

SENATE BILL 249

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Taxation.
January 25, 1979	Fiscal Note requested.
February 2, 1979	Fiscal note returned.
March 16, 1979	Committee recommend bill, do not pass. On motion, Senate reconsider its action taken on Adverse Committee Report and order printed and placed on second reading. Motion failed.

1 *Senate* BILL NO. *249*
 2 INTRODUCED BY *Rep. Daniel Anderson*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE EXISTING
 5 INDIVIDUAL INCOME TAX AND IMPOSING A STATE INCOME TAX BASED
 6 ON A PERCENTAGE OF THE FEDERAL INCOME TAX PAYABLE ON MONTANA
 7 TAXABLE INCOME; AMENDING SECTIONS 7-34-2416, 13-37-303,
 8 15-30-101, 15-30-162, 15-30-241, 15-30-303, 15-30-323,
 9 15-31-202, 53-2-404, AND 67-11-303, MCA; REPEALING SECTIONS
 10 15-30-103 THROUGH 15-30-105, 15-30-111 THROUGH 15-30-116,
 11 15-30-121 THROUGH 15-30-124, 15-30-131, 15-30-132,
 12 15-30-134, 15-30-135, 15-30-142, AND 15-30-143, MCA; AND
 13 PROVIDING AN 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)(2) "Fiduciary" means a guardian, trustee,~~
 4 ~~executor, administrator, receiver, conservator, or any~~
 5 ~~person, whether individual or corporate, acting in any~~
 6 ~~fiduciary capacity for any person, trust, or estate.~~

7 ~~(4)(3) "Foreign country" or "foreign government" means~~
 8 ~~any jurisdiction other than the one embraced within the~~
 9 ~~United States, its territories and possessions.~~

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

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

25 ~~(6) "Internal revenue code" or "IRC" means the~~

1 Internal Revenue Code of 1954, as amended.

2 ~~{6}--"Net--income"--means--the--adjusted--gross--income--of--a~~
3 ~~taxpayer--less--the--deductions--allowed--by--this--chapter.~~

4 ~~{7}--"Paid"--for--the--purposes--of--the--deductions--and~~
5 ~~credits--under--this--chapter--means--paid--or--accrued--or--paid--or~~
6 ~~incurred--and--the--terms--"paid--or--incurred"--and--"paid--or~~
7 ~~accrued"--shall--be--construed--according--to--the--method--of~~
8 ~~accounting--upon--the--basis--of--which--the--taxable--income--is~~
9 ~~computed--under--this--chapter.~~

10 ~~{8}--"Received"--for--the--purpose--of--computation--of~~
11 ~~taxable--income--under--this--chapter--means--received--or--accrued~~
12 ~~and--the--term--"received--or--accrued"--shall--be--construed~~
13 ~~according--to--the--method--of--accounting--upon--the--basis--of~~
14 ~~which--the--taxable--income--is--computed--under--this--chapter.~~

15 {7} "Person" means an individual, a trust or estate,
16 or a partnership.

17 ~~{9}{8} "Resident" applies only to natural persons and~~
18 ~~includes, for the purpose of determining liability to the~~
19 ~~tax imposed by this chapter with reference to the income of~~
20 ~~any taxable year, any person domiciled in the state of~~
21 ~~Montana and any other person who maintains a permanent place~~
22 ~~of abode within the state even though temporarily absent~~
23 ~~from the state and has not established a residence~~
24 ~~elsewhere.~~

25 ~~{10}--"Taxable--income"--means--the--adjusted--gross--income~~

1 ~~of--a--taxpayer--less--the--deductions--and--exemptions--provided~~
2 ~~for--in--this--chapter.~~

3 ~~{11}{9} "Taxable year" means the taxpayer's taxable~~
4 ~~year for federal income tax purposes.~~

5 ~~{12}{10} "Taxpayer" includes any person or fiduciary,~~
6 ~~resident or nonresident, subject to a tax imposed by this~~
7 ~~chapter and does not include corporations."~~

8 NEW SECTION. Section 2. State income tax as
9 percentage of federal tax. (1) A state income tax is imposed
10 and shall be paid and collected for each taxable year upon:

11 (a) the federal adjusted taxable income derived from
12 sources within and without Montana of every resident and
13 fiduciary required to make a return and pay federal income
14 taxes under the IRC; and

15 (b) the federal adjusted taxable income derived from
16 sources within Montana of every nonresident and fiduciary
17 required to make a return and pay federal income taxes under
18 the IRC.

19 (2) "Federal adjusted taxable income" means the
20 taxpayer's taxable income as determined for federal income
21 taxes under the provisions of the IRC with the following
22 additional deductions:

23 (a) all benefits received under the federal employees'
24 retirement act not in excess of \$3,600;

25 (b) all benefits paid under the teachers' retirement

1 law which are specified as exempt from taxation by 19-4-706;

2 (c) all benefits paid under The Public Employees'
3 Retirement System Act which are specified as exempt from
4 taxation by 19-3-105;

5 (d) all benefits paid under the highway patrol
6 retirement law which are specified as exempt from taxation
7 by 19-6-705;

8 (e) Montana income tax refunds or credits;

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

12 (g) interest received on obligations of any state,
13 territory, or county, municipality, district, or other
14 political subdivisions; and

15 (h) an expenditure for an energy conservation purpose,
16 as provided in Title 15, chapter 32, part 1.

17 (3) A shareholder of a corporation for which the
18 election provided for under subchapter S of the Internal
19 Revenue Code of 1954 is in effect but for which the election
20 provided under 15-31-202 is not in effect may deduct from
21 his federal taxable income any part of the corporation's
22 undistributed taxable income, net operating loss, capital or
23 other gains, and profits or losses required to be included
24 in the shareholder's federal taxable income by reason of the
25 election under subchapter S. However, to the shareholder's

1 federal taxable income must be added distributions received
2 from the corporation to the extent the distributions would
3 be treated as taxable dividends if the subchapter S election
4 were not in effect.

5 (4) Nonresidents taking any of the deductions listed
6 in subsection (2) may claim only that percentage of itemized
7 deductions and the personal exemption deduction allowed from
8 federal adjusted gross income that the percentage of
9 adjusted gross income earned from sources within Montana
10 bears to the taxpayer's federal adjusted gross income.

11 (5) If a taxpayer's federal adjusted taxable income is
12 adjusted for state income tax purposes to include any of the
13 additional deductions or modifications of subsections (2)
14 through (4), the taxpayer's federal income tax liability
15 must be recomputed on this adjusted figure to allow the
16 state income tax rate to be applied against it.

17 NEW SECTION. Section 3. Rate of tax — variations.

18 (1) The rate of state income tax is 27 1/2% of a taxpayer's
19 federal income tax liability. If the taxpayer's federal
20 adjusted taxable income includes any of the additional
21 deductions or modifications of [subsections (2) through (4)
22 of section 2], the taxpayer's federal income tax liability
23 must be recomputed for state income tax purposes and the
24 state income tax rate applied against the recomputed
25 liability.

1 (2) (a) The department may publish a rule modifying
2 the rate of tax if:

3 (i) the legislature is not in session; and

4 (ii) changes in the IRC are made that would
5 substantially reduce the revenue produced by the state
6 income tax during the current biennium.

7 (b) The department may, if necessary:

8 (i) make the modified percentage retroactive to the
9 previous January 1; and

10 (ii) publish new withholding tables and estimated tax
11 return requirements.

12 (c) The modified percentage must be computed so that
13 the estimated revenue produced by the state income tax under
14 the modified percentage during the biennium will not exceed
15 the legislative appropriation from income tax funds made for
16 that biennium by more than 5%.

17 NEW SECTION. Section 4. Nonresidents -- determination
18 of in-state income. A nonresident's income from sources
19 within Montana includes income derived from all property
20 owned in the state and from every business, trade,
21 profession, or occupation carried on in this state. It does
22 not include income from annuities, interest on bank
23 deposits, interest on notes, bonds, or other
24 interest-bearing obligations, or dividends on stock of
25 corporations, except to the extent to which this income is a

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

8 NEW SECTION. Section 5. Tax return -- contents. (1)
9 Every individual or fiduciary mentioned in [subsection (1)
10 of section 2] shall file a return with the department
11 showing:

12 (a) the amount of tax due and payable as reported on
13 the taxpayer's federal income tax return or as recomputed as
14 required in [subsection (1) of section 3];

15 (b) the amount of tax due under [section 3], less
16 credits claimed against the tax;

17 (c) any other information necessary for administration
18 of the state income tax, as may be prescribed by the
19 department.

20 (2) If a taxpayer is unable to make his own return, a
21 duly authorized agent, guardian, or other person charged
22 with the care of the person or property of the taxpayer
23 shall file the return.

24 NEW SECTION. Section 6. Payment of the state income
25 tax -- refunds -- interest. (1) All taxpayers required to

1 file a state income tax return shall compute the amount of
 2 state income tax due and shall, at the time the return is
 3 filed, pay to the department any balance of tax in excess of
 4 \$1 remaining unpaid after crediting the amount withheld as
 5 provided under 15-30-202 or any payment of estimated tax as
 6 provided under 15-30-242.

7 (2) If the withheld or the estimated tax paid exceeds
 8 the state income tax due by more than \$1, the department
 9 shall refund the excess to the taxpayer within 30 days after
 10 receiving the return.

11 (3) Except as provided in 15-30-321, interest at a
 12 rate of 9% a year shall be added to any state income tax, or
 13 portion of tax, not paid from the due date until paid,
 14 whether the taxpayer has been granted a filing extension or
 15 not.

16 (4) If a joint return is made by husband and wife, the
 17 liability with respect to the tax is joint and several.

18 Section 7. Section 7-34-2416, MCA, is amended to read:

19 "7-34-2416. Tax-exempt status of bonds. Bonds issued
 20 by a county pursuant to the provisions of 7-34-2411 through
 21 7-34-2418 are declared to be issued for an essential public
 22 and governmental purpose by a political subdivision within
 23 the meaning of ~~15-30-111(2)(e)~~ [subsection (2)(g) of section
 24 2]."

25 Section 8. Section 13-37-303, MCA, is amended to read:

1 "13-37-303. Designation by taxpayer. (1) An individual
 2 whose income tax liability under ~~Title 15, Chapter 30~~
 3 [section 7] for a taxable year is \$1 or more may designate
 4 \$1 be paid over to the fund. In the case of a joint return
 5 ~~as provided in 15-30-142,~~ of a husband and wife having an
 6 income tax liability of \$2 or more, each spouse may
 7 designate \$1 be paid to the fund.

8 (2) The department shall provide a place on the face
 9 of the blank form of return, provided for in 15-30-144,
 10 where an individual may make the designation provided for in
 11 subsection (1). The form shall adequately explain the
 12 individual's option to designate \$1 to the fund and that a
 13 designation does not increase tax liability."

14 Section 9. Section 15-30-162, MCA, is amended to read:

15 "15-30-162. Investment credit. There is allowed as a
 16 credit against the taxes imposed by ~~15-30-103 and 15-30-104~~
 17 [sections 2 and 3] a percentage of the investment in certain
 18 depreciable property equal to one-fifth the percentage of
 19 investment in such property allowed under section 38 of the
 20 Internal Revenue Code of 1954, as amended, or as section 38
 21 may be renumbered or amended."

22 Section 10. Section 15-30-241, MCA, is amended to
 23 read:

24 "15-30-241. Declaration of estimated tax. (1) Every
 25 individual ~~except farmers, ranchers, or stockmen~~ shall, at

1 the time prescribed in subsection (3) of this section, make
 2 a declaration of his estimated tax for the taxable year if
 3 ~~his net income from sources other than wages, salaries,~~
 4 ~~bonuses, or other emoluments can reasonably be expected to~~
 5 ~~equal or exceed his net income from wages, salaries, bonuses~~
 6 ~~or other emoluments, which are subject to withholding he is~~
 7 required to file a declaration of his estimated tax under
 8 the provisions of the IRC.

9 (2) In the declaration required under subsection (1)
 10 of this section, the individual shall state:

11 (a) the amount which he estimates as the amount of tax
 12 under ~~15-30-103~~ [section 3] for the taxable year;

13 (b) the amount which he estimates will be withheld
 14 from wages paid by his employer if said individual is an
 15 employee;

16 (c) the excess of the amount estimated under
 17 subsection (2)(a) over the amount estimated under subsection
 18 (2)(b), which excess for purposes of this section shall be
 19 considered the estimated tax for the taxable year;

20 (d) such other information as may be prescribed in
 21 rules promulgated by the department.

22 (3) The declaration required under subsection (1) of
 23 this section shall be filed with the department on or before
 24 April 15 of the taxable year, except that if the
 25 requirements of subsection (1) of this section are first

1 met:

2 (a) after April 1 and before October 1 of the taxable
 3 year, the declaration shall be filed on or before October 15
 4 of the taxable year;

5 (b) after October 1 of the taxable year, the
 6 declaration shall be filed on or before February 15 of the
 7 succeeding taxable year.

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

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

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

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

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

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

10 (8) Any individual who fails to file a declaration of
11 estimated tax as required by this section is not subject to
12 the penalties set forth in 15-30-321."

13 Section 11. Section 15-30-303, MCA, is amended to
14 read:

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

1 or under this chapter.

2 (2) The officers charged with the custody of such
3 reports and returns shall not be required to produce any of
4 them or evidence of anything contained in them in any action
5 or proceeding in any court, except in any action or
6 proceeding to which the department is a party under the
7 provisions of this chapter or any other taxing act or on
8 behalf of any party to any action or proceedings under the
9 provisions of this chapter or such other act when the
10 reports or facts shown thereby are directly involved in such
11 action or proceedings, in either of which events the court
12 may require the production of and may admit in evidence so
13 much of said reports or of the facts shown thereby as are
14 pertinent to the action or proceedings and no more.

15 (3) Nothing herein shall be construed to prohibit:

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

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

22 (c) the inspection by the attorney general or other
23 legal representative of the state of the report or return of
24 any taxpayer who shall bring action to set aside or review
25 the tax based thereon or against whom an action or

1 proceeding has been instituted in accordance with the
2 provisions of 15-30-311 and 15-30-322.

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

6 (5) Any offense against subsections (1) through (4) of
7 this section shall be punished by a fine not exceeding
8 \$1,000 or by imprisonment in the county jail not exceeding 1
9 year, or both, at the discretion of the court, and if the
10 offender be an officer or employee of the state, he shall be
11 dismissed from office and be incapable of holding any public
12 office in this state for a period of 1 year thereafter.

13 (6) Notwithstanding the provisions of this section,
14 the department may permit the commissioner of internal
15 revenue of the United States or the proper officer of any
16 state imposing a tax upon the incomes of individuals or the
17 authorized representative of either such officer to inspect
18 the return of income of any individual or may furnish to
19 such officer or his authorized representative an abstract of
20 the return of income of any individual or supply him with
21 information concerning any item of income contained in any
22 return or disclosed by the report of any investigation of
23 the income or return of income of any individual, but such
24 permission shall be granted or such information furnished to
25 such officer or his representative only if the statutes of

1 the United States or of such other state, as the case may
2 be, grant substantially similar privileges to the proper
3 officer of this state charged with the administration of
4 this chapter.

5 ~~(7) Further, notwithstanding any of the provisions of~~
6 ~~this section, the department shall furnish to the division~~
7 ~~of motor vehicles of the department of justice all~~
8 ~~information necessary to identify those persons qualifying~~
9 ~~for the additional exemption for blindness pursuant to~~
10 ~~15-30-112(4) for the purpose of enabling said division to~~
11 ~~administer the provisions of 61-5-105.~~

12 Section 12. Section 15-30-323, MCA, is amended to
13 read:

14 "15-30-323. Penalty for deficiency. (1) If the payment
15 required by ~~15-30-142(6)~~ [section 6] is not made within 30
16 days or if the understatement is due to negligence on the
17 part of the taxpayer but without fraud, there shall be added
18 to the amount of the deficiency 5% thereof; provided,
19 however, that no deficiency penalty shall be less than \$2.
20 Interest will be computed at the rate of 9% per annum or
21 fraction thereof on the additional assessment. Except as
22 otherwise expressly provided in this subsection, the
23 interest shall in all cases be computed from the date the
24 return and tax were originally due as distinguished from the
25 due date as it may have been extended to the date of

1 payment.

2 (2) If the time for filing a return is extended, the
3 taxpayer shall pay in addition interest thereon at the rate
4 of 9% per annum from the time when the return was originally
5 required to be filed to the time of payment."

6 Section 13. Section 15-31-202, MCA, is amended to
7 read:

8 "15-31-202. Election by small business corporation.

9 (1) Except as provided in subsection (6), any small business
10 corporation may elect, in accordance with the provisions of
11 this section, not to be subject to the taxes imposed by this
12 chapter. Such election shall be valid only if consented to
13 by all persons who are shareholders in such corporation. The
14 election is effective:

15 (a) on the first day of the first taxable year for
16 which such election is effective, if such election is made
17 on or before such first day; or

18 (b) on the day on which the election is made, if the
19 election is made after such first day.

20 (2) If a small business corporation makes an election
21 under subsection (1), then:

22 (a) with respect to the taxable years of the
23 corporation for which such election is in effect, such
24 corporation shall not be subject to the taxes imposed by
25 this chapter and, with respect to such taxable years and all

1 succeeding taxable years, the provisions of this part shall
2 apply to such corporation; and

3 (b) with respect to the taxable years of a shareholder
4 of such corporation in which or with which the taxable years
5 of the corporation for which such election is in effect end,
6 the provisions of this part shall apply to such shareholder,
7 and with respect to such taxable years and all succeeding
8 taxable years, the provisions of this part shall apply to
9 such shareholder.

10 (3) An election under subsection (1) may be made by a
11 small business corporation for any taxable year at any time
12 during the first month of such taxable year or at any time
13 during the month preceding such first month. Such election
14 shall be made in such manner as the department of revenue
15 shall prescribe by regulations.

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

21 (5) (a) (i) An election under subsection (1) made by a
22 small business corporation shall terminate if any person who
23 was not a shareholder in such corporation at the time of the
24 initial election under subsection (1) subsequently becomes a
25 shareholder in such corporation and affirmatively refuses

1 (in such manner as the department shall by rules prescribe)
 2 to consent to such election on or before the 60th day on
 3 which he acquires the stock.

4 (ii) If the person acquiring the stock is the estate of
 5 a decedent, the period under subsection (5)(a)(i) for
 6 affirmatively refusing to consent to the election shall
 7 expire on the 60th day after whichever of the following is
 8 the earlier:

9 (A) the day on which the executor or administrator of
 10 the estate qualifies; or

11 (B) the last day of the taxable year of the
 12 corporation, in which the decedent died.

13 (iii) Any termination of an election under subsection
 14 (5)(a)(i) by reason of the affirmative refusal of any person
 15 to consent to such election shall be effective for the
 16 taxable year of the corporation in which such person becomes
 17 a shareholder in the corporation and for all succeeding
 18 taxable years of the corporation.

19 (b) An election under subsection (1) made by a small
 20 business corporation may be revoked by it for any taxable
 21 year after the first taxable year for which the election is
 22 effective. An election may be revoked only if all persons
 23 who are shareholders in the corporation on the day on which
 24 the revocation is made consent to the revocation. A
 25 revocation under this paragraph shall be effective:

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

3 (ii) for the taxable year following the taxable year in
 4 which made, if made after the close of such first month, and
 5 for all succeeding taxable years of the corporation. Such
 6 revocation shall be made in such manner as the department
 7 shall prescribe by regulations.

8 (c) An election under subsection (1) made by a small
 9 business corporation shall terminate if the corporation
 10 ceases to meet the definition of a small business
 11 corporation at any time after election is effective under
 12 subsection (1).

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

17 (6) If a small business corporation has made an
 18 election under subsection (1) and if such election has been
 19 terminated or revoked under subsection (5), such corporation
 20 (and any successor corporation) shall not be eligible to
 21 make an election under subsection (1) for any taxable year
 22 prior to its fifth taxable year which begins after the first
 23 taxable year for which such termination or revocation is
 24 effective unless the department consents to such election.

25 (7) This election shall not be effective unless the

1 corporate net income or loss of such electing corporation
2 shall have been included in the stockholders' federal
3 adjusted gross taxable income as such is defined in
4 ~~15-30-111~~ [section 2].

5 (8) Every electing corporation shall be required to
6 pay the minimum fee of \$10 required by [84-1501]."

7 Section 14. Section 53-2-404, MCA, is amended to read:

8 "53-2-404. Investigation of relatives' state income
9 tax returns prima facie evidence of income -- penalty for
10 disclosing contents of return. (1) The department of social
11 and rehabilitation services shall be required and it shall
12 be its duty, when necessary to determine the financial
13 circumstances of those relatives herein named, to secure
14 from the department of revenue a report of the amount of
15 income set forth on the return required by ~~15-30-142~~
16 [section 5]. The department of revenue is authorized and it
17 shall be its duty to divulge or make known to the department
18 of social and rehabilitation services the amount of income
19 or any particulars set forth or disclosed in any report or
20 return required under the state income tax act and submitted
21 by the relatives herein named.

22 (2) A separate income tax return shall constitute
23 prima facie evidence of taxable income, amount of tax, and
24 number of dependents of the individual making it; a joint
25 income tax return of husband and wife shall constitute prima

1 facie evidence of taxable income, amount of tax, and number
2 of dependents of either spouse for the purposes of this
3 part.

4 (3) It shall be unlawful for the department of social
5 and rehabilitation services or any deputy, assistant, agent,
6 clerk, or other officer or employee to divulge or make known
7 in any manner any information secured from the department of
8 revenue in the administration of this part except for
9 purposes directly connected with the administration of this
10 part. Violation of the provisions of this section shall be
11 punished by a fine not exceeding \$1,000 or by imprisonment
12 in the county jail not exceeding 1 year, or both, at the
13 discretion of the court, and if the offender be an officer
14 or employee of the state, he shall be dismissed from office
15 and be incapable of holding any public office in this state
16 for a period of 1 year thereafter."

17 Section 15. Section 67-11-303, MCA, is amended to
18 read:

19 "67-11-303. Bonds and obligations. (1) An authority
20 may borrow money for any of its corporate purposes and issue
21 its bonds therefor, including refunding bonds, in such form
22 and upon such terms as it may determine, payable out of any
23 revenues of the authority, including revenues derived from:
24 (a) an airport or air navigation facility or
25 facilities;

1 (b) taxes levied pursuant to 67-11-301 or other law
2 for airport purposes;

3 (c) grants or contributions from the federal
4 government; or

5 (d) other sources.

6 (2) The bonds may be issued by resolution of the
7 authority, without an election and without any limitation of
8 amount, except that no such bonds may be issued at any time
9 if the total amount of principal and interest to become due
10 in any year on such bonds and on any then outstanding bonds
11 for which revenues from the same source or sources are
12 pledged exceeds the amount of such revenues to be received
13 in that year as estimated in the resolution authorizing the
14 issuance of the bonds. The authority shall take all action
15 necessary and possible to impose, maintain, and collect
16 rates, charges, rentals, and taxes, if any are pledged,
17 sufficient to make the revenues from the pledged source in
18 such year at least equal to the amount of such principal and
19 interest due in that year.

20 (3) The bonds may be sold at public or private sale
21 and may bear interest at a rate not exceeding 10% a year.
22 Except as otherwise provided herein, any bonds issued
23 pursuant to this chapter by an authority may be payable as
24 to principal and interest solely from revenues of the
25 authority and shall state on their face the applicable

1 limitations or restrictions regarding the source from which
2 such principal and interest are payable.

3 (4) Bonds issued by an authority or municipality
4 pursuant to the provisions of this chapter are declared to
5 be issued for an essential public and governmental purpose
6 by a political subdivision within the meaning of
7 ~~15-30-111(2)(e)~~ [subsection (2)(g) of section 2].

8 (5) For the security of any such bonds, the authority
9 or municipality may by resolution make and enter into any
10 covenant, agreement, or indenture and may exercise any
11 additional powers authorized to be exercised by a
12 municipality under Title 7, chapter 7, parts 44 and 45. The
13 sums required from time to time to pay principal and
14 interest and to create and maintain a reserve for the bonds
15 may be paid from any revenues referred to in this chapter,
16 prior to the payment of current costs of operation and
17 maintenance of the facilities.

18 (6) Subject to the conditions stated in this
19 subsection (6), the governing body of any municipality
20 having a population in excess of 10,000, with respect to
21 bonds issued pursuant to this chapter by the municipality or
22 by an authority in which the municipality is included, may
23 by resolution covenant that in the event that at any time
24 all revenues, including taxes, appropriated and collected
25 for such bonds are insufficient to pay principal or interest

1 then due, it will levy a general tax upon all of the taxable
 2 property in the municipality for the payment of such
 3 deficiency; and may further covenant that at any time a
 4 deficiency is likely to occur within 1 year for the payment
 5 of principal and interest due on such bonds, it will levy a
 6 general tax upon all the taxable property in the
 7 municipality for the payment of such deficiency, and such
 8 taxes are not subject to any limitation of rate or amount
 9 applicable to other municipal taxes but shall be limited to
 10 a rate estimated to be sufficient to produce the amount of
 11 the deficiency. In the event more than one municipality
 12 having a population in excess of 10,000 is included in an
 13 authority issuing bonds pursuant to this chapter, the
 14 municipalities may apportion the obligation to levy taxes
 15 for the payment of, or in anticipation of, a deficiency in
 16 the revenues appropriated for such bonds in such manner as
 17 the municipalities may determine. The resolution shall state
 18 the principal amount and purpose of the bonds and the
 19 substance of the covenant respecting deficiencies. No such
 20 resolution becomes effective until the question of its
 21 approval has been submitted to the qualified electors of the
 22 municipality at a special election called for that purpose
 23 by the governing body of the municipality and a majority of
 24 the electors voting on the question have voted in favor
 25 thereof. The notice and conduct of the election shall be

1 governed, to the extent applicable, by 7-7-4227 through
 2 7-7-4232 for an election called by cities and towns, and
 3 7-7-2229 through 7-7-2234 for an election called by
 4 counties. If a majority of the electors voting thereon vote
 5 against approval of the resolution, the municipality has no
 6 authority to make the covenant or to levy a tax for the
 7 payment of deficiencies pursuant to this section, but such
 8 municipality or authority may nevertheless issue bonds under
 9 this chapter payable solely from the sources referred to in
 10 subsection (1) above."

11 Section 16. Limitation of act. Nothing in this act
 12 shall be construed to affect any tax liability, or actions
 13 or causes of actions incident to these actions, that arose
 14 or might have arisen under Title 15, chapter 30, as it
 15 existed prior to January 1, 1979.

16 Section 17. Repealer. Sections 15-30-103 through
 17 15-30-105, 15-30-111 through 15-30-116, 15-30-121 through
 18 15-30-124, 15-30-131, 15-30-132, 15-30-134, 15-30-135,
 19 15-30-142, and 15-30-143, MCA, are repealed.

20 Section 18. Effective date. This act is effective on
 21 passage and approval and applies to taxable years beginning
 22 after December 31, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 137-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 249 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 repeals the existing individual income tax and imposing a state income tax based on a percentage of the Federal income tax payable on Montana taxable income; and provides an effective date.

It is impossible, without a considerable amount of analysis, to render an accurate statement of the impact on revenue which passage of this proposal would have. The difficulty lies in two areas: first, the Federal fiscal year runs from October 1 to September 30 and, thus, does not coincide with the state's fiscal year. The Federal government makes estimates for income tax collections during its fiscal year but no information is readily available which would allow one to translate these estimates into ones which coincide with the state's fiscal year. Second, the Federal government does not estimate the tax paid from an individual state but is content to predict the aggregate amount collected. Thus, there is no way to derive state liability when given Federal estimates. If the proposal is enacted, a substantial amount of work lies ahead before accurate forecasts of state revenue flowing from this source could be made.

The most recent two years of Federal statistics available indicate that the rate chosen produces about the same amount of revenue as was produced by the current income tax.

<u>Calendar Year</u>	<u>Federal Income Tax Attributable to Montana</u>	<u>27.5% of Federal Tax</u>	<u>Actual (Estimated) Calendar Year Collections Under Present Law</u>
1976	409,562,000	112,629,550	107,831,000
1977	459,166,000 ^P	126,270,650 ^P	123,143,000

^P = preliminary

Since the Federal structure is much more sharply progressive than the current state rate structure, one can conjecture that, in the absence of Congressional action to cut the Federal income tax, the revenue to the state under this proposal would probably exceed the revenue under present law. (Income tax collections, present law: FY80 \$154.268 M (estimated); FY81 \$169.790 M (estimated))

Richard L. Drury
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/2/79

(Continued on page 2)

STATE OF MONTANA

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Page 2

At present there are three states which use a percentage of Federal income tax to compute state income tax. These are Nebraska, Rhode Island, and Vermont. The state of Louisiana uses a modified version of this method. Two states, Alaska and West Virginia, once based income tax upon a portion of the Federal liability but have since abandoned the concept. (Source: Federation of Tax Administrators "The Impact of Federal Tax Changes on State Taxation" 1978, on file in the Department of Revenue).

It should be noted that the Federal government uses the individual income tax as a tool to implement fiscal policy. The discretionary power granted to the Department of Revenue (section 3(2)(a)) to change the rate would mitigate the effects of Federal tinkering but it may be extremely difficult for the Department to achieve the target set in section 3(2)(c). The target itself is not well-defined since the legislature does not appropriate income tax funds per se. Instead, appropriations are made from the three funds into which income tax proceeds are distributed.

TECHNICAL NOTES: Is the individual's Federal Income Tax liability (section 3) to be his liability before any credits granted by the Federal government are taken or are all Federal credits allowed? A more specific definition should be given since, for many taxpayers, being allowed to reduce liability by Federal credit would result in enormous tax savings for state purposes.

If Federal credits are to be allowed then Montana's added portion of the investment tax credit ought to be repealed because the Federal credit would have already reduced Federal adjusted taxable income. (section 9.)

The benefits paid to retired and disabled firefighters which are excluded from Montana adjusted gross income under present law (15-30-111(g)) are included in Federal adjusted taxable income under this proposal.

PREPARED BY DEPARTMENT OF REVENUE

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Office of Budget and Program Planning
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