

CHAPTER NO. 648

HOUSE BILL NO. 461

INTRODUCED BY BERTELSEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 29, 1979	Introduced and referred to Committee on Taxation.
February 6, 1979	Rereferred to Committee on Judiciary.
February 7, 1979	Rereferred to Committee on Taxation.
March 19, 1979	Committee recommend bill do pass as amended. Report adopted.
March 20, 1979	Printed and placed on members' desks.
March 21, 1979	Second reading, do pass. Considered correctly engrossed.
March 22, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

March 23, 1979	Introduced and referred to Committee on Judiciary.
March 30, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 31, 1979	Second reading, concurred in.
April 3, 1979	Third reading, concurred in as amended.

IN THE HOUSE

April 4, 1979	Returned from second house. Concurred in as amended.
April 5, 1979	Second reading, amendments rejected.

April 5, 1979	On motion Joint Conference Committee requested.
April 6, 1979	Joint Conference Committee appointed.
April 12, 1979	Joint Conference Committee dissolved.
	On motion Free Joint Conference Committee requested.
April 13, 1979	Free Joint Conference Committee appointed.
April 17, 1979	Free Joint Conference Committee reported.
April 18, 1979	Second reading, adopted. Third reading, adopted. Adopted by second house.
April 19, 1979	Sent to enrolling. Reported correctly enrolled.

1 House BILL NO. 461
2 INTRODUCED BY J. Bartalena

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS AND
6 PENALTIES RELATING TO THE COLLECTION OF THE INDIVIDUAL
7 INCOME TAX; ADOPTING 'PURPOSELY' AND 'KNOWINGLY' AS THE
8 REQUIRED MENTAL STATE; PROVIDING THAT AN ATTEMPT TO EVADE
9 THE TAX IS A FELONY; SETTING VENUE FOR ALL PROSECUTIONS IN
10 LEWIS AND CLARK COUNTY; PROVIDING FOR A PERIOD OF LIMITATION
11 FOR PROSECUTION; AMENDING SECTIONS 15-30-101, 15-30-145,
12 15-30-209, 15-30-224, AND 15-30-321, MCA; AND PROVIDING AN
13 IMMEDIATE EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

17 "15-30-101. Definitions. For the purpose of this
18 chapter, unless otherwise required by the context, the
19 following definitions apply:

- 20 (1) "Department" means the department of revenue.
21 (2) "Dividend" means any distribution made by a
22 corporation out of its earnings or profits to its
23 shareholders or members, whether in cash or in other
24 property or in stock of the corporation, other than stock
25 dividends as herein defined. "Stock dividends" means new

1 stock issued, for surplus or profits capitalized, to
2 shareholders in proportion to their previous holdings.

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

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

10 (5) "Information agents" include all individuals,
11 corporations, associations, and partnerships, in whatever
12 capacity acting, including lessees or mortgagors of real or
13 personal property, fiduciaries, employers, and all officers
14 and employees of the state or of any municipal corporation
15 or political subdivision of the state, having the control,
16 receipt, custody, disposal, or payment of interest, rent,
17 salaries, wages, premiums, annuities, compensations,
18 remunerations, emoluments, or other fixed or determinable
19 annual or periodical gains, profits, and income with respect
20 to which any person or fiduciary is taxable under this
21 chapter.

22 ~~(6)~~ "Knowingly" is as defined in 45-2-101.

23 ~~(6)(1)~~ "Net income" means the adjusted gross income of
24 a taxpayer less the deductions allowed by this chapter.

25 ~~(7)(1)~~ "Paid", for the purposes of the deductions and

1 credits under this chapter, means paid or accrued or paid or
 2 incurred, and the terms "paid or incurred" and "paid or
 3 accrued" shall be construed according to the method of
 4 accounting upon the basis of which the taxable income is
 5 computed under this chapter.

6 ~~(9)~~ "Purposely" is as defined in 45-2-101.

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

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

20 ~~(12)~~ "Taxable income" means the adjusted gross
 21 income of a taxpayer less the deductions and exemptions
 22 provided for in this chapter.

23 ~~(13)~~ "Taxable year" means the taxpayer's taxable
 24 year for federal income tax purposes.

25 ~~(14)~~ "Taxpayer" includes any person or fiduciary,

1 resident or nonresident, subject to a tax imposed by this
 2 chapter and does not include corporations."

3 Section 2. Section 15-30-145, MCA, is amended to read:

4 "15-30-145. Revision of return by department --
 5 examination of records and persons. (1) If, in the opinion
 6 of the department, any return of a taxpayer is in any
 7 essential respect incorrect, it may revise such return. If
 8 any taxpayer fails to make return as herein required, the
 9 department is authorized to make an estimate of the taxable
 10 income of such taxpayer from any information in its
 11 possession and to audit and state an account according to
 12 such return or the estimate so made by it for the taxes,
 13 penalties, and interest due the state from such taxpayer.
 14 Except in the case of ~~willfully~~ a person who purposely or
 15 knowingly files a false or fraudulent return with intent to
 16 evade the tax violating the provisions of this chapter, the
 17 amount of tax due under any return shall be determined by
 18 the department within 5 years after the return was made and
 19 the department thereafter shall be barred from revising any
 20 such returns or recomputing the tax due thereon, and no
 21 proceeding in court for the collection of such tax shall be
 22 instituted after the expiration of said period,
 23 notwithstanding the provisions of 15-30-322. In the case of
 24 a ~~willfully~~ person who purposely or knowingly files a false
 25 or fraudulent return violating the provisions of this

1 ~~chapter~~, the amount of tax due may be determined at any time
 2 after the return is filed and the tax may be collected at
 3 any time after it becomes due and, where no return has been
 4 filed, the tax may be assessed at any time.

5 (2) The department, for the purpose of ascertaining
 6 the correctness of any return or for the purpose of making
 7 an estimate of taxable income of any person where
 8 information has been obtained, may also examine or cause to
 9 have examined by any agent or representative designated by
 10 it for that purpose any books, papers, or records of
 11 memoranda bearing upon the matters required to be included
 12 in the return and may require the attendance of the person
 13 rendering the return or any officer or employee of such
 14 person or the attendance of any person having knowledge in
 15 the premises and may take testimony and require proof
 16 material for its information, with power to administer oaths
 17 to such person or persons."

18 Section 3. Section 15-30-209, MCA, is amended to read:

19 "15-30-209. Violations by employer -- penalties and
 20 remedies. (1) If any employer shall fail to pay over to the
 21 state the tax deducted and withheld under the provisions of
 22 15-30-201 through 15-30-208 or shall fail to file or furnish
 23 any statement provided for within the time prescribed
 24 therefor, the same additions to the amount of such tax shall
 25 be imposed and added as those specified in 15-30-321, as

1 amended, with respect to failure to make a return of income
 2 or to pay any income tax, and any individual, corporation,
 3 or partnership or any officer or employee thereof who, with
 4 intent to evade any tax or any requirement of 15-30-201
 5 through 15-30-208, or who, with like intent, files or
 6 supplies any false or fraudulent statement or information
 7 shall be liable to the same penalties as those imposed by
 8 15-30-321, as amended, with respect to filing or supplying
 9 any false or fraudulent statement or information with
 10 respect to income taxes.

11 (2) All of the remedies available to the state for the
 12 administration, enforcement, and collection of income taxes
 13 shall be available and shall apply to the tax required to be
 14 deducted and withheld under the provisions of 15-30-201
 15 through 15-30-208."

16 Section 4. Section 15-30-224, MCA, is amended to read:

17 "15-30-224. Failure to withhold or pay -- penalties.
 18 If any withholding agent knowingly fails to withhold or pay
 19 to the department any sums required to be withheld and paid
 20 by 15-30-221 through 15-30-228 or any order made pursuant to
 21 15-30-221 through 15-30-228, the same additions to the
 22 amount of such tax shall be imposed and added as those
 23 specified in 15-30-321, as amended, with respect to failure
 24 to make a return of income or to pay any income tax. Any
 25 individual, corporation, or partnership or any officer or

1 employee thereof who, with intent to evade any tax or any
 2 requirement of 15-30-221 through 15-30-228, or who, with
 3 like intent, files or supplies any false or fraudulent
 4 statement or information shall be liable to the same
 5 penalties as those imposed by 15-30-321, ~~as amended,~~ with
 6 respect to filing or supplying any false or fraudulent
 7 statement or information with respect to income taxes."

8 Section 5. Section 15-30-321, MCA, is amended to read:

9 "15-30-321. Penalties for violation of chapter. (1) If
 10 any person, without ~~intent to evade~~ purposely or knowingly
 11 violating any tax requirement imposed by this chapter, fails
 12 to file a return of income on or before its due date
 13 (determined with regard to an extension of time granted for
 14 filing the return), there shall be imposed a penalty of 5%
 15 of any balance of tax unpaid with respect to such return as
 16 of its due date, but in no event shall the penalty for
 17 failure to file a return by its due date be less than \$5.
 18 The department may abate the penalty if the taxpayer
 19 establishes that the failure to file on time was due to
 20 reasonable cause and was not due to neglect on his part. If
 21 any person, without ~~intent to evade~~ purposely or knowingly
 22 violating any tax requirement imposed by this chapter, fails
 23 to pay any tax on or before its due date (determined with
 24 regard to an extension of time granted for the filing of a
 25 return), there shall be added to the tax a penalty of 10% of

1 said tax, but not less than \$5, and interest shall accrue on
 2 the tax at the rate of 9% per annum for the entire period it
 3 remains unpaid. The department may abate the penalty if the
 4 taxpayer establishes that the failure to pay on time was due
 5 to reasonable cause and was not due to neglect on his part.

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

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

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

7 ~~(4) The certificate of the department to the effect~~
 8 ~~that a tax has not been paid, that a return has not been~~
 9 ~~filed, or that information has not been supplied as required~~
 10 ~~by or under the provisions of this chapter shall be prima~~
 11 ~~facie evidence that such tax has not been paid, that such~~
 12 ~~return has not been filed, or that such information has not~~
 13 ~~been supplied. An individual, corporation, or partnership or~~
 14 ~~an officer or employee of a corporation or a member or~~
 15 ~~employee of a partnership who purposely or knowingly~~
 16 ~~attempts in any manner to evade or defeat a tax imposed by~~
 17 ~~this chapter or the payment thereof is, in addition to other~~
 18 ~~penalties provided by law, guilty of a felony and upon~~
 19 ~~conviction thereof is punishable by a fine not to exceed~~
 20 ~~\$5,000 or by imprisonment for a term not to exceed 5 years,~~
 21 ~~or by both such fine and imprisonment.~~

22 (5) The certificate of the department to the effect
 23 that a tax has not been paid, that a return has not been
 24 filed, or that information has not been supplied as required
 25 under the provisions of this chapter is prima facie evidence

1 that the tax has not been paid, the return has not been
 2 filed, or the information has not been supplied."

3 NEW SECTION. Section 6. Venue. A prosecution of an
 4 offense under 15-30-321 must be tried in the district court
 5 for Lewis and Clark County.

6 NEW SECTION. Section 7. Time limitations for
 7 prosecution. A prosecution for an offense under 15-30-321 is
 8 subject to the following periods of limitation:

9 (1) A prosecution for a misdemeanor must be commenced
 10 within 5 years after the offense is committed.

11 (2) A prosecution for a felony must be commenced
 12 within 10 years after the offense is committed.

13 Section 8. Effective date. This act is effective on
 14 passage and approval.

-End-

HB 767

Approved by Committee
on Judiciary
Taxation

HOUSE BILL NO. 461

INTRODUCED BY BERTELSEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS AND PENALTIES RELATING TO THE COLLECTION OF THE INDIVIDUAL INCOME TAX; ADOPTING 'PURPOSELY' AND 'KNOWINGLY' AS THE REQUIRED MENTAL STATE; PROVIDING THAT AN ATTEMPT TO EVADE THE TAX IS A FELONY; SETTING VENUE FOR ALL PROSECUTIONS IN LEWIS AND CLARK COUNTY; PROVIDING FOR A PERIOD OF LIMITATION FOR PROSECUTION; AMENDING SECTIONS 15-30-101, 15-30-145, 15-30-209, 15-30-224, AND 15-30-321, MCA; AND PROVIDING AN IMMEDIATE 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)~~ "Knowingly" is as defined in 45-2-101.

~~(6)(7)~~ "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(7)(8)~~ "Paid", for the purposes of the deductions and

1 credits under this chapter, means paid or accrued or paid or
 2 incurred, and the terms "paid or incurred" and "paid or
 3 accrued" shall be construed according to the method of
 4 accounting upon the basis of which the taxable income is
 5 computed under this chapter.

6 ~~191~~ "Purposely" is as defined in 45-2-101.

7 ~~187~~~~1101~~ "Received", for the purpose of computation of
 8 taxable income under this chapter, means received or accrued
 9 and the term "received or accrued" shall be construed
 10 according to the method of accounting upon the basis of
 11 which the taxable income is computed under this chapter.

12 ~~197~~~~1111~~ "Resident" applies only to natural persons and
 13 includes, for the purpose of determining liability to the
 14 tax imposed by this chapter with reference to the income of
 15 any taxable year, any person domiciled in the state of
 16 Montana and any other person who maintains a permanent place
 17 of abode within the state even though temporarily absent
 18 from the state and has not established a residence
 19 elsewhere.

20 ~~119~~~~1121~~ "Taxable income" means the adjusted gross
 21 income of a taxpayer less the deductions and exemptions
 22 provided for in this chapter.

23 ~~111~~~~1111~~ "Taxable year" means the taxpayer's taxable
 24 year for federal income tax purposes.

25 ~~112~~~~1141~~ "Taxpayer" includes any person or fiduciary,

1 resident or nonresident, subject to a tax imposed by this
 2 chapter and does not include corporations."

3 Section 2. Section 15-30-145, MCA, is amended to read:

4 "15-30-145. Revision of return by department --
 5 examination of records and persons. (1) If, in the opinion
 6 of the department, any return of a taxpayer is in any
 7 essential respect incorrect, it may revise such return. If
 8 any taxpayer fails to make return as herein required, the
 9 department is authorized to make an estimate of the taxable
 10 income of such taxpayer from any information in its
 11 possession and to audit and state an account according to
 12 such return or the estimate so made by it for the taxes,
 13 penalties, and interest due the state from such taxpayer.
 14 Except in the case of ~~witffully~~ a person who purposely or
 15 knowingly files a false or fraudulent return ~~with intent to~~
 16 ~~evade the tax~~ violating the provisions of this chapter, the
 17 amount of tax due under any return shall be determined by
 18 the department within 5 years after the return was made and
 19 the department thereafter shall be barred from revising any
 20 such returns or recomputing the tax due thereon, and no
 21 proceeding in court for the collection of such tax shall be
 22 instituted after the expiration of said period,
 23 notwithstanding the provisions of 15-30-322. In the case of
 24 a ~~witffully~~ person who purposely or knowingly files a false
 25 or fraudulent return violating the provisions of this

1 ~~chapter~~, the amount of tax due may be determined at any time
2 after the return is filed and the tax may be collected at
3 any time after it becomes due and, where no return has been
4 filed, the tax may be assessed at any time.

5 (2) The department, for the purpose of ascertaining
6 the correctness of any return or for the purpose of making
7 an estimate of taxable income of any person where
8 information has been obtained, may also examine or cause to
9 have examined by any agent or representative designated by
10 it for that purpose any books, papers, or records of
11 memoranda bearing upon the matters required to be included
12 in the return and may require the attendance of the person
13 rendering the return or any officer or employee of such
14 person or the attendance of any person having knowledge in
15 the premises and may take testimony and require proof
16 material for its information, with power to administer oaths
17 to such person or persons."

18 Section 3. Section 15-30-209, MCA, is amended to read:

19 "15-30-209. Violations by employer -- penalties and
20 remedies. (1) If any employer shall fail to pay over to the
21 state the tax deducted and withheld under the provisions of
22 15-30-201 through 15-30-208 or shall fail to file or furnish
23 any statement provided for within the time prescribed
24 therefor, the same additions to the amount of such tax shall
25 be imposed and added as those specified in 15-30-321, ~~as~~

1 ~~amended~~, with respect to failure to make a return of income
2 or to pay any income tax, and any individual, corporation,
3 or partnership or any officer or employee thereof who, with
4 intent to evade any tax or any requirement of 15-30-201
5 through 15-30-208, or who, with like intent, files or
6 supplies any false or fraudulent statement or information
7 shall be liable to the same penalties as those imposed by
8 15-30-321, ~~as amended~~, with respect to filing or supplying
9 any false or fraudulent statement or information with
10 respect to income taxes.

11 (2) All of the remedies available to the state for the
12 administration, enforcement, and collection of income taxes
13 shall be available and shall apply to the tax required to be
14 deducted and withheld under the provisions of 15-30-201
15 through 15-30-208."

16 Section 4. Section 15-30-224, MCA, is amended to read:

17 "15-30-224. Failure to withhold or pay -- penalties.
18 If any withholding agent knowingly fails to withhold or pay
19 to the department any sums required to be withheld and paid
20 by 15-30-221 through 15-30-228 or any order made pursuant to
21 15-30-221 through 15-30-228, the same additions to the
22 amount of such tax shall be imposed and added as those
23 specified in 15-30-321, ~~as amended~~, with respect to failure
24 to make a return of income or to pay any income tax. Any
25 individual, corporation, or partnership or any officer or

1 employee thereof who, with intent to evade any tax or any
 2 requirement of 15-30-221 through 15-30-228, or who, with
 3 like intent, files or supplies any false or fraudulent
 4 statement or information shall be liable to the same
 5 penalties as those imposed by 15-30-321, ~~as amended~~, with
 6 respect to filing or supplying any false or fraudulent
 7 statement or information with respect to income taxes."

8 Section 5. Section 15-30-321, MCA, is amended to read:

9 "15-30-321. Penalties for violation of chapter. (1) If
 10 any person, without ~~intent-to-evade~~ purposely or knowingly
 11 violating any tax requirement imposed by this chapter, fails
 12 to file a return of income on or before its due date
 13 (determined with regard to an extension of time granted for
 14 filing the return), there shall be imposed a penalty of 5%
 15 of any balance of tax unpaid with respect to such return as
 16 of its due date, but in no event shall the penalty for
 17 failure to file a return by its due date be less than \$5.
 18 The department may abate the penalty if the taxpayer
 19 establishes that the failure to file on time was due to
 20 reasonable cause and was not due to neglect on his part. If
 21 any person, without ~~intent-to-evade~~ purposely or knowingly
 22 violating any tax requirement imposed by this chapter, fails
 23 to pay any tax on or before its due date (determined with
 24 regard to an extension of time granted for the filing of a
 25 return), there shall be added to the tax a penalty of 10% of

1 said tax, but not less than \$5, and interest shall accrue on
 2 the tax at the rate of 9% per annum for the entire period it
 3 remains unpaid. The department may abate the penalty if the
 4 taxpayer establishes that the failure to pay on time was due
 5 to reasonable cause and was not due to neglect on his part.

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

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

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

7 (4) ~~the certificate of the department to the effect~~
 8 ~~that a tax has not been paid, that a return has not been~~
 9 ~~filed, or that information has not been supplied as required~~
 10 ~~by or under the provisions of this chapter shall be prima~~
 11 ~~facie evidence that such tax has not been paid, that such~~
 12 ~~return has not been filed, or that such information has not~~
 13 ~~been supplied. An individual, corporation, or partnership or~~
 14 ~~an officer or employee of a corporation or a member or~~
 15 ~~employee of a partnership who purposely or knowingly~~
 16 ~~attempts in any manner to evade or defeat a tax imposed by~~
 17 ~~this chapter or the payment thereof is, in addition to other~~
 18 ~~penalties provided by law, guilty of a felony and upon~~
 19 ~~conviction thereof is punishable by a fine not to exceed~~
 20 ~~\$5,000 or by imprisonment for a term not to exceed 5 years,~~
 21 ~~or by both such fine and imprisonment.~~

22 (5) The certificate of the department to the effect
 23 that a tax has not been paid, that a return has not been
 24 filed, or that information has not been supplied as required
 25 under the provisions of this chapter is prima facie evidence

1 ~~that the tax has not been paid, the return has not been~~
 2 ~~filed, or the information has not been supplied."~~

3 NEW SECTION. Section 6. Venue. A prosecution of an
 4 offense under 15-30-321 must be tried in the district court
 5 for Lewis and Clark County.

6 NEW SECTION. Section 7. Time limitations for
 7 prosecution. A prosecution for an offense under 15-30-321 is
 8 subject to the following periods of limitation:

9 (1) A prosecution for a misdemeanor must be commenced
 10 within 5 years after the offense is committed.

11 (2) A prosecution for a felony must be commenced
 12 within 10 years after the offense is committed. MUST BE
 13 COMMENCED WITHIN 5 YEARS AFTER THE OFFENSE IS COMMITTED.

14 Section 8. Effective date. This act is effective on
 15 passage and approval.

-End-

1 HOUSE BILL NO. 461

2 INTRODUCED BY BERTELSEN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS AND
6 PENALTIES RELATING TO THE COLLECTION OF THE INDIVIDUAL
7 INCOME TAX; ADOPTING 'PURPOSELY' AND 'KNOWINGLY' AS THE
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25 dividends as herein defined. "Stock dividends" means new

1 stock issued, for surplus or profits capitalized, to
2 shareholders in proportion to their previous holdings.

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

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

10 (5) "Information agents" include all individuals,
11 corporations, associations, and partnerships, in whatever
12 capacity acting, including lessees or mortgagors of real or
13 personal property, fiduciaries, employers, and all officers
14 and employees of the state or of any municipal corporation
15 or political subdivision of the state, having the control,
16 receipt, custody, disposal, or payment of interest, rents,
17 salaries, wages, premiums, annuities, compensations,
18 remunerations, emoluments, or other fixed or determinable
19 annual or periodical gains, profits, and income with respect
20 to which any person or fiduciary is taxable under this
21 chapter.

22 ~~(6) "Knowingly" is as defined in 45-2-101.~~

23 ~~(7) "Net income" means the adjusted gross income of~~
24 ~~a taxpayer less the deductions allowed by this chapter.~~

25 ~~(8) "Paid", for the purposes of the deductions and~~

1 credits under this chapter, means paid or accrued or paid or
 2 incurred, and the terms "paid or incurred" and "paid or
 3 accrued" shall be construed according to the method of
 4 accounting upon the basis of which the taxable income is
 5 computed under this chapter.

6 ~~(9)~~ "Purposefully" is as defined in 45-2-101.

7 ~~(8)~~(10) "Received", for the purpose of computation of
 8 taxable income under this chapter, means received or accrued
 9 and the term "received or accrued" shall be construed
 10 according to the method of accounting upon the basis of
 11 which the taxable income is computed under this chapter.

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

20 ~~(10)~~(12) "Taxable income" means the adjusted gross
 21 income of a taxpayer less the deductions and exemptions
 22 provided for in this chapter.

23 ~~(11)~~(13) "Taxable year" means the taxpayer's taxable
 24 year for federal income tax purposes.

25 ~~(12)~~(14) "Taxpayer" includes any person or fiduciary.

1 resident or nonresident, subject to a tax imposed by this
 2 chapter and does not include corporations."

3 Section 2. Section 15-30-145, MCA, is amended to read:

4 "15-30-145. Revision of return by department --
 5 examination of records and persons. (1) If, in the opinion
 6 of the department, any return of a taxpayer is in any
 7 essential respect incorrect, it may revise such return. If
 8 any taxpayer fails to make return as herein required, the
 9 department is authorized to make an estimate of the taxable
 10 income of such taxpayer from any information in its
 11 possession and to audit and state an account according to
 12 such return or the estimate so made by it for the taxes,
 13 penalties, and interest due the state from such taxpayer.
 14 Except in the case of ~~willfully~~ a person who purposefully or
 15 knowingly files a false or fraudulent return ~~with intent--to~~
 16 ~~evade--the-tax~~ violating the provisions of this chapter, the
 17 amount of tax due under any return shall be determined by
 18 the department within 5 years after the return was made and
 19 the department thereafter shall be barred from revising any
 20 such returns or recomputing the tax due thereon, and no
 21 proceeding in court for the collection of such tax shall be
 22 instituted after the expiration of said period,
 23 notwithstanding the provisions of 15-30-322. In the case of
 24 a ~~willfully~~ person who purposefully or knowingly files a false
 25 or fraudulent return violating the provisions of this

1 chapter, the amount of tax due may be determined at any time
 2 after the return is filed and the tax may be collected at
 3 any time after it becomes due and, where no return has been
 4 filed, the tax may be assessed at any time.

5 (2) The department, for the purpose of ascertaining
 6 the correctness of any return or for the purpose of making
 7 an estimate of taxable income of any person where
 8 information has been obtained, may also examine or cause to
 9 have examined by any agent or representative designated by
 10 it for that purpose any books, papers, or records of
 11 memoranda bearing upon the matters required to be included
 12 in the return and may require the attendance of the person
 13 rendering the return or any officer or employee of such
 14 person or the attendance of any person having knowledge in
 15 the premises and may take testimony and require proof
 16 material for its information, with power to administer oaths
 17 to such person or persons."

18 Section 3. Section 15-30-209, MCA, is amended to read:

19 "15-30-209. Violations by employer -- penalties and
 20 remedies. (1) If any employer shall fail to pay over to the
 21 state the tax deducted and withheld under the provisions of
 22 15-30-201 through 15-30-208 or shall fail to file or furnish
 23 any statement provided for within the time prescribed
 24 therefor, the same additions to the amount of such tax shall
 25 be imposed and added as those specified in 15-30-321, as

1 ~~amended~~, with respect to failure to make a return of income
 2 or to pay any income tax, and any individual, corporation,
 3 or partnership or any officer or employee thereof who, with
 4 intent to evade any tax or any requirement of 15-30-201
 5 through 15-30-208, or who, with like intent, files or
 6 supplies any false or fraudulent statement or information
 7 shall be liable to the same penalties as those imposed by
 8 15-30-321, ~~as amended~~, with respect to filing or supplying
 9 any false or fraudulent statement or information with
 10 respect to income taxes.

11 (2) All of the remedies available to the state for the
 12 administration, enforcement, and collection of income taxes
 13 shall be available and shall apply to the tax required to be
 14 deducted and withheld under the provisions of 15-30-201
 15 through 15-30-208."

16 Section 4. Section 15-30-224, MCA, is amended to read:

17 "15-30-224. Failure to withhold or pay -- penalties.
 18 If any withholding agent knowingly fails to withhold or pay
 19 to the department any sums required to be withheld and paid
 20 by 15-30-221 through 15-30-228 or any order made pursuant to
 21 15-30-221 through 15-30-228, the same additions to the
 22 amount of such tax shall be imposed and added as those
 23 specified in 15-30-321, ~~as amended~~, with respect to failure
 24 to make a return of income or to pay any income tax. Any
 25 individual, corporation, or partnership or any officer or

1 employee thereof who, with intent to evade any tax or any
2 requirement of 15-30-221 through 15-30-228, or who, with
3 like intent, files or supplies any false or fraudulent
4 statement or information shall be liable to the same
5 penalties as those imposed by 15-30-321, ~~as amended~~, with
6 respect to filing or supplying any false or fraudulent
7 statement or information with respect to income taxes."

8 Section 5. Section 15-30-321, MCA, is amended to read:

9 "15-30-321. Penalties for violation of chapter. (1) If
10 any person, without ~~intent to evade~~ purposely or knowingly
11 violating any tax requirement imposed by this chapter, fails
12 to file a return of income on or before its due date
13 (determined with regard to an extension of time granted for
14 filing the return), there shall be imposed a penalty of 5%
15 of any balance of tax unpaid with respect to such return as
16 of its due date, but in no event shall the penalty for
17 failure to file a return by its due date be less than \$5.
18 The department may abate the penalty if the taxpayer
19 establishes that the failure to file on time was due to
20 reasonable cause and was not due to neglect on his part. If
21 any person, without ~~intent to evade~~ purposely or knowingly
22 violating any tax requirement imposed by this chapter, fails
23 to pay any tax on or before its due date (determined with
24 regard to an extension of time granted for the filing of a
25 return), there shall be added to the tax a penalty of 10% of

1 said tax, but not less than \$5, and interest shall accrue on
2 the tax at the rate of 9% per annum for the entire period it
3 remains unpaid. The department may abate the penalty if the
4 taxpayer establishes that the failure to pay on time was due
5 to reasonable cause and was not due to neglect on his part.

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

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

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

7 (4) ~~The certificate of the department to the effect~~
8 ~~that a tax has not been paid, that a return has not been~~
9 ~~filed, or that information has not been supplied as required~~
10 ~~by or under the provisions of this chapter shall be prima~~
11 ~~facie evidence that such tax has not been paid, that such~~
12 ~~return has not been filed, or that such information has not~~
13 ~~been supplied. An individual, corporation, or partnership or~~
14 ~~an officer or employee of a corporation or a member or~~
15 ~~employee of a partnership who purposely or knowingly~~
16 ~~attempts in any manner to evade or defeat a tax imposed by~~
17 ~~this chapter or the payment thereof is, in addition to other~~
18 ~~penalties provided by law, guilty of a felony and upon~~
19 ~~conviction thereof is punishable by a fine not to exceed~~
20 ~~\$5,000 or by imprisonment for a term not to exceed 5 years,~~
21 ~~or by both such fine and imprisonment.~~

22 (5) The certificate of the department to the effect
23 that a tax has not been paid, that a return has not been
24 filed, or that information has not been supplied as required
25 under the provisions of this chapter is prima facie evidence

1 ~~that the tax has not been paid, the return has not been~~
2 ~~filed, or the information has not been supplied."~~

3 NEW SECTION. Section 6. Venue. A prosecution of an
4 offense under 15-30-321 must be tried in the district court
5 for Lewis and Clark County.

6 NEW SECTION. Section 7. Time limitations for
7 prosecution. A prosecution for an offense under 15-30-321 is
8 subject to the following periods of limitation:

9 (1) ~~A prosecution for a misdemeanor must be commenced~~
10 ~~within 5 years after the offense is committed.~~

11 (2) ~~A prosecution for a felony must be commenced~~
12 ~~within 10 years after the offense is committed. MUST BE~~
13 COMMENCED WITHIN 5 YEARS AFTER THE OFFENSE IS COMMITTED.

14 Section 8. Effective date. This act is effective on
15 passage and approval.

-End-

1 HOUSE BILL NO. 461
 2 INTRODUCED BY BERTELSEN
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS AND
 6 PENALTIES RELATING TO THE COLLECTION OF THE INDIVIDUAL
 7 INCOME TAX; ADOPTING "PURPOSELY" AND "KNOWINGLY" AS THE
 8 REQUIRED MENTAL STATE; ~~PROVIDING THAT AN ATTEMPT TO EVADE~~
 9 ~~THE TAX IS A FELONY~~; SETTING VENUE FOR ALL PROSECUTIONS ~~IN~~
 10 ~~LEWIS AND CLARK COUNTY~~; PROVIDING FOR A PERIOD OF LIMITATION
 11 FOR PROSECUTION; AMENDING SECTIONS 15-30-101, 15-30-145,
 12 ~~15-30-209~~, ~~15-30-224~~, AND 15-30-321, MCA; AND PROVIDING AN
 13 IMMEDIATE EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 15-30-101, MCA, is amended to read:
17 "15-30-101. Definitions. For the purpose of this
18 chapter, unless otherwise required by the context, the
19 following definitions apply:

- 20 (1) "Department" means the department of revenue.
- 21 (2) "Dividend" means any distribution made by a
22 corporation out of its earnings or profits to its
23 shareholders or members, whether in cash or in other
24 property or in stock of the corporation, other than stock
25 dividends as herein defined. "Stock dividends" means new

1 stock issued, for surplus or profits capitalized, to
2 shareholders in proportion to their previous holdings.

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

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

10 (5) "Information agents" include all individuals,
11 corporations, associations, and partnerships, in whatever
12 capacity acting, including lessees or mortgagors of real or
13 personal property, fiduciaries, employers, and all officers
14 and employees of the state or of any municipal corporation
15 or political subdivision of the state, having the control,
16 receipt, custody, disposal, or payment of interest, rent,
17 salaries, wages, premiums, annuities, compensations,
18 remunerations, emoluments, or other fixed or determinable
19 annual or periodical gains, profits, and income with respect
20 to which any person or fiduciary is taxable under this
21 chapter.

22 ~~(6) "Knowingly" is as defined in 45-2-101.~~

23 ~~(6)(1) "Net income" means the adjusted gross income of~~
24 ~~a taxpayer less the deductions allowed by this chapter.~~

25 ~~(7)(1) "Paid", for the purposes of the deductions and~~

1 credits under this chapter, means paid or accrued or paid or
2 incurred, and the terms "paid or incurred" and "paid or
3 accrued" shall be construed according to the method of
4 accounting upon the basis of which the taxable income is
5 computed under this chapter.

6 ~~191~~ "Purposely" is as defined in 45-2-101.

7 ~~101~~ "Received", for the purpose of computation of
8 taxable income under this chapter, means received or accrued
9 and the term "received or accrued" shall be construed
10 according to the method of accounting upon the basis of
11 which the taxable income is computed under this chapter.

12 ~~111~~ "Resident" applies only to natural persons and
13 includes, for the purpose of determining liability to the
14 tax imposed by this chapter with reference to the income of
15 any taxable year, any person domiciled in the state of
16 Montana and any other person who maintains a permanent place
17 of abode within the state even though temporarily absent
18 from the state and has not established a residence
19 elsewhere.

20 ~~121~~ "Taxable income" means the adjusted gross
21 income of a taxpayer less the deductions and exemptions
22 provided for in this chapter.

23 ~~131~~ "Taxable year" means the taxpayer's taxable
24 year for federal income tax purposes.

25 ~~141~~ "Taxpayer" includes any person or fiduciary,

1 resident or nonresident, subject to a tax imposed by this
2 chapter and does not include corporations."

3 Section 2. Section 15-30-145, MCA, is amended to read:

4 "15-30-145. Revision of return by department --
5 examination of records and persons. (1) If, in the opinion
6 of the department, any return of a taxpayer is in any
7 essential respect incorrect, it may revise such return. If
8 any taxpayer fails to make return as herein required, the
9 department is authorized to make an estimate of the taxable
10 income of such taxpayer from any information in its
11 possession and to audit and state an account according to
12 such return or the estimate so made by it for the taxes,
13 penalties, and interest due the state from such taxpayer.
14 Except in the case of ~~with intent to evade the tax~~ with intent to
15 evade the tax, purposely or knowingly files a false or
16 fraudulent return ~~with intent to evade the tax violating the~~
17 provisions of this chapter, the amount of tax due under any
18 return shall be determined by the department within 5 years
19 after the return was made and the department thereafter
20 shall be barred from revising any such returns or
21 recomputing the tax due thereon, and no proceeding in court
22 for the collection of such tax shall be instituted after the
23 expiration of said period, notwithstanding the provisions of
24 15-30-322. In the case of a ~~with intent to evade the tax~~ with
25 intent to evade the tax, purposely or knowingly files a

1 false or fraudulent return violating the provisions of this
 2 chapter, the amount of tax due may be determined at any time
 3 after the return is filed and the tax may be collected at
 4 any time after it becomes due and, where no return has been
 5 filed, the tax may be assessed at any time.

6 (2) The department, for the purpose of ascertaining
 7 the correctness of any return or for the purpose of making
 8 an estimate of taxable income of any person where
 9 information has been obtained, may also examine or cause to
 10 have examined by any agent or representative designated by
 11 it for that purpose any books, papers, or records of
 12 memoranda bearing upon the matters required to be included
 13 in the return and may require the attendance of the person
 14 rendering the return or any officer or employee of such
 15 person or the attendance of any person having knowledge in
 16 the premises and may take testimony and require proof
 17 material for its information, with power to administer oaths
 18 to such person or persons."

19 Section 3~~v~~ Section 15-30-289~~v~~ MCA~~v~~ is amended to read
 20 "15-30-289~~v~~ Violations by employer penalties and
 21 remedies--(1) If any employer shall fail to pay over to the
 22 state the tax deducted and withheld under the provisions of
 23 15-30-281 through 15-30-288 or shall fail to file or furnish
 24 any statement provided for within the time prescribed
 25 therefore, the same additions to the amount of such tax shall

1 be imposed and added as those specified in 15-30-321~~v~~ as
 2 amended~~v~~ with respect to failure to make a return of income
 3 or to pay any income tax, and any individual, corporation
 4 or partnership or any officer or employee thereof who with
 5 intent to evade any tax or any requirement of 15-30-281
 6 through 15-30-288~~v~~ or who with like intent files or
 7 supplies any false or fraudulent statement or information
 8 shall be liable to the same penalties as those imposed by
 9 15-30-321~~v~~ as amended~~v~~ with respect to filing or supplying
 10 any false or fraudulent statement or information with
 11 respect to income taxes.

12 (2) All of the remedies available to the state for the
 13 administration, enforcement, and collection of income taxes
 14 shall be available and shall apply to the tax required to be
 15 deducted and withheld under the provisions of 15-30-281
 16 through 15-30-288~~v~~."

17 Section 4~~v~~ Section 15-30-224~~v~~ MCA~~v~~ is amended to read
 18 "15-30-224~~v~~ Failure to withhold or pay penalties
 19 If any withholding agent knowingly fails to withhold or pay
 20 to the department any sums required to be withheld and paid
 21 by 15-30-221 through 15-30-228 or any order made pursuant to
 22 15-30-221 through 15-30-228~~v~~ the same additions to the
 23 amount of such tax shall be imposed and added as those
 24 specified in 15-30-321~~v~~ as amended~~v~~ with respect to failure
 25 to make a return of income or to pay any income tax. Any

1 individual, corporation, or partnership or any officer or
 2 employee thereof who, with intent to evade any tax or any
 3 requirement of 15-30-221 through 15-30-228, or who, with
 4 like intent, files or supplies any false or fraudulent
 5 statement or information shall be liable to the same
 6 penalties as those imposed by 15-30-321, as amended, with
 7 respect to filing or supplying any false or fraudulent
 8 statement or information with respect to income taxes."

9 Section 3. Section 15-30-321, MCA, is amended to read:

10 "15-30-321. Penalties for violation of chapter. (1) If
 11 any person, without intent to evade purposely or knowingly
 12 violating any tax requirement imposed by this chapter, fails
 13 to file a return of income on or before its due date
 14 (determined with regard to an extension of time granted for
 15 filing the return), there shall be imposed a penalty of 5%
 16 of any balance of tax unpaid with respect to such return as
 17 of its due date, but in no event shall the penalty for
 18 failure to file a return by its due date be less than \$5.
 19 The department may abate the penalty if the taxpayer
 20 establishes that the failure to file on time was due to
 21 reasonable cause and was not due to neglect on his part. If
 22 any person, without intent to evade purposely or knowingly
 23 violating any tax requirement imposed by this chapter, fails
 24 to pay any tax on or before its due date (determined with
 25 regard to an extension of time granted for the filing of a

1 return), there shall be added to the tax a penalty of 10% of
 2 said tax, but not less than \$5, and interest shall accrue on
 3 the tax at the rate of 9% per annum for the entire period it
 4 remains unpaid. The department may abate the penalty if the
 5 taxpayer establishes that the failure to pay on time was due
 6 to reasonable cause and was not due to neglect on his part.

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

16 (3) Any individual, corporation, or partnership or any
 17 officer or employee of any corporation or member or employee
 18 of any partnership who, with intent to evade any tax or any
 19 requirement of this chapter or any lawful requirement of the
 20 department thereunder, WITH INTENT TO EVADE ANY TAX OR ANY
 21 REQUIREMENT OF THIS CHAPTER OR ANY LAWFUL REQUIREMENT OF THE
 22 DEPARTMENT THEREUNDER, purposely or knowingly, fails to pay
 23 the tax or to make, render, OR sign or verify any return or
 24 to supply any information within the time required by or
 25 under the provisions of this chapter or who, with like

1 ~~intently makes, renders, signs, or verifies any false or~~
 2 ~~fraudulent return or statement or supplies any false or~~
 3 ~~fraudulent information OR WHO, WITH LIKE INTENT, PURPOSELY~~
 4 ~~OR KNOWINGLY MAKES, RENDERS, OR SIGNS ANY FALSE OR~~
 5 ~~FRAUDULENT RETURN OR STATEMENT OR SUPPLIES ANY FALSE OR~~
 6 ~~FRAUDULENT INFORMATION shall be liable to a penalty of not~~
 7 ~~more than \$1,000, to be recovered by the attorney general in~~
 8 ~~the name of the state by action in any court of competent~~
 9 ~~jurisdiction, and shall also be guilty of a misdemeanor and~~
 10 ~~shall upon conviction be fined not to exceed \$1,000 or be~~
 11 ~~imprisoned in the county jail not to exceed 1 year, or both,~~
 12 ~~at the discretion of the court.~~

13 (4) ~~The certificate of the department to the effect~~
 14 ~~that a tax has not been paid, that a return has not been~~
 15 ~~filed, or that information has not been supplied as required~~
 16 ~~by or under the provisions of this chapter shall be prima~~
 17 ~~facie evidence that such tax has not been paid, that such~~
 18 ~~return has not been filed, or that such information has not~~
 19 ~~been supplied. An individual, corporation, or partnership, or~~
 20 ~~an officer or employee of a corporation, or a member or~~
 21 ~~employee of a partnership who purposely or knowingly~~
 22 ~~attempts in any manner to evade or defeat a tax imposed by~~
 23 ~~this chapter or the payment thereof, in addition to other~~
 24 ~~penalties provided by law, is guilty of a felony, and upon~~
 25 ~~conviction thereof is punishable by a fine not to exceed~~

1 ~~\$5,000 or by imprisonment for a term not to exceed 5 years,~~
 2 ~~or by both such fine and imprisonment.~~

3 ~~(5) The certificate of~~ WITH RESPECT TO THE IMPOSITION
 4 ~~OF A CIVIL PENALTY, EVIDENCE PRODUCED BY~~ the department to
 5 the effect that a tax has not been paid, that a return has
 6 not been filed, or that information has not been supplied as
 7 required under the provisions of this chapter is prima facie
 8 evidence that the tax has not been paid, the return has not
 9 been filed, or the information has not been supplied."

10 ~~NEW SECTION. Section 4. Venue. A VENUE FOR A~~
 11 ~~prosecution of an offense under 15-30-321 must be tried IS~~
 12 ~~IN THE DISTRICT COURT OF THE COUNTY OF THE DEFENDANT'S~~
 13 ~~RESIDENCE. IF THE DEFENDANT IS NOT A RESIDENT OF MONTANA,~~
 14 ~~VENUE IS~~ in the district court for Lewis and Clark County.

15 ~~NEW SECTION. Section 5. Time limitations for~~
 16 ~~prosecution. A prosecution for an offense under 15-30-321 is~~
 17 ~~subject to the following periods of limitation:~~

18 ~~(1) A prosecution for a misdemeanor must be commenced~~
 19 ~~within 5 years after the offense is committed.~~

20 ~~(2) A prosecution for a felony must be commenced~~
 21 ~~within 10 years after the offense is committed. MUST BE~~
 22 ~~COMMENCED WITHIN 5 YEARS AFTER THE OFFENSE IS COMMITTED.~~

23 Section 6. Effective date -- ~~APPLICABILITY~~. This act
 24 is effective on passage and approval ~~BUT HAS NO EFFECT ON~~
 25 ~~PROSECUTIONS COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS~~
~~ACT.~~

1 HOUSE BILL NO. 461

2 INTRODUCED BY BERTELSEN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS AND
6 PENALTIES RELATING TO THE COLLECTION OF THE INDIVIDUAL
7 INCOME TAX; ADOPTING 'PURPOSELY' AND 'KNOWINGLY' AS THE
8 REQUIRED MENTAL STATE; ~~PROVIDING THAT AN ATTEMPT TO EVADE~~
9 ~~THE TAX IS A FELONY; SETTING VENUE FOR ALL PROSECUTIONS IN~~
10 ~~LEWIS AND CLARK COUNTY;~~ PROVIDING FOR A PERIOD OF LIMITATION
11 FOR PROSECUTION; AMENDING SECTIONS 15-30-101, 15-30-145,
12 ~~15-30-209, 15-30-224,~~ AND 15-30-321, MCA; AND PROVIDING AN
13 IMMEDIATE EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

17 "15-30-101. Definitions. For the purpose of this
18 chapter, unless otherwise required by the context, the
19 following definitions apply:

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

21 (2) "Dividend" means any distribution made by a
22 corporation out of its earnings or profits to its
23 shareholders or members, whether in cash or in other
24 property or in stock of the corporation, other than stock
25 dividends as herein defined. "Stock dividends" means new

1 stock issued, for surplus or profits capitalized, to
2 shareholders in proportion to their previous holdings.

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

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

10 (5) "Information agents" include all individuals,
11 corporations, associations, and partnerships, in whatever
12 capacity acting, including lessees or mortgagors of real or
13 personal property, fiduciaries, employers, and all officers
14 and employees of the state or of any municipal corporation
15 or political subdivision of the state, having the control,
16 receipt, custody, disposal, or payment of interest, rent,
17 salaries, wages, premiums, annuities, compensations,
18 remunerations, emoluments, or other fixed or determinable
19 annual or periodical gains, profits, and income with respect
20 to which any person or fiduciary is taxable under this
21 chapter.

22 ~~(6) "Knowingly" is as defined in 45-2-101.~~

23 ~~(6)(7)~~ "Net income" means the adjusted gross income of
24 a taxpayer less the deductions allowed by this chapter.

25 ~~(7)(8)~~ "Paid", for the purposes of the deductions and

1 credits under this chapter, means paid or accrued or paid or
 2 incurred, and the terms "paid or incurred" and "paid or
 3 accrued" shall be construed according to the method of
 4 accounting upon the basis of which the taxable income is
 5 computed under this chapter.

6 ~~(9)~~ "Purposely" is as defined in 45-2-101.

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

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

20 ~~(12)~~ "Taxable income" means the adjusted gross
 21 income of a taxpayer less the deductions and exemptions
 22 provided for in this chapter.

23 ~~(13)~~ "Taxable year" means the taxpayer's taxable
 24 year for federal income tax purposes.

25 ~~(14)~~ "Taxpayer" includes any person or fiduciary,

1 resident or nonresident, subject to a tax imposed by this
 2 chapter and does not include corporations."

3 Section 2. Section 15-30-145, MCA, is amended to read:

4 "15-30-145. Revision of return by department --
 5 examination of records and persons. (1) If, in the opinion
 6 of the department, any return of a taxpayer is in any
 7 essential respect incorrect, it may revise such return. If
 8 any taxpayer fails to make return as herein required, the
 9 department is authorized to make an estimate of the taxable
 10 income of such taxpayer from any information in its
 11 possession and to audit and state an account according to
 12 such return or the estimate so made by it for the taxes,
 13 penalties, and interest due the state from such taxpayer.
 14 Except in the case of ~~with intent~~ a person who, WITH INTENT TO
 15 EVADE THE TAX, purposely or knowingly files a false or
 16 fraudulent return with intent to evade the tax violating the
 17 provisions of this chapter, the amount of tax due under any
 18 return shall be determined by the department within 5 years
 19 after the return was made and the department thereafter
 20 shall be barred from revising any such returns or
 21 recomputing the tax due thereon, and no proceeding in court
 22 for the collection of such tax shall be instituted after the
 23 expiration of said period, notwithstanding the provisions of
 24 15-30-322. In the case of a ~~with intent~~ person who, WITH
 25 INTENT TO EVADE THE TAX, purposely or knowingly files a

March 30, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 461, third reading bill, be amended as follows:

1. Title, lines 5 and 6.

Strike: "AND PENALTIES"

2. Title, lines 8 and 9.

Strike: "PROVIDING THAT AN ATTEMPT TO EVADE THE TAX IS A FELONY;"

3. Title, lines 9 and 10.

Strike: "IN LEWIS AND CLARK COUNTY"

4. Title, line 12.

Strike: "15-30-209, 15-30-224,"

5. Page 4, line 14.

Following: "who"

Insert: ", with intent to evade the tax,"

6. Page 4, line 24.

Following: "who"

Insert: ", with intent to evade the tax,"

7. Page 5, line 18 through line 7 on page 7.

Strike: sections 3 and 4 in their entirety

Re-number: subsequent sections.

8. Page 8, line 17.

Following: "who"

Insert: ", with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder,"

9. Page 8, line 20.

Following: "render,"

Insert: "or"

Following: "sign"

Strike: ", or verify"

10. Page 8, line 22.

Following: "chapter"

Insert: "or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information"

11. Page 9, lines 13 through 22.

Strike: line 13 through "(5)" on line 22

12. Page 9, line 22.

Following: "(5)"

Strike: "The certificate of"

Insert: "With respect to the imposition of a civil penalty, evidence produced by"

13. Page 10, line 3.

Following: "Venue."

Strike: "A"

Insert: "Venue for a"

14. Page 10, lines 3 and 4.

Strike: "of an offense"

15. Page 10, line 4.

Following: "15-30-321"

Strike: "must be tried"

Insert: "is in the district court of the county of the defendant's residence. If the defendant is not a resident of Montana, venue is"

16. Page 10, line 14.

Following: "date"

Insert: "-- applicability"

17. Page 10, line 15.

Following: "approval"

Insert: "but has no effect on prosecutions commenced prior to the effective date of this act"