

1 HOUSE BILL NO. 15
2 INTRODUCED BY MARKS
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE LAWS RELATING TO INCOME, GASOLINE, AND
6 CORPORATION TAXES; AMENDING SECTIONS 84-1501.2, 84-1838,
7 84-1840, 84-4903.8, 84-4926, 84-6305, AND 84-6307, R.C.M.
8 1947; REPEALING SECTIONS 84-4903.1, 84-4903.13, AND 84-6303,
9 R.C.M. 1947."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 84-1501.2, R.C.M. 1947, is amended
13 to read as follows:
14 "84-1501.2. Election by small business corporation.
15 ~~(a)(1) Eligibility.~~ Except as provided in subsection ~~(#)~~
16 (6), any small business corporation may elect, in accordance
17 with the provisions of this section, not to be subject to
18 the taxes imposed by this chapter. Such election shall be
19 valid only if consented to by all persons who are
20 shareholders in such corporation—, the election is
21 effective:
22 ~~(1)(a)~~ on the first day of the first taxable year for
23 which such election is effective, if such election is made
24 on or before such first day; or
25 ~~(2)(b)~~ on the day on which the election is made, if

1 the election is made after such first day, ~~consent to such~~
2 ~~election.~~
3 ~~(b)(2) Effect.~~ If a small business corporation makes
4 an election under subsection ~~(a)(1)~~, then—:
5 ~~(1)(a)~~ with respect to the taxable years of the
6 corporation for which such election is in effect, such
7 corporation shall not be subject to the taxes imposed by
8 this chapter and, with respect to such taxable years and all
9 succeeding taxable years, the provisions of this act shall
10 apply to such corporation, and
11 ~~(2)(b)~~ with respect to the taxable years of a
12 shareholder of such corporation in which or with which the
13 taxable years of the corporation for which such election is
14 in effect end, the provisions of this act shall apply to
15 such shareholder, and with respect to such taxable years and
16 all succeeding taxable years, the provisions of this act
17 shall apply to such shareholder.
18 ~~(c) Where and how made.~~
19 ~~(1)(3) In general.~~ An election under subsection ~~(a)~~
20 (1) may be made by a small business corporation for any
21 taxable year at any time during the first month of such
22 taxable year, or at any time during the month preceding such
23 first month. Such election shall be made in such manner as
24 the state department of revenue shall prescribe by
25 regulations.

~~(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—~~

~~(A) within the 90 day period beginning on the day after the date of the enactment of this subchapter, or~~

~~(B) if its taxable year ends within such 90 day period, before the close of such taxable year.~~

~~An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.~~

~~(d) (2) Years for which effective. An election under subsection (a) (1) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e) (5).~~

~~(e) Termination.~~

~~(1) (5) (a) New shareholders. An election under subsection (a) (1) made by a small business corporation shall terminate if any person who was not a shareholder in such~~

corporation—

~~(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or~~

~~(B) on the day on which the election is made, if such election is made after such first day, at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and does not consent to such election within such time as the department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.~~

~~(2) (b) Revocation. An election under subsection (a) (1) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—;~~

~~(i) for the taxable year in which made, if made before the close of the first month of such taxable year;:~~

~~(ii) for the taxable year following the taxable year in which made, if made after the close of such first month,~~

1 and for all succeeding taxable years of the corporation.
 2 Such revocation shall be made in such manner as the state
 3 department of revenue shall prescribe by regulations.

4 ~~(3)(c) Ceases to be small business corporation.~~ An
 5 election under subsection ~~(a)(1)~~ made by a small business
 6 corporation shall terminate if the corporation ceases to
 7 meet the definition of a small business corporation at any
 8 time ~~after election is effective under subsection (1).~~

9 ~~(a) after the first day of the first taxable year of~~
 10 ~~the corporation for which the election is effective, if such~~
 11 ~~election is made on or before such first day, or~~

12 ~~(b) after the day on which the election is made, if~~
 13 ~~such election is made after such first day, the corporation~~
 14 ~~ceases to be a small business corporation (as defined in~~
 15 ~~this act).~~

16 (d) Such termination shall be effective for the
 17 taxable year of the corporation in which the corporation
 18 ceases to be a small business corporation and for all
 19 succeeding taxable years of the corporation.

20 ~~(f)(6) Election after termination.~~ If a small business
 21 corporation has made an election under subsection ~~(a)(1)~~ and
 22 if such election has been terminated or revoked under
 23 subsection ~~(a)(5)~~, such corporation (and any successor
 24 corporation) shall not be eligible to make an election under
 25 subsection ~~(a)(1)~~ for any taxable year prior to its fifth

1 taxable year which begins after the first taxable year for
 2 which such termination or revocation is effective, unless
 3 the state department of revenue consents to such election.

4 ~~(g)(7)~~ This election shall not be effective unless the
 5 corporate net income or loss of such electing corporation
 6 shall have been included in the stockholders' adjusted gross
 7 income as such is defined in ~~section~~ 84-4905.

8 ~~(h)(8)~~ Every electing corporation shall be required to
 9 pay the minimum fee of ~~ten dollars~~ (\$10.00) required by
 10 ~~section~~ 84-1501.

11 Section 2. Section 84-1838, R.C.M. 1947, is amended to
 12 read as follows:

13 "84-1838. ~~Administration~~ Administrative powers.

14 ~~(a) Rules and regulations:~~ (1) The department shall enforce
 15 the provisions of this act, and may prescribe, adopt, and
 16 enforce reasonable rules ~~and regulations~~ relating to the
 17 administration and enforcement thereof.

18 ~~(b)(2) Examination of records:~~ The department or its
 19 authorized representative is hereby empowered to examine the
 20 books, papers, records, and equipment of any special fuel
 21 dealer or special fuel user or any person dealing in,
 22 transporting, or storing special fuel, as defined in this
 23 act and to investigate the character of the disposition
 24 which any person makes of such special fuel in order to
 25 ascertain and determine whether all excise taxes due

1 hereunder are being properly reported and paid. If such
 2 books, papers, records, and equipment are not maintained in
 3 this state at the time of demand, they shall be furnished to
 4 the department for review and shall be accompanied by the
 5 special fuel dealer or special fuel user or such dealer or
 6 user shall bear the reasonable cost of examination by an
 7 agent authorized or designated by the department at the
 8 place where such books or records are kept, provided the
 9 taxpayer shall not be liable for such costs for a period
 10 exceeding ~~one~~ (1) week or for such longer period as he may
 11 consent to in writing, unless the result of said examination
 12 is the payment of a tax deficiency.

13 ~~(3) Evidence~~ For the purpose of enforcing the
 14 provisions of this act, the fact that a special fuel dealer
 15 or a special fuel user has placed or received special fuel
 16 into storage or dispensing equipment designed to fuel motor
 17 vehicles shall be prima facie evidence that all of such
 18 special fuel has been delivered by the special fuel dealer
 19 or special fuel user into the fuel supply tanks of motor
 20 vehicles and consumed in the propulsion of motor vehicles
 21 upon the highways as herein defined unless the contrary
 22 shall be established by satisfactory evidence.

23 ~~(4) Reciprocal exchange of data~~ The department
 24 shall, upon request from officials to whom are entrusted the
 25 enforcement of the special fuel tax law of any other state,

1 the District of Columbia, the United States, its territories
 2 and possessions, or the provinces of the Dominion of Canada,
 3 forward to such officials any information which it may have
 4 relative to the receipt, storage, delivery, sale, use, or
 5 other disposition of special fuel by any special fuel dealer
 6 or special fuel user, provided such other state or states
 7 furnish like information to this state."

8 Section 3. Section 84-1840, R.C.M. 1947, is amended to
 9 read as follows:

10 "84-1840. Disposition of funds. All taxes, interest,
 11 and penalties collected under this ~~act~~ chapter or chapters
 12 63 of this title shall be turned over promptly to the state
 13 treasurer, ~~and the state treasurer~~ who shall place the same
 14 in the earmarked revenue fund to the credit of the
 15 department of highways, except those funds hereinbelow
 16 allocated to cities, towns and counties, which funds shall
 17 be paid by the state treasurer directly to such cities,
 18 towns, and counties.

19 (1) ~~Six million five hundred thousand dollars~~
 20 ~~(\$6,500,000)~~ of the funds collected under this act shall be
 21 allocated each fiscal year on a monthly basis to the
 22 counties and incorporated cities and towns in Montana for
 23 construction, reconstruction, maintenance, and repair of
 24 rural roads, and city or town streets and alleys, as
 25 provided in subsections (a) and (b) hereof.

1 (a) ~~Two million nine hundred fifty thousand dollars~~
 2 ~~(\$2,950,000)~~ shall be divided among the various counties in
 3 the following manner:

4 (i) ~~Forty per centum (40%)~~ in the ratio that the rural
 5 road mileage in each county, exclusive of the federal-aid
 6 interstate system and the federal-aid primary system, bears
 7 to the total rural road mileage in the state, exclusive of
 8 the federal-aid interstate system and the federal-aid
 9 primary system;_i

10 (ii) ~~Forty per centum (40%)~~ in the ratio that the rural
 11 population in each county outside incorporated cities and
 12 towns bears to the total rural population in the state
 13 outside incorporated cities and towns;_i

14 (iii) ~~Twenty per centum (20%)~~ in the ratio that the
 15 land area of each county bears to the total land area of the
 16 state;_i

17 (b) ~~Three million five hundred fifty thousand dollars~~
 18 ~~(\$3,550,000)~~ shall be divided among the incorporated cities
 19 and towns in the following manner:

20 (i) ~~Fifty per cent (50%)~~ of the sum ~~shall be divided~~
 21 in the ratio that the population within the corporate limits
 22 of the city or town bears to the total population within
 23 corporate limits of all the cities and towns in Montana;_i

24 (ii) ~~Fifty per cent (50%) shall be divided~~ in the ratio
 25 that the city or town street and alley mileage, exclusive of

1 the federal-aid interstate system and the federal-aid
 2 primary system, within corporate limits bears to the total
 3 street and alley mileage, exclusive of the federal-aid
 4 interstate system and federal-aid primary system, within the
 5 corporate limits of all cities and towns in Montana.

6 (2) All funds hereby allocated to counties, cities,
 7 and towns shall be used exclusively for the construction,
 8 reconstruction, maintenance, and repair of rural roads, city
 9 or town streets and alleys, or for the share which such
 10 city, town, or county might otherwise expend for
 11 proportionate matching of federal funds allocated for the
 12 construction of roads or streets which are part of the
 13 federal-aid primary or secondary highway system, or urban
 14 extensions thereto.

15 (3) Upon receipt of the allocation provided herein,
 16 the governing bodies of the recipient counties, cities, and
 17 towns, shall inform the department of highways of the
 18 purposes for which the funds ~~shall~~ will be expended so that
 19 the county commissioners, the governing body, and the
 20 department of highways may ~~co-ordinate~~ coordinate the
 21 expenditure of public funds for road improvements.

22 (4) All funds hereby allocated to counties, cities,
 23 and towns shall be disbursed to the lowest responsible
 24 bidder according to applicable bidding procedures followed
 25 in all cases where the contract for construction,

1 reconstruction, and maintenance or repair is in excess of
2 \$4,000.

3 (5) For the purposes of this ~~act~~ section where
4 distribution of funds is made on a basis related to
5 population, the population shall be determined by the last
6 preceding official federal census.

7 (6) For the purposes of this ~~act~~ section where
8 determination of mileage is necessary for distribution of
9 funds it shall be the responsibility of the cities, towns,
10 and counties to furnish to the department of highways and
11 state treasurer a yearly certified statement indicating the
12 total mileage within their respective areas applicable to
13 this act. All mileage submitted shall be subject to review
14 and approval by the department of highways.

15 (7) None of the funds authorized by this section shall
16 be used for the purchase of capital equipment."

17 Section 4. Section 84-4903.8, R.C.M. 1947, is amended
18 to read as follows:

19 "84-4903.8. Department may require withholding agent
20 to make return and pay tax at any time. If the state
21 department of revenue in any case has reason to believe that
22 the collection of the tax provided for in ~~this section~~
23 84-4903.2 is in jeopardy, it may require the withholding
24 agent to make such return and pay such tax at any time."

25 Section 5. Section 84-4926, R.C.M. 1947, is amended to

1 read as follows:

2 "84-4926. ~~Deferment of collection of income tax of~~
3 ~~persons in military service state of limitations~~
4 ~~suspended. Soldiers' and sailors' relief.~~ (1) The collection
5 from any person in the military service, as defined by the
6 Soldiers' and Sailors' Civil Relief Act of 1940, effective
7 October 17, 1940, as amended October 6, 1942, of any tax
8 prescribed by the state of Montana on the income of such
9 person, whether falling due prior to or during his period of
10 military service, shall be deferred for a period extending
11 not more than ~~six~~-(6) months after the termination of his
12 period of military service, if such person's ability to pay
13 such tax is materially impaired by reason of such service.

14 (2) No interest on any amount of tax, collection of
15 which is deferred for any period under this act, and no
16 penalty for nonpayment of such amount during such period,
17 shall accrue for such period of deferment by reason of such
18 nonpayment. The running of any statute of limitations
19 against the payment of such tax by any lawful means shall be
20 suspended for the period of military service of any
21 individual, for whom the collection of such tax is deferred
22 under this section, and for an additional period of ~~one~~-(1)
23 year, beginning with the day following the period of
24 military service."

25 Section 6. Section 84-6305, R.C.M. 1947, is amended to

1 read as follows:

2 "84-6305. Definition of other words and terms. All
3 other words and terms used in this act, including the words
4 "person," "motor vehicle," "gasoline," and "use," unless
5 otherwise indicated in this act, shall have the same meaning
6 given to said words by ~~section 84-1807~~ 84-1846."

7 Section 7. Section 84-6307, R.C.M. 1947, is amended to
8 read as follows:

9 "84-6307. Failure or refusal to make and file return
10 or false return — department of revenue to prepare
11 statement. If any importer fails or refuses to make and file
12 a return at the time prescribed in this act, or ~~make~~ makes,
13 willfully or otherwise, an erroneous, false, or fraudulent
14 statement, the ~~state~~ department of revenue, or its duly
15 appointed agent, shall make the statement from its or his
16 own knowledge and from such information as it or he can
17 obtain through testimony or otherwise. Any statement so made
18 shall be prima facie good and sufficient for all legal
19 purposes. As a further means of making the statement, the
20 ~~state~~ department of ~~revenue~~ or its duly appointed agent,
21 shall have the power to examine the books, records, and
22 papers of such importer, to ascertain the amount of tax due
23 under the provisions of this act. From the statement so
24 made, the ~~state~~ department of ~~revenue~~ shall determine the
25 amount of tax due, if any, and shall add the penalty

1 provided herein for failure to pay the tax or to file the
2 return within the time prescribed for the payment of such
3 tax or the filing of such return, and shall notify the
4 importer, of the amount of tax and penalty assessed,
5 together with a demand for immediate payment of the tax and
6 penalty. If such tax and penalty ~~is~~ are not paid within
7 ~~thirty~~ (30) days, the state treasurer ~~of the state of~~
8 ~~Montana~~ shall proceed to collect such tax and penalty in the
9 manner prescribed in ~~section 84-1807~~ 84-1858."

10 Section 8. Repealer. Sections 84-4903.1, 84-4903.13,
11 and 84-6303, R.C.M. 1947, are repealed.

-End-

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DIRECTOR, RESEARCH

LC 0018

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 15

TO REVISE AND CLARIFY INDIVIDUAL AND CORPORATE INCOME
TAXES AND GASOLINE TAXES.

(This summary does not include discussion of routine form
or grammatical changes.)

Section 1. 84-1501.2. The rearrangement makes it clear
in (a) that (1) and (2) refer to when the election is effective
and not to when the consent takes place. In (e)(1) and (e)(3)
the language in (A) and (B) is not needed for meaning. Again,
wording is rearranged to clarify.

Subsection (c)(2) is deleted as temporary.

Section 2. 84-1838. Inserts the word "or" between the
penultimate and last items in a series.

Section 3. 84-1840. Expands scope of "this act" so that
it includes the chapter which encompasses all motor fuel taxes.
In practice, all of these taxes are paid into the highway fund
now, so no substantive change is involved.

Section 4. 84-4903.8. Substituted "84-4903.2" for "this
section" because that is the section which is concerned with
the tax in question.

Section 5. Amend 84-4926 by inserting the words "for
which" in the last sentence to make it grammatical.

Sections 6 and 7. 84-6305 and 84-6307 correct references
to repealed sections.

Section 8. Repeals.

84-4903.1 is merely a declaratory, non-legal statement
and is not needed.

LC 0018

84-4903.13 relates to rule-making powers - not needed because 84-4930 delegates such authority for all of Chapter 49.

84-6303 is redundant since (a) the amendment to 84-1840 would specify that this tax is paid into the highway fund, and (b) the 5% overhead factor is not used in budgeting; the department of revenue simply receives an appropriation from the highway fund for the actual costs of collecting all motor fuel taxes.

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 17 with the provisions of this section, not to be subject to
 18 the taxes imposed by this chapter. Such election shall be
 19 valid only if consented to by all persons who are
 20 shareholders in such corporation—, the election is
 21 effective:
 22 ~~(4)(a)~~ on the first day of the first taxable year for
 23 which such election is effective, if such election is made
 24 on or before such first day; or
 25 ~~(2)(b)~~ on the day on which the election is made, if

1 the election is made after such first day, ~~consent to such~~
 2 ~~election.~~
 3 ~~(b)(2) Effect.~~ If a small business corporation makes
 4 an election under subsection ~~(a)(1)~~, then—;
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 6 corporation for which such election is in effect, such
 7 corporation shall not be subject to the taxes imposed by
 8 this chapter and, with respect to such taxable years and all
 9 succeeding taxable years, the provisions of this act shall
 10 apply to such corporation, and
 11 ~~(2)(b)~~ with respect to the taxable years of a
 12 shareholder of such corporation in which or with which the
 13 taxable years of the corporation for which such election is
 14 in effect end, the provisions of this act shall apply to
 15 such shareholder, and with respect to such taxable years and
 16 all succeeding taxable years, the provisions of this act
 17 shall apply to such shareholder.
 18 ~~(e) Where and how made.~~
 19 ~~(4)(3) In general.~~ An election under subsection ~~(a)~~
 20 (1) may be made by a small business corporation for any
 21 taxable year at any time during the first month of such
 22 taxable year, or at any time during the month preceding such
 23 first month. Such election shall be made in such manner as
 24 the state department of revenue shall prescribe by
 25 regulations.

~~(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—~~

~~(A) within the 90 day period beginning on the day after the date of the enactment of this subchapter, or~~

~~(B) if its taxable year ends within such 90 day period, before the close of such taxable year.~~

~~An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.~~

~~(d) (4) Years for which effective. An election under subsection (a) (1) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e) (5).~~

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~~(B) on the day on which the election is made, if such election is made after such first day, at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and does not consent to such election within such time as the department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.~~

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~~(i) for the taxable year in which made, if made before the close of the first month of such taxable year;:~~

~~(ii) for the taxable year following the taxable year in which made, if made after the close of such first month,~~

1 and for all succeeding taxable years of the corporation.
 2 Such revocation shall be made in such manner as the state
 3 department of revenue shall prescribe by regulations.

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 5 election under subsection ~~(a)(1)~~ made by a small business
 6 corporation shall terminate if the corporation ceases to
 7 meet the definition of a small business corporation at any
 8 time ~~after election is effective under subsection (1).~~

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 2 which such termination or revocation is effective, unless
 3 the state department of revenue consents to such election.

4 ~~(9)(7)~~ This election shall not be effective unless the
 5 corporate net income or loss of such electing corporation
 6 shall have been included in the stockholders' adjusted gross
 7 income as such is defined in ~~section~~ 84-4905.

8 ~~(b)(8)~~ Every electing corporation shall be required to
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 21 dealer or special fuel user or any person dealing in,
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 23 act and to investigate the character of the disposition
 24 which any person makes of such special fuel in order to
 25 ascertain and determine whether all excise taxes due

1 hereunder are being properly reported and paid. If such
 2 books, papers, records, and equipment are not maintained in
 3 this state at the time of demand, they shall be furnished to
 4 the department for review and shall be accompanied by the
 5 special fuel dealer or special fuel user or such dealer or
 6 user shall bear the reasonable cost of examination by an
 7 agent authorized or designated by the department at the
 8 place where such books or records are kept, provided the
 9 taxpayer shall not be liable for such costs for a period
 10 exceeding ~~one~~ (1) week or for such longer period as he may
 11 consent to in writing, unless the result of said examination
 12 is the payment of a tax deficiency.

13 ~~(e) (3) Evidence:~~ For the purpose of enforcing the
 14 provisions of this act, the fact that a special fuel dealer
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 18 special fuel has been delivered by the special fuel dealer
 19 or special fuel user into the fuel supply tanks of motor
 20 vehicles and consumed in the propulsion of motor vehicles
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 22 shall be established by satisfactory evidence.

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 24 shall, upon request from officials to whom are entrusted the
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1 the District of Columbia, the United States, its territories
 2 and possessions, or the provinces of the Dominion of Canada,
 3 forward to such officials any information which it may have
 4 relative to the receipt, storage, delivery, sale, use, or
 5 other disposition of special fuel by any special fuel dealer
 6 or special fuel user, provided such other state or states
 7 furnish like information to this state."

8 Section 3. Section 84-1840, R.C.M. 1947, is amended to
 9 read as follows:

10 "84-1840. Disposition of funds. All taxes, interest,
 11 and penalties collected under this ~~act~~ chapter or chapters
 12 63 of this title shall be turned over promptly to the state
 13 treasurer, ~~and the state treasurer who~~ shall place the same
 14 in the earmarked revenue fund to the credit of the
 15 department of highways, except those funds hereinbelow
 16 allocated to cities, towns and counties, which funds shall
 17 be paid by the state treasurer directly to such cities,
 18 towns, and counties.

19 (1) ~~Six million five hundred thousand dollars~~
 20 ~~(\$6,500,000)~~ of the funds collected under this act shall be
 21 allocated each fiscal year on a monthly basis to the
 22 counties and incorporated cities and towns in Montana for
 23 construction, reconstruction, maintenance, and repair of
 24 rural roads, and city or town streets and alleys, as
 25 provided in subsections (a) and (b) hereof;

1 (a) ~~Two million nine hundred fifty thousand dollars~~
2 ~~(\$2,950,000)~~ shall be divided among the various counties in
3 the following manner:

4 (i) ~~Forty per centum (40%)~~ in the ratio that the rural
5 road mileage in each county, exclusive of the federal-aid
6 interstate system and the federal-aid primary system, bears
7 to the total rural road mileage in the state, exclusive of
8 the federal-aid interstate system and the federal-aid
9 primary system;

10 (ii) ~~Forty per centum (40%)~~ in the ratio that the rural
11 population in each county outside incorporated cities and
12 towns bears to the total rural population in the state
13 outside incorporated cities and towns;

14 (iii) ~~Twenty per centum (20%)~~ in the ratio that the
15 land area of each county bears to the total land area of the
16 state;

17 (b) ~~Three million five hundred fifty thousand dollars~~
18 ~~(\$3,550,000)~~ shall be divided among the incorporated cities
19 and towns in the following manner:

20 (i) ~~Fifty per cent (50%)~~ of the sum shall be divided
21 in the ratio that the population within the corporate limits
22 of the city or town bears to the total population within
23 corporate limits of all the cities and towns in Montana;

24 (ii) ~~Fifty per cent (50%)~~ shall be divided in the ratio
25 that the city or town street and alley mileage, exclusive of

1 the federal-aid interstate system and the federal-aid
2 primary system, within corporate limits bears to the total
3 street and alley mileage, exclusive of the federal-aid
4 interstate system and federal-aid primary system, within the
5 corporate limits of all cities and towns in Montana.

6 (2) All funds hereby allocated to counties, cities,
7 and towns shall be used exclusively for the construction,
8 reconstruction, maintenance, and repair of rural roads, city
9 or town streets and alleys, or for the share which such
10 city, town, or county might otherwise expend for
11 proportionate matching of federal funds allocated for the
12 construction of roads or streets which are part of the
13 federal-aid primary or secondary highway system, or urban
14 extensions thereto.

15 (3) Upon receipt of the allocation provided herein,
16 the governing bodies of the recipient counties, cities, and
17 towns, shall inform the department of highways of the
18 purposes for which the funds shall will be expended so that
19 the county commissioners, the governing body, and the
20 department of highways may ~~co-ordinate~~ coordinate the
21 expenditure of public funds for road improvements.

22 (4) All funds hereby allocated to counties, cities,
23 and towns shall be disbursed to the lowest responsible
24 bidder according to applicable bidding procedures followed
25 in all cases where the contract for construction,

1 reconstruction, and maintenance or repair is in excess of
2 \$4,000.

3 (5) For the purposes of this ~~act~~ section where
4 distribution of funds is made on a basis related to
5 population, the population shall be determined by the last
6 preceding official federal census.

7 (6) For the purposes of this ~~act~~ section where
8 determination of mileage is necessary for distribution of
9 funds it shall be the responsibility of the cities, towns,
10 and counties to furnish to the department of highways and
11 state treasurer a yearly certified statement indicating the
12 total mileage within their respective areas applicable to
13 this act. All mileage submitted shall be subject to review
14 and approval by the department of highways.

15 (7) None of the funds authorized by this section shall
16 be used for the purchase of capital equipment."

17 Section 4. Section 84-4903.8, R.C.M. 1947, is amended
18 to read as follows:

19 "84-4903.8. Department may require withholding agent
20 to make return and pay tax at any time. If the state
21 department of revenue in any case has reason to believe that
22 the collection of the tax provided for in ~~this section~~
23 84-4903.2 is in jeopardy, it may require the withholding
24 agent to make such return and pay such tax at any time."

25 Section 5. Section 84-4926, R.C.M. 1947, is amended to

1 read as follows:

2 "84-4926. ~~Deferment of collection of income tax of~~
3 ~~persons in military service statute of limitations~~
4 ~~suspended. Soldiers' and sailors' relief.~~ (1) The collection
5 from any person in the military service, as defined by the
6 Soldiers' and Sailors' Civil Relief Act of 1940, effective
7 October 17, 1940, as amended October 6, 1942, of any tax
8 prescribed by the state of Montana on the income of such
9 person, whether falling due prior to or during his period of
10 military service, shall be deferred for a period extending
11 not more than ~~six~~-(6)- months after the termination of his
12 period of military service, if such person's ability to pay
13 such tax is materially impaired by reason of such service.

14 (2) No interest on any amount of tax, collection of
15 which is deferred for any period under this act, and no
16 penalty for nonpayment of such amount during such period,
17 shall accrue for such period of deferment by reason of such
18 nonpayment. The running of any statute of limitations
19 against the payment of such tax by any lawful means shall be
20 suspended for the period of military service of any
21 individual, for whom the collection of such tax is deferred
22 under this section, and for an additional period of ~~one~~-(1)-
23 year, beginning with the day following the period of
24 military service."

25 Section 6. Section 84-6305, R.C.M. 1947, is amended to

1 read as follows:

2 "84-6305. Definition of other words and terms. All
3 other words and terms used in this act, including the words
4 "person," "motor vehicle," "gasoline," and "user," unless
5 otherwise indicated in this act, shall have the same meaning
6 given to said words by ~~section 84-1807~~ 84-1846."

7 Section 7. Section 84-6307, R.C.M. 1947, is amended to
8 read as follows:

9 "84-6307. Failure or refusal to make and file return
10 or false return — department of revenue to prepare
11 statement. If any importer fails or refuses to make and file
12 a return at the time prescribed in this act, or ~~make~~ makes,
13 willfully or otherwise, an erroneous, false, or fraudulent
14 statement, the ~~state~~ department of revenue, or its duly
15 appointed agent, shall make the statement from its or his
16 own knowledge and from such information as it or he can
17 obtain through testimony or otherwise. Any statement so made
18 shall be prima facie good and sufficient for all legal
19 purposes. As a further means of making the statement, the
20 ~~state~~ department of ~~revenue~~ or its duly appointed agent,
21 shall have the power to examine the books, records, and
22 papers of such importer, to ascertain the amount of tax due
23 under the provisions of this act. From the statement so
24 made, the ~~state~~ department of ~~revenue~~ shall determine the
25 amount of tax due, if any, and shall add the penalty

1 provided herein for failure to pay the tax or to file the
2 return within the time prescribed for the payment of such
3 tax or the filing of such return, and shall notify the
4 importer, of the amount of tax and penalty assessed,
5 together with a demand for immediate payment of the tax and
6 penalty. If such tax and penalty ~~is~~ are not paid within
7 ~~thirty~~ {30} days, the state treasurer ~~of the state of~~
8 ~~Montana~~ shall proceed to collect such tax and penalty in the
9 manner prescribed in ~~section 84-1807~~ 84-1858."

10 Section 8. Repealer. Sections 84-4903.1, 84-4903.13,
11 and 84-6303, R.C.M. 1947, are repealed.

-End-

HOUSE BILL NO. 15
INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INCOME, GASOLINE, AND CORPORATION TAXES; AMENDING SECTIONS 84-1501.2, 84-1838, 84-1840, 84-4903.8, 84-4926, 84-6305, AND 84-6307, R.C.M. 1947; REPEALING SECTIONS 84-4903.1, 84-4903.13, AND 84-6303, R.C.M. 1947."

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

Section 1. Section 84-1501.2, R.C.M. 1947, is amended to read as follows:

"84-1501.2. Election by small business corporation. ~~(a)(1) Eligibility.~~ Except as provided in subsection ~~(f)~~ ~~(g)~~, any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation--the election is effective:

~~(1)~~ on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

~~(2)~~ on the day on which the election is made, if

the election is made after such first day--~~consent to such election.~~

~~(b)(2) Effect.~~ If a small business corporation makes an election under subsection ~~(a)(1)~~, then--

~~(1)(a)~~ with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

~~(2)(b)~~ with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

~~(c)--Where-and-how-made~~

~~(1)(1) In-general.~~ An election under subsection ~~(a)(1)~~ may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the state department of revenue shall prescribe by regulations.

1 ~~{2} taxable years beginning before date of enactment.~~
 2 ~~An election may be made under subsection (a) by a small~~
 3 ~~business corporation for its first taxable year which begins~~
 4 ~~after December 31, 1958, and on or before the date of the~~
 5 ~~enactment of this subchapter, and ends after such date at~~
 6 ~~any time--~~

7 ~~(A) within the 90-day period beginning on the day~~
 8 ~~after the date of the enactment of this subchapter, or~~

9 ~~(B) if its taxable year ends within such 90-day~~
 10 ~~period, before the close of such taxable year.~~

11 ~~An election may be made pursuant to this paragraph only~~
 12 ~~if the small business corporation has been a small business~~
 13 ~~corporation (as defined in this act) on each day after the~~
 14 ~~date of the enactment of this subchapter and before the day~~
 15 ~~of such election.~~

16 ~~{d}(4) Years for which effective.~~ An election under
 17 subsection ~~{e}(1)~~ shall be effective for the taxable year of
 18 the corporation for which it is made and for all succeeding
 19 taxable years of the corporation, unless it is terminated,
 20 with respect to any such taxable year, under subsection
 21 ~~{e}(5).~~

22 ~~{e} Termination.~~

23 ~~{f}(5) (a) New shareholders.~~ An election under
 24 subsection ~~{e}(1)~~ made by a small business corporation shall
 25 terminate if any person who was not a shareholder in such

1 corporation--

2 ~~(A) on the first day of the first taxable year of the~~
 3 ~~corporation for which the election is effective, if such~~
 4 ~~election is made on or before such first day, or~~

5 ~~(B) on the day on which the election is made, if such~~
 6 ~~election is made after such first day, at the time of the~~
 7 ~~initial election under subsection (1) subsequently becomes a~~
 8 ~~shareholder in such corporation and does not consent to such~~
 9 ~~election within such time as the department of revenue shall~~
 10 ~~prescribe by regulations. Such termination shall be~~
 11 ~~effective for the taxable year of the corporation in which~~
 12 ~~such person becomes a shareholder in the corporation and for~~
 13 ~~all succeeding taxable years of the corporation.~~

14 ~~{2}(b) Revocation.~~ An election under subsection ~~{e}~~
 15 ~~(1)~~ made by a small business corporation may be revoked by
 16 it for any taxable year after the first taxable year for
 17 which the election is effective. An election may be revoked
 18 only if all persons who are shareholders in the corporation
 19 on the day on which the revocation is made consent to the
 20 revocation. A revocation under this paragraph shall be
 21 effective--;

22 ~~{A}(i)~~ for the taxable year in which made, if made
 23 before the close of the first month of such taxable year;

24 ~~{e}(ii)~~ for the taxable year following the taxable year
 25 in which made, if made after the close of such first month,

1 and for all succeeding taxable years of the corporation.
 2 Such revocation shall be made in such manner as the state
 3 department of revenue shall prescribe by regulations.

4 ~~{b}(C) Ceases-to-be-small-business-corporation.~~ An
 5 election under subsection ~~{a}(1)~~ made by a small business
 6 corporation shall terminate if the corporation ceases to
 7 meet the definition of a small business corporation at any
 8 time after election is effective under subsection (1).

9 ~~{A}--after-the-first-day-of-the-first-taxable-year-of~~
 10 ~~the-corporation-for-which-the-election-is-effective-if-such~~
 11 ~~election-is-made-on-or-before-such-first-day-or~~

12 ~~{B}--after-the-day-on-which-the-election-is-made-if~~
 13 ~~such-election-is-made-after-such-first-day-the-corporation~~
 14 ~~ceases-to-be-a-small-business-corporation--(as-defined-in~~
 15 ~~this-act).~~

16 (d) Such termination shall be effective for the
 17 taxable year of the corporation in which the corporation
 18 ceases to be a small business corporation and for all
 19 succeeding taxable years of the corporation.

20 ~~{f}(6) Election-after-termination.~~ If a small business
 21 corporation has made an election under subsection ~~{a}(1)~~ and
 22 if such election has been terminated or revoked under
 23 subsection ~~{a}(5)~~, such corporation (and any successor
 24 corporation) shall not be eligible to make an election under
 25 subsection ~~{a}(1)~~ for any taxable year prior to its fifth

1 taxable year which begins after the first taxable year for
 2 which such termination or revocation is effective, unless
 3 the state department of revenue consents to such election.

4 ~~{a}(7)~~ This election shall not be effective unless the
 5 corporate net income or loss of such electing corporation
 6 shall have been included in the stockholders' adjusted gross
 7 income as such is defined in section 84-4905.

8 ~~{a}(8)~~ Every electing corporation shall be required to
 9 pay the minimum fee of ~~ten-dollars-(\$10.00)~~ required by
 10 section 84-1501."

11 Section 2. Section 84-1838, R.C.M. 1947, is amended to
 12 read as follows:

13 "84-1838. Administration Administrative powers.
 14 ~~{a}-Rules-and-regulations.~~ (1) The department shall enforce
 15 the provisions of this act, and may prescribe, adopt, and
 16 enforce reasonable rules and regulations relating to the
 17 administration and enforcement thereof.

18 ~~{b}(2) Examination-of-records.~~ The department or its
 19 authorized representative is hereby empowered to examine the
 20 books, papers, records, and equipment of any special fuel
 21 dealer or special fuel user or any person dealing in,
 22 transporting, or storing special fuel, as defined in this
 23 act and to investigate the character of the disposition
 24 which any person makes of such special fuel in order to
 25 ascertain and determine whether all excise taxes due

1 hereunder are being properly reported and paid. If such
 2 books, papers, records, and equipment are not maintained in
 3 this state at the time of demand, they shall be furnished to
 4 the department for review and shall be accompanied by the
 5 special fuel dealer or special fuel user or such dealer or
 6 user shall bear the reasonable cost of examination by an
 7 agent authorized or designated by the department at the
 8 place where such books or records are kept, provided the
 9 taxpayer shall not be liable for such costs for a period
 10 exceeding ~~one--(1)~~ week or for such longer period as he may
 11 consent to in writing, unless the result of said examination
 12 is the payment of a tax deficiency.

13 ~~(c)(3) Evidence~~ For the purpose of enforcing the
 14 provisions of this act, the fact that a special fuel dealer
 15 or a special fuel user has placed or received special fuel
 16 into storage or dispensing equipment designed to fuel motor
 17 vehicles shall be prima facie evidence that all of such
 18 special fuel has been delivered by the special fuel dealer
 19 or special fuel user into the fuel supply tanks of motor
 20 vehicles and consumed in the propulsion of motor vehicles
 21 upon the highways as herein defined unless the contrary
 22 shall be established by satisfactory evidence.

23 ~~(d)(4) Reciprocal--exchange--of--data~~ The department
 24 shall, upon request from officials to whom are entrusted the
 25 enforcement of the special fuel tax law of any other state,

1 the District of Columbia, the United States, its territories
 2 and possessions, or the provinces of the Dominion of Canada,
 3 forward to such officials any information which it may have
 4 relative to the receipt, storage, delivery, sale, use, or
 5 other disposition of special fuel by any special fuel dealer
 6 or special fuel user, provided such other state or states
 7 furnish like information to this state."

8 Section 3. Section 84-1840, R.C.M. 1947, is amended to
 9 read as follows:

10 "84-1840. Disposition of funds. All taxes, interest,
 11 and penalties collected under this ~~act~~ chapter or chapters
 12 63 of this title shall be turned over promptly to the state
 13 treasurer, ~~and the state treasurer who~~ shall place the same
 14 in the earmarked revenue fund to the credit of the
 15 department of highways, except those funds hereinbelow
 16 allocated to cities, towns and counties, which funds shall
 17 be paid by the state treasurer directly to such cities,
 18 towns, and counties.

19 (1) ~~Six--million---five---hundred---thousand---dollars~~
 20 ~~(\$6,500,000)~~ of the funds collected under this act shall be
 21 allocated each fiscal year on a monthly basis to the
 22 counties and incorporated cities and towns in Montana for
 23 construction, reconstruction, maintenance, and repair of
 24 rural roads, and city or town streets and alleys, as
 25 provided in subsections (a) and (b) hereof.

1 (a) ~~Two-million-nine-hundred-fifty-thousand-dollars~~
 2 ~~(\$2,950,000)~~ shall be divided among the various counties in
 3 the following manner:

4 (i) ~~forty-per-centum-(40%)~~ in the ratio that the rural
 5 road mileage in each county, exclusive of the federal-aid
 6 interstate system and the federal-aid primary system, bears
 7 to the total rural road mileage in the state, exclusive of
 8 the federal-aid interstate system and the federal-aid
 9 primary systems;

10 (ii) ~~Forty-per-centum-(40%)~~ in the ratio that the rural
 11 population in each county outside incorporated cities and
 12 towns bears to the total rural population in the state
 13 outside incorporated cities and towns;

14 (iii) ~~Twenty-per-centum-(20%)~~ in the ratio that the
 15 land area of each county bears to the total land area of the
 16 state;

17 (b) ~~Three-million-five-hundred-fifty-thousand-dollars~~
 18 ~~(\$3,550,000)~~ shall be divided among the incorporated cities
 19 and towns in the following manner:

20 (i) ~~Fifty-per-cent-(50%)~~ of the sum ~~shall-be-divided~~
 21 in the ratio that the population within the corporate limits
 22 of the city or town bears to the total population within
 23 corporate limits of all the cities and towns in Montana;

24 (ii) ~~fifty-per-cent-(50%)~~ ~~shall-be-divided~~ in the ratio
 25 that the city or town street and alley mileage, exclusive of

1 the federal-aid interstate system and the federal-aid
 2 primary system, within corporate limits bears to the total
 3 street and alley mileage, exclusive of the federal-aid
 4 interstate system and federal-aid primary system, within the
 5 corporate limits of all cities and towns in Montana.

6 (2) All funds hereby allocated to counties, cities,
 7 and towns shall be used exclusively for the construction,
 8 reconstruction, maintenance, and repair of rural roads, city
 9 or town streets and alleys, or for the share which such
 10 city, town, or county might otherwise expend for
 11 proportionate matching of federal funds allocated for the
 12 construction of roads or streets which are part of the
 13 federal-aid primary or secondary highway system, or urban
 14 extensions thereto.

15 (3) Upon receipt of the allocation provided herein,
 16 the governing bodies of the recipient counties, cities, and
 17 towns, shall inform the department of highways of the
 18 purposes for which the funds ~~shall will~~ be expended so that
 19 the county commissioners, the governing body, and the
 20 department of highways may ~~co-ordinate~~ coordinate the
 21 expenditure of public funds for road improvements.

22 (4) All funds hereby allocated to counties, cities,
 23 and towns shall be disbursed to the lowest responsible
 24 bidder according to applicable bidding procedures followed
 25 in all cases where the contract for construction,

1 reconstruction, and maintenance or repair is in excess of
2 \$4,000.

3 (5) For the purposes of this act ~~section~~ where
4 distribution of funds is made on a basis related to
5 population, the population shall be determined by the last
6 preceding official federal census.

7 (6) For the purposes of this act ~~section~~ where
8 determination of mileage is necessary for distribution of
9 funds it shall be the responsibility of the cities, towns,
10 and counties to furnish to the department of highways and
11 state treasurer a yearly certified statement indicating the
12 total mileage within their respective areas applicable to
13 this act. All mileage submitted shall be subject to review
14 and approval by the department of highways.

15 (7) None of the funds authorized by this section shall
16 be used for the purchase of capital equipment."

17 Section 4. Section 84-4903.8, R.C.M. 1947, is amended
18 to read as follows:

19 "84-4903.8. Department may require withholding agent
20 to make return and pay tax at any time. If the state
21 department of revenue in any case has reason to believe that
22 the collection of the tax provided for in ~~this section~~
23 ~~84-4903.2~~ is in jeopardy, it may require the withholding
24 agent to make such return and pay such tax at any time."

25 Section 5. Section 84-4926, R.C.M. 1947, is amended to

1 read as follows:

2 "84-4926. Deferment--of--collection--of--income--tax--of
3 persons--in--military--service--statute--of--limitations
4 ~~suspended~~ Soldiers' and sailors' relief, (1) The collection
5 from any person in the military service, as defined by the
6 Soldiers' and Sailors' Civil Relief Act of 1940, effective
7 October 17, 1940, as amended October 6, 1942, of any tax
8 prescribed by the state of Montana on the income of such
9 person, whether falling due prior to or during his period of
10 military service, shall be deferred for a period extending
11 not more than ~~six-(6)~~ months after the termination of his
12 period of military service, if such person's ability to pay
13 such tax is materially impaired by reason of such service.

14 (2) No interest on any amount of tax, collection of
15 which is deferred for any period under this act, and no
16 penalty for nonpayment of such amount during such period,
17 shall accrue for such period of deferment by reason of such
18 nonpayment. The running of any statute of limitations
19 against the payment of such tax by any lawful means shall be
20 suspended for the period of military service of any
21 individual, ~~for whom~~ the collection of such tax is deferred
22 under this section, and for an additional period of ~~one-(1)~~
23 year, beginning with the day following the period of
24 military service."

25 Section 6. Section 84-6305, R.C.M. 1947, is amended to

1 read as follows:

2 "84-6305. Definition of other words and terms. All
3 other words and terms used in this act, including the words
4 "person", "motor vehicle", "gasoline" and "user" unless
5 otherwise indicated in this act, shall have the same meaning
6 given to said words by ~~section 84-1801~~ 84-1846."

7 Section 7. Section 84-6307, R.C.M. 1947, is amended to
8 read as follows:

9 "84-6307. Failure or refusal to make and file return
10 or false return -- department of revenue to prepare
11 statement. If any importer fails or refuses to make and file
12 a return at the time prescribed in this act, or ~~make~~ makes,
13 willfully or otherwise, an erroneous, false, or fraudulent
14 statement, the state department of revenue or its duly
15 appointed agent shall make the statement from its or his
16 own knowledge and from such information as it or he can
17 obtain through testimony or otherwise. Any statement so made
18 shall be prima facie good and sufficient for all legal
19 purposes. As a further means of making the statement, the
20 ~~state department of revenue~~ or its duly appointed agent
21 shall have the power to examine the books, records, and
22 papers of such importer to ascertain the amount of tax due
23 under the provisions of this act. From the statement so
24 made, the ~~state department of revenue~~ shall determine the
25 amount of tax due, if any, and shall add the penalty

1 provided herein for failure to pay the tax or to file the
2 return within the time prescribed for the payment of such
3 tax or the filing of such return, and shall notify the
4 importer of the amount of tax and penalty assessed,
5 together with a demand for immediate payment of the tax and
6 penalty. If such tax and penalty ~~is~~ are not paid within
7 ~~thirty~~ {30} days, the ~~state~~ treasurer of ~~the state of~~
8 ~~Montana~~ shall proceed to collect such tax and penalty in the
9 manner prescribed in ~~section 84-1807~~ 84-1858."

10 Section 8. Repealer. Sections 84-4903.1, 84-4903.13,
11 and 84-6303, R.C.M. 1947, are repealed.

-End-