HOUSE BILL 321

IN THE HOUSE

January 23, 1979	Introduced and referred to Committee on Taxation.
March 27, 1979	Committee recommend bill, do not pass.
	Report adopted. Objection.
March 28, 1979	Second reading, do not pass.

House BILL NO. 321

INTRODUCED BY Dassinger Mye Manning Harrington Tayne Shelden Barth Dozier Day

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE PERSONAL EXEMPTIONS UNDER THE PERSONAL INCOME TAX INTO DEPENDENCY CREDITS AGAINST INCOME TAX LIABILITY; AMENDING SECTIONS 15-30-101, 15-30-112, 15-30-114, 15-30-115, 15-30-132, 15-30-135, 15-30-142, AND 15-30-303; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

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

(2) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(3) "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.

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

(5) "Information agents" include 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, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(6) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(7) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

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(8) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(9) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter 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.

(10) "Taxable income" means the adjusted gross income of a taxpayer less the deductions ~~and-exemptions~~ provided for in this chapter.

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

(12) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-112, MCA, is amended to read:

"15-30-112. ~~Exemptions~~ Dependency credits. (1) In the case of an individual, the ~~exemptions-provided-by~~ dependency relations recognized in this section shall be allowed as

~~deductions--in--computing-taxable-income~~ credits against tax liability. Each credit to which the taxpayer is entitled shall reduce his final tax liability determined under 15-30-103 and 15-30-104 by $30. Total credits claimed may not exceed income tax liability for the year as determined prior to the credits allowed under 15-30-124, 15-30-162, 15-32-201, and 15-50-207.

(2) (a) ~~An--exemption--of--$650~~ One credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the taxpayer.

(b) An additional ~~exemption--of-$650~~ credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional ~~exemption-of-$650~~ credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional ~~exemption-of-$650~~ credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional ~~exemption-of-$650~~ credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional ~~exemption--of-$650~~ credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest

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diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) ~~An-exemption-of-$650~~ A credit shall be allowed for taxable years beginning after December 31, ~~1973~~ 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $650; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No ~~exemption~~ credit shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

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(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income."

Section 3. Section 15-30-114, MCA, is amended to read:

"15-30-114. Additional ~~exemption~~ credit for dependent child with handicap. (1) In lieu of the ~~exemption~~ credit in 15-30-112(5), ~~an exemption~~ a credit for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the ~~exemption~~ credit, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal place of abode the

home of the taxpayer and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. ~~An exemption~~ A credit may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent."

Section 4. Section 15-30-115, MCA, is amended to read:

"15-30-115. Physician's verification of handicap required. A taxpayer claiming the ~~exemption~~ credit provided for in 15-30-114 must provide with his income tax statement written documentation by a licensed physician that the handicap qualifies under that section."

Section 5. Section 15-30-132, MCA, is amended to read:

"15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The ~~exemptions~~ credits provided in 15-30-112 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state, abandoning his residence in the state, and establishing a residence elsewhere must file a return on the fractional basis. If he obtains employment outside the state without abandoning his Montana residence, then income from such employment is taxable in Montana."

Section 6. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust;

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant, to be held or distributed as the court may direct; and

(e) income of an estate during the period of administration or settlement permitted by subsection (3) of

this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia. In cases under subsections (d) and (e) of subsection (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of

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administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same ~~exemptions~~ <u>credits</u> as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or

settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

(c) If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to

which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor."

Section 7. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $720 and married individuals not filing separate returns and having a combined gross income for the

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taxable year of more than $1,445 shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $650 for each additional ~~personal--exemption~~ dependency credit allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds ~~the-amount-of-the-exemption-deduction~~ $650 multiplied by the number of dependency credits he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so

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consents.

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

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

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

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed, with interest added at

the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer."

Section 8. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the

provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1

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year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish to the division of motor vehicles of the department of justice all information necessary to identify those persons qualifying

for the additional ~~exemption~~ credit for blindness pursuant to 15-30-112(4), for the purpose of enabling said division to administer the provisions of 61-5-105."

Section 9. Effective date. This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 142-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 79, there is hereby submitted a Fiscal Note for House Bill 321 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This proposed bill converts the personal exemptions under the personal income tax into dependency credits against income tax liability and provides an effective date.

ASSUMPTIONS

a) The percentage increase in total tax liability for individual income tax which apparently would have occurred if the proposed law had been in effect throughout calendar year 1977 will apply equally to FY80 and FY81, under the proposed law.
b) The Department of Revenue forecast of individual income tax receipts for the 80-81 biennium is assumed to be the basis for comparison.

FISCAL IMPACT

	FY 80	FY 81
Individual Income Tax Receipts		
under current law	$154.268 M	$169.790 M
under proposed law	165.159 M	181.776 M
Estimated Increase	$ 10.891 M	$ 11.986 M

FUND INFORMATION

General Fund		
under current law	$ 98.732 M	$108.666 M
under proposed law	105.702 M	116.337 M
Estimated Increase	$ 6.970 M	$ 7.671 M
Earmarked Revenue Fund		
under current law	$ 38.567 M	$ 42.447 M
under proposed law	41.290 M	45.444 M
Estimated Increase	$ 2.723 M	$ 2.997 M
Sinking Fund*		
under current law	$ 16.969 M	$ 18.677 M
under proposed law	18.167 M	19.995 M
Estimated Increase	$ 1.198 M	$ 1.318 M

*A portion of this fund may be transferred to general fund as long-range bond excess if debt service resources are adequate.

Richard L. Trang for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2/1/79

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EFFECT ON LOCAL GOVERNMENTS

No Local Impact.

LONG-RANGE EFFECTS

Individual income tax collections would increase by about 7% from what they would be under continuation of the present law.

TECHNICAL NOTE

If it is considered desirable to replace the personal exemption allowance with a dependency credit without substantially affecting revenue, then it would appear that the amount of the dependency credit should be set at about 43 or 44 dollars.

PREPARED BY DEPARTMENT OF REVENUE

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: