hereby is, required."

3 Section 10. Section 84-4924, R.C.M. 1947, is amended  
 4 to read as follows:

5 "84-4924. Penalties for violations of act. (1) If any  
 6 person, without intent to evade any tax imposed by this act,  
 7 fails to make a return of income at the time required by or  
 8 under the provisions of this act, there shall be imposed a  
 9 minimum penalty of ten dollars (\$10) for such failure, or,  
 10 if a tax in excess of two hundred dollars (\$200) is due, a  
 11 penalty in an amount equal to ~~five--(5)--per--centum~~ five  
 12 percent (5%) thereof, unless it is shown that the failure  
 13 was due to reasonable cause and not due to neglect. If any  
 14 person, without intent to evade any tax imposed by this act,  
 15 fails to pay any tax if one is due at the time required by  
 16 or under the provisions of this act, there shall be added to  
 17 the tax an additional amount equal to ~~ten--(10)--per--centum~~  
 18 ten percent (10%) thereof, but not less than ten dollars  
 19 (\$10), unless it is shown that the failure was due to  
 20 reasonable cause and not due to neglect. Interest at the  
 21 rate of nine ~~per-centum~~ percent (9%) per annum shall be  
 22 added to the tax for the entire period it remains unpaid.

23 (2) If any person fails with intent to evade any tax  
 24 imposed by this act, to make a return of income or to pay a  
 25 tax if one is due at the time required by or under the

1 provisions of this act there shall be added to the tax an  
 2 additional amount equal to twenty-five ~~per-centum~~ percent  
 3 (25%) thereof, but such additional amount shall in no case  
 4 be less than twenty-five dollars (\$25), and interest at one  
 5 (1) ~~per-centum~~ percent for each month or fraction of a month  
 6 during which the tax remains unpaid.

7 (3) Any individual, corporation or partnership, or any  
 8 officer or employee of any corporation, or member or  
 9 employee of any partnership, who, with intent to evade any  
 10 tax or any requirement of this act or any lawful requirement  
 11 of the department thereunder, fails to pay the tax, or to  
 12 make, render, sign or verify any return, or to supply any  
 13 information, within the time required by or under the  
 14 provisions of this act, or who, with like intent, makes,  
 15 renders, signs, or verifies any false or fraudulent return  
 16 or statement, or supplies any false or fraudulent  
 17 information, shall be liable to a penalty of not more than  
 18 one thousand dollars ~~(\$1,000.00)~~ (\$1,000), to be recovered  
 19 by the attorney general, in the name of the state, by action  
 20 in any court of competent jurisdiction, and shall also be  
 21 guilty of a misdemeanor and shall, upon conviction, be fined  
 22 not to exceed one thousand dollars ~~(\$1,000.00)~~ (\$1,000) or  
 23 be imprisoned in the county jail not to exceed one (1) year,  
 24 or both, at the discretion of the court.

25 (4) The certificate of the department to the effect

1 that a tax has not been paid, that a return has not been  
 2 filed, or that information has not been supplied, as  
 3 required by or under the provisions of this act, shall be  
 4 prima facie evidence that such tax has not been paid, that  
 5 such return has not been filed, or that such information has  
 6 not been supplied."

7 Section 9. Section 84-4939, R.C.M. 1947, is amended to  
 8 read as follows:

9 "84-4939. Declaration of estimated tax. (1) Every  
 10 individual, ~~except farmers, ranchers or stockmen,~~ shall, at  
 11 the time prescribed in subsection (3) of this section, make  
 12 a declaration of his estimated tax for the taxable year, ~~if~~  
 13 ~~his net income from sources other than wages, salaries,~~  
 14 ~~bonus, or other emolument can reasonably be expected to~~  
 15 ~~equal or exceed his net income from wages, salaries, bonus~~  
 16 ~~or other emolument, which wages, salaries, bonus or other~~  
 17 ~~emolument are subject to withholding if he is required to~~  
 18 file a declaration of his estimated tax under the provisions  
 19 of the internal revenue code.

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

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

24 (b) The amount which he estimates will be withheld from  
 25 wages paid by his employer if said individual is an

1 employee.

2 (c) The excess of the amount estimated under  
 3 subparagraph (a) over the amount estimated under  
 4 subparagraph (b) which excess for purposes of this section  
 5 shall be considered the estimated tax for the taxable year.

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

8 (3) The declaration required under subsection (1) of  
 9 this section shall be filed with the department on or before  
 10 April fifteenth of the taxable year except that if the  
 11 requirements of subsection (1) of this section are first  
 12 met:

13 (a) After April first and before October first of the  
 14 taxable year the declaration shall be filed on or before  
 15 October fifteenth of the taxable year.

16 (b) After October first of the taxable year the  
 17 declaration shall be filed on or before February fifteenth  
 18 of the succeeding taxable year.

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

23 (4) An individual may make amendments of a declaration  
 24 filed during the taxable year under subsection (3) of this  
 25 section under rules and regulations prescribed by the

1 department.

2 (5) If on or before February fifteenth of the  
3 succeeding taxable year, the taxpayer files a return for the  
4 taxable year for which the declaration is required and pays  
5 in full the amount computed on their return as payable then  
6 under rules and regulations prescribed by the department.

7 (a) If the declaration is not required to be filed  
8 during the taxable year but is required to be filed on or  
9 before such February fifteenth, such return shall for the  
10 purposes of this section be considered as such declaration;  
11 and

12 (b) If the tax shown on the return is greater than the  
13 estimated tax shown in a declaration previously made or in  
14 the last amendments thereof such return shall for the  
15 purposes of this section be considered as the amendment of  
16 the declaration permitted by subsection (4) of this section  
17 to be filed on or before such February fifteenth.

18 (6) The department shall promulgate rules and  
19 regulations governing reasonable extensions of time for  
20 filing declarations and paying the estimated tax, except in  
21 the case of taxpayers who are abroad, and no such extension  
22 shall be for more than six (6) months.

23 (7) If the taxpayer is unable to make his own  
24 declaration, the declaration shall be made by a duly  
25 authorized agent or by the guardian or other person charged

1 with the care of the person or property of such taxpayer."

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

7 Section 13. Repealer. Sections 84-4901 through  
8 84-4903, 84-4905 through 84-4910, 84-4912, 84-4914, 84-4915  
9 and 84-4917, R.C.M. 1947, are repealed.

10 Section 14. Effective date. This act is effective  
11 January 1, 1976.

-End-



Reported back from Committee without recommendation, as amended.

SENATE BILL NO. 155

INTRODUCED BY TOWE, HIMSL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMPOSITION OF A MONTANA INCOME TAX WHICH IS EQUAL TO A PERCENTAGE OF THE FEDERAL INCOME TAX PAYABLE ON MONTANA TAXABLE INCOME; AMENDING SECTIONS 84-4903.1, 84-4924, AND 84-4939, R.C.M. 1947; REPEALING 84-4901 THROUGH 84-4903, 84-4905 THROUGH 84-4910, 84-4912, 84-4914, 84-4915 AND 84-4917, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Purpose. It is the purpose and intent of this act that Montana income tax rates shall be a flat percentage of the federal income tax.

Section 2. Construction. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this act, nor shall the descriptive matter or heading relating to any part, section, subsection or paragraph be given any legal effect.

Section 3. Definitions. As used in this act:

(1) "Department" means the department of revenue.

(2) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this

act, and does not include corporations.

(3) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(4) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(5) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this act with reference to the income of any taxable year, any person domiciled in the state of Montana, and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Information agents" includes all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensations,

SECOND READING  
Corrected 9/11/15

1 remuneration, emoluments, or other fixed or determinable  
2 annual or periodical gains, profits and income with respect  
3 to which any person or fiduciary is taxable under this act.

4 (8) "Includes" and "including" when used in a  
5 definition contained in this act shall not be deemed to  
6 exclude other things otherwise within the meaning of the  
7 word defined.

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

11 (10) "Internal revenue code" or "IRC" means the  
12 Internal Revenue Code of 1954 as amended or as hereafter  
13 amended, including all amendments thereto subsequent to  
14 December 31, 1970, which amendments shall be operative for  
15 the purpose of this act as of the time they become operative  
16 under federal law.

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

19 Section 4. Internal revenue code and regulations --  
20 incorporation by reference. (1) Whenever the IRC is  
21 mentioned in this act, the particular portions or provisions  
22 thereof, as now in effect or hereafter amended, which are  
23 referred to, shall be regarded as incorporated in this act  
24 by that reference and shall have effect as though fully set  
25 forth herein.

1 (2) Whenever any portion of the IRC incorporated by  
2 reference as provided in subsection (1) of this section  
3 refers to rules and regulations promulgated by the United  
4 States director of internal revenue, or hereafter so  
5 promulgated, they shall be regarded as regulations  
6 promulgated by the department under and in accord with the  
7 provisions of this act, unless and until the department  
8 promulgates specific regulations in lieu thereof conformable  
9 to this act.

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

24 (2) There is levied and there shall be collected and  
25 paid for each taxable year upon the adjusted federal taxable

1 income of every nonresident individual and fiduciary  
 2 required to make a return and pay a tax under the federal  
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 4 the total income tax that would be payable for the same  
 5 taxable year to the United States under the provisions of  
 6 chapter 1 of subtitle A of the Internal Revenue Code of  
 7 1954, public law 591, 83rd congress, 2nd session, upon all  
 8 adjusted federal taxable income derived from sources within  
 9 Montana, without any allowance for credits against such tax  
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11 (3) The rate of tax imposed by subsections (1) and (2)  
 12 of section 5 of this act shall be based on a flat percentage  
 13 of federal tax liability irrespective of income, which  
 14 percentage shall be ~~twenty--seven--and--one--half--percent~~  
 15 ~~(27.5%)~~ THIRTY-TWO AND THREE-TENTHS PERCENT (32.3%). A  
 16 different HIGHER OR LOWER percentage may SHALL be fixed at  
 17 any time the legislature is not in session, if necessary  
 18 because of a change in the IRC or regulations pursuant  
 19 thereto. This new percentage may, if necessary, be  
 20 retroactive to the previous January 1 and the necessary  
 21 adjustment to the withholding tables and estimated tax  
 22 payments for the remainder of the calendar year may also be  
 23 made by proper department rules. The percentage may be  
 24 stated in tenths of a percentage point but the percentage so  
 25 determined should MUST be computed so that the estimated

1 revenue will not be more than five percent (5%) in excess of  
 2 the legislative appropriation. BEFORE ANY NEW PERCENTAGE IS  
 3 IMPLEMENTED IT SHALL BE SUBMITTED TO A JOINT MEETING OF THE  
 4 HOUSE AND SENATE TAXATION COMMITTEES FOR APPROVAL.

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

10 (a) Taxpayer may subtract from federal taxable income,  
 11 to the extent included therein:

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

18 (A) All benefits received under the Federal Employees  
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 20 dollars (\$3,600);

21 (B) All benefits paid under the Montana Teachers'  
 22 Retirement System as exempt from taxation by section  
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 25 Employees' Retirement Act which are specified as exempt from

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4 by section 31-221, R.C.M. 1947;

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

6 (iii) Interest income from obligations of the United  
7 States government to the extent said income is exempt from  
8 state income tax under federal law;

9 (iv) Interest received on obligations of any state,  
10 territory, or county, municipality, district or other  
11 political subdivisions thereof.

12 (b) In the case of a shareholder of a corporation with  
13 respect to which the election provided for under subchapter  
14 S of the Internal Revenue Code of 1954 is in effect, but  
15 with respect to which the election provided for under  
16 section 84-1501.2 is not in effect, there may be eliminated  
17 from the shareholder's federal taxable income any part of  
18 the corporation's undistributed taxable income, net  
19 operating loss, capital gains or other gains, profits or  
20 losses required to be included in the shareholder's federal  
21 taxable income by reason of the said election under  
22 subchapter S. However, there then shall be added to the  
23 shareholder's federal taxable income, distributions received  
24 from the corporation, to the extent such distributions would  
25 be treated as taxable dividends if the subchapter S election

1 were not in effect.

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

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

13 Section 6. Nonresidents -- determination of in-state  
14 income. A nonresident's income from sources within Montana  
15 includes income derived from all property owned and from  
16 every business, trade, profession or occupation carried on  
17 in this state, but does not include income from annuities,  
18 interest on bank deposits, interest on notes, bonds or other  
19 interest bearing obligations, or dividends on stock of  
20 corporations, except to the extent to which the same are a  
21 part of the income derived from a business, trade,  
22 profession, or occupation carried on in this state. In the  
23 case of a business, trade, profession, or occupation carried  
24 on partly within and partly without this state by a  
25 nonresident, the income from sources within this state shall

1 be determined by apportionment and allocation under rules  
2 issued by the department.

3 Section 7. Tax return -- contents. Every individual  
4 or fiduciary required to make and file an income tax return  
5 under the provisions of the IRC shall render to the  
6 department a return setting forth:

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

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

11 (3) any other information for the purpose of carrying  
12 out the provisions of this act as may be prescribed by the  
13 department.

14 If a taxpayer is unable to make his own return, the  
15 return shall be made by a duly authorized agent or by a  
16 guardian or other person charged with the care of the person  
17 or property of the taxpayer.

18 Section 8. Payment of the income tax. (1) All  
19 taxpayers including but not limited to those subject to the  
20 provisions of sections 84-4939 and 84-4943 shall compute the  
21 amount of tax payable and shall at the time of filing the  
22 return pay to the department any balance of tax remaining  
23 unpaid after crediting the amount withheld as provided by  
24 section 84-4943 or any payment of estimated tax as provided  
25 by section 84-4939; provided, however, the tax so computed

1 is greater by one dollar (\$1) than the amount withheld or  
2 paid as estimated tax. If the amount withheld or paid as  
3 estimated tax exceeds by more than one dollar (\$1) the  
4 amount of tax computed, the excess shall be refunded to the  
5 taxpayer.

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

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

11 (4) If the amount of tax as verified is greater than  
12 the amount theretofore paid, the excess shall be paid by the  
13 taxpayer to the department within thirty (30) days after  
14 notice of the amount of the tax as computed.

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

20 Section 9. Section 84-4903.1, R.C.M. 1947, is amended  
21 to read as follows:

22 "84-4903.1. Collection of tax from nonresidents --  
23 withholding authorized. In order to ensure collection, in  
24 the manner and to the extent provided by ~~section--84-4907~~  
25 sections 5 and 6 of this act, of the income tax imposed upon

1 the income of nonresidents by section ~~84-4903~~ 5 (2) of this  
 2 act, withholding of portions of certain payments to  
 3 nonresidents and payment of the amounts so withheld to the  
 4 state department of revenue as partial payment of such  
 5 nonresidents' income tax in the manner set forth in the  
 6 following sections shall be, and hereby is, required."

7 Section 10. Section 84-4924, R.C.M. 1947, is amended  
 8 to read as follows:

9 \*84-4924. Penalties for violations of act. (1) If any  
 10 person, without intent to evade any tax imposed by this act,  
 11 fails to make a return of income at the time required by or  
 12 under the provisions of this act, there shall be imposed a  
 13 minimum penalty of ten dollars (\$10) for such failure, or,  
 14 if a tax in excess of two hundred dollars (\$200) is due, a  
 15 penalty in an amount equal to ~~five--(5)--per--centum~~ five  
 16 percent (5%) thereof, unless it is shown that the failure  
 17 was due to reasonable cause and not due to neglect. If any  
 18 person, without intent to evade any tax imposed by this act,  
 19 fails to pay any tax if one is due at the time required by  
 20 or under the provisions of this act, there shall be added to  
 21 the tax an additional amount equal to ~~ten--(10)--per--centum~~  
 22 ten percent (10%) thereof, but not less than ten dollars  
 23 (\$10), unless it is shown that the failure was due to  
 24 reasonable cause and not due to neglect. Interest at the  
 25 rate of nine per-centum percent (9%) per annum shall be

1 added to the tax for the entire period it remains unpaid.

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

11 (3) Any individual, corporation or partnership, or any  
 12 officer or employee of any corporation, or member or  
 13 employee of any partnership, who, with intent to evade any  
 14 tax or any requirement of this act or any lawful requirement  
 15 of the department thereunder, fails to pay the tax, or to  
 16 make, render, sign or verify any return, or to supply any  
 17 information, within the time required by or under the  
 18 provisions of this act, or who, with like intent, makes,  
 19 renders, signs, or verifies any false or fraudulent return  
 20 or statement, or supplies any false or fraudulent  
 21 information, shall be liable to a penalty of not more than  
 22 one thousand dollars ~~(\$1,000.00)~~ (\$1,000), to be recovered  
 23 by the attorney general, in the name of the state, by action  
 24 in any court of competent jurisdiction, and shall also be  
 25 guilty of a misdemeanor and shall, upon conviction, be fined

1 not to exceed one thousand dollars ~~(\$1,000.00)~~ (\$1,000) or  
 2 be imprisoned in the county jail not to exceed one (1) year,  
 3 or both, at the discretion of the court.

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

11 Section 11. Section 84-4939, R.C.M. 1947, is amended  
 12 to read as follows:

13 "84-4939. Declaration of estimated tax. (1) Every  
 14 individual ~~except farmers, ranchers or stockmen~~ shall, at  
 15 the time prescribed in subsection (3) of this section, make  
 16 a declaration of his estimated tax for the taxable year, ~~if~~  
 17 ~~his net income from sources other than wages, salaries,~~  
 18 ~~bonus or other emolument can reasonably be expected to~~  
 19 ~~equal or exceed his net income from wages, salaries, bonus~~  
 20 ~~or other emolument, which wages, salaries, bonus or other~~  
 21 ~~emolument are subject to withholding if he is required to~~  
 22 file a declaration of his estimated tax under the provisions  
 23 of the internal revenue code.

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

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

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

6 (c) The excess of the amount estimated under  
 7 subparagraph (a) over the amount estimated under  
 8 subparagraph (b) which excess for purposes of this section  
 9 shall be considered the estimated tax for the taxable year.

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

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

17 (a) After April first and before October first of the  
 18 taxable year the declaration shall be filed on or before  
 19 October fifteenth of the taxable year.

20 (b) After October first of the taxable year the  
 21 declaration shall be filed on or before February fifteenth  
 22 of the succeeding taxable year.

23 ~~Provided that the declaration required to be filed~~  
 24 ~~during 1955 may be filed not later than October 15, 1955 if~~  
 25 ~~the requirements of subsection (1) of this section are~~

~~fulfilled at any time prior to October 27, 1955.~~

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

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

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

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

(6) The department shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension

shall be for more than six (6) months.

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

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

Section 13. Repealer. Sections 84-4901 through 84-4903, 84-4905 through 84-4910, 84-4912, 84-4914, 84-4915 and 84-4917, R.C.M. 1947, are repealed.

Section 14. Effective date. This act is effective January 1, 1976.

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