

HOUSE BILL NO. 17

INTRODUCED BY NORDTVEDT

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE HOUSE

| | |
|------------------|--|
| January 6, 1981 | Introduced and referred to Committee on Taxation. |
| January 7, 1981 | Fiscal note requested. |
| January 12, 1981 | Fiscal note returned. |
| January 15, 1981 | Committee recommend bill do pass as amended. Report adopted. |
| January 16, 1981 | Bill printed and placed on members' desks. |
| January 17, 1981 | Second reading, do pass. |
| January 19, 1981 | Correctly engrossed. |
| | Third reading, passed. Transmitted to Senate. |

IN THE SENATE

| | |
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| January 20, 1981 | Introduced and referred to Committee on Taxation. |
| March 26, 1981 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 28, 1981 | Second reading, concurred in. |
| March 30, 1981 | Motion pass consideration. |
| March 31, 1981 | On motion rules suspended. Bill allowed to be transmitted on 71st legislative day. Motion adopted. |
| | Third reading, concurred in as amended. Ayes, 49; Noes, 0. |

IN THE HOUSE

April 1, 1981

Returned from Senate with amendments.

April 8, 1981

Second reading, amendments not concurred in.

On motion Conference Committee requested and appointed.

April 23, 1981

Conference Committee reported and dissolved.

On motion rules suspended and Conference Committee report placed on second reading this day.

Second reading, Conference Committee report adopted.

On motion rules suspended and Conference Committee report placed on third reading this day.

Third reading, Conference Committee report adopted. Ayes, 86; Noes, 0.

IN THE SENATE

April 23, 1981

Conference Committee report adopted.

IN THE HOUSE

April 23, 1981

Returned from Senate. Sent to enrolling.

Reported correctly enrolled.

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
 6 SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO
 7 DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX;
 8 AMENDING SECTIONS 15-30-149 AND 15-31-531, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 15-30-149, MCA, is amended to read:
 12 "15-30-149. Credits and refunds -- period of
 13 limitations. (1) If the department discovers from the
 14 examination of a return or upon claim duly filed by a
 15 taxpayer or upon final judgment of a court that the amount
 16 of income tax collected is in excess of the amount due or
 17 that any penalty or interest was erroneously or illegally
 18 collected, the amount of the overpayment shall be credited
 19 against any income tax, penalty, or interest then due from
 20 the taxpayer and the balance of such excess shall be
 21 refunded to the taxpayer.

22 (2) Effective with taxable years ending on or after
 23 December 31, 1959, no such credit or refund shall be allowed
 24 or made after 5 years from the date prescribed by statute
 25 for filing the return or after 1 year from the date the

1 overpayment occurred, whichever period expires later, unless
 2 before the expiration of such period a claim therefor is
 3 filed by the taxpayer or the department has determined the
 4 existence of the overpayment and has approved the refund or
 5 credit thereof. However, if an overpayment of tax results
 6 from a net operating loss carryback, the overpayment may be
 7 refunded or credited within the period that expires on the
 8 15th day of the 40th month following the close of the
 9 taxable year of the net operating loss if that period
 10 expires later than 5 years from the due date of the return
 11 for the year to which the net operating loss is carried
 12 back.

13 (3) Within 6 months after a claim for refund is filed,
 14 the department shall examine said claim and either approve
 15 or disapprove it. If said claim is approved, the credit or
 16 refund shall be made to the taxpayer within 60 days after
 17 the claim is approved; if the claim is disallowed, the
 18 department shall so notify the taxpayer and shall grant a
 19 hearing thereon upon proper application by the taxpayer. If
 20 the department disapproves a claim for refund, review of the
 21 determination of the department may be had as otherwise
 22 provided in this chapter.

23 (4) Except as hereinafter provided for, effective with
 24 taxable years ending on or after December 31, 1962, interest
 25 shall be allowed on overpayments at the rate of 6 1/2% per

1 annum from the due date of the return or from the date of
 2 the overpayment (whichever date is later) to the date the
 3 department approves refunding or crediting of the
 4 overpayment. With respect to tax paid by withholding or by
 5 estimate, the date of overpayment shall be deemed to be the
 6 date on which the return for the taxable year was due. No
 7 interest shall accrue on an overpayment if the taxpayer
 8 elects to have it applied to his estimated tax for the
 9 succeeding taxable year, nor shall interest accrue during
 10 any period the processing of a claim for refund is delayed
 11 more than 30 days by reason of failure of the taxpayer to
 12 furnish information requested by the department for the
 13 purpose of verifying the amount of the overpayment. No
 14 interest shall be allowed if:

15 (a) the overpayment is refunded within 6 months from
 16 the date the return is due or the date the return is filed,
 17 whichever date is later;

18 (b) the overpayment results from the carryback of a net
 19 operating loss; or

20 (c) the amount of interest is less than \$1.

21 (5) An overpayment not made incident to a bona fide and
 22 orderly discharge of an actual income tax liability or one
 23 reasonably assumed to be imposed by this law shall not be
 24 considered an overpayment with respect to which interest is
 25 allowable."

1 Section 2. Section 15-31-531, MCA, is amended to read:
 2 "15-31-531. Credit for overpayment -- interest on
 3 overpayment. (1) If the department of revenue determines
 4 that the amount of tax, penalty, or interest due for any
 5 year is less than the amount paid, the amount of the
 6 overpayment shall be credited against any tax, penalty, or
 7 interest then due from the taxpayer and the balance refunded
 8 to the taxpayer or its successor through reorganization,
 9 merger, or consolidation or to its shareholders upon
 10 dissolution.

11 (2) Except as hereinafter provided for, interest shall
 12 be allowed on overpayments at the rate of 6 9/2% per annum
 13 from the due date of the return or from the date of
 14 overpayment (whichever date is later) to the date the
 15 department approves refunding or crediting of the
 16 overpayment. Interest shall not accrue during any period
 17 the processing of a claim for refund is delayed more than 30
 18 days by reason of failure of the taxpayer to furnish
 19 information requested by the department for the purpose of
 20 verifying the amount of the overpayment. No interest shall
 21 be allowed:

22 (a) if the overpayment is refunded within 6 months from
 23 the date the return is due or from the date the return is
 24 filed, whichever is later; or

25 (b) if the amount of interest is less than \$1.

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1 (3) A payment not made incident to a bona fide and
2 orderly discharge of an actual corporation license tax
3 liability or one reasonably assumed to be imposed by this
4 law shall not be considered an overpayment with respect to
5 which interest is allowable."

-End-

STATE OF MONTANA

REQUEST NO. 29-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 7, 19 81, there is hereby submitted a Fiscal Note for House Bill 17 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

An act to provide that the same interest rate apply to overpayment refunds as to delinquent tax due for the income and corporation tax.

ASSUMPTIONS

1. Individual Income Tax Overpayment refunds amount to \$150,000 per year, including 6% interest.
2. There are no data available regarding overpayment refunds for corporation tax; however, it is not believed that the amount of such refunds is substantial.

FISCAL IMPACT

| Individual Income Tax Collections | FY 82 | FY 83 |
|-----------------------------------|------------------|------------------|
| Under current law | \$161.556 M | \$167.993 M |
| Under proposed law | <u>161.552 M</u> | <u>167.989 M</u> |
| Estimated Decrease | (\$ 0.004 M) | (\$ 0.004 M) |

FUND INFORMATION

| | | |
|------------------------|------------------|------------------|
| General Fund | | |
| Under current law | \$103.396 M | \$107.516 M |
| Under proposed law | <u>103.393 M</u> | <u>107.513 M</u> |
| Estimated Decrease | (\$ 0.003 M) | (\$ 0.003 M) |
| Earmarked Revenue Fund | | |
| Under current law | \$ 40.389 M | \$ 41.998 M |
| Under proposed law | <u>40.388 M</u> | <u>41.997 M</u> |
| Estimated Decrease | (\$ 0.001 M) | (\$ 0.001 M) |
| Sinking Fund * | | |
| Under current law | \$ 17.771 M | \$ 18.479 M |
| Under proposed law | <u>17.771 M</u> | <u>18.479 M</u> |
| Estimated Decrease | (\$ 0) | (\$ 0) |

Corporation License/Income Tax Collections

Minimal effect

Minimal effect

* A portion of this account may be transferred to the general fund as long range bond excess, if debt service requirements are sufficiently low.

PREPARED BY THE DEPARTMENT OF REVENUE.

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-10-81

Approved by Committee
on Taxation

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14 examination of a return or upon claim duly filed by a
15 taxpayer or upon final judgment of a court that the amount
16 of income tax collected is in excess of the amount due or
17 that any penalty or interest was erroneously or illegally
18 collected, the amount of the overpayment shall be credited
19 against any income tax, penalty, or interest then due from
20 the taxpayer and the balance of such excess shall be
21 refunded to the taxpayer.
22 (2) Effective with taxable years ending on or after
23 December 31, 1959, no such credit or refund shall be allowed
24 or made after 5 years from the date prescribed by statute
25 for filing the return or after 1 year from the date the

1 overpayment occurred, whichever period expires later, unless
2 before the expiration of such period a claim therefor is
3 filed by the taxpayer or the department has determined the
4 existence of the overpayment and has approved the refund or
5 credit thereof. However, if an overpayment of tax results
6 from a net operating loss carryback, the overpayment may be
7 refunded or credited within the period that expires on the
8 15th day of the 40th month following the close of the
9 taxable year of the net operating loss if that period
10 expires later than 5 years from the due date of the return
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12 back.
13 (3) Within 6 months after a claim for refund is filed,
14 the department shall examine said claim and either approve
15 or disapprove it. If said claim is approved, the credit or
16 refund shall be made to the taxpayer within 60 days after
17 the claim is approved; if the claim is disallowed, the
18 department shall so notify the taxpayer and shall grant a
19 hearing thereon upon proper application by the taxpayer. If
20 the department disapproves a claim for refund, review of the
21 determination of the department may be had as otherwise
22 provided in this chapter.
23 (4) Except as hereinafter provided for, ~~effective with~~
24 ~~taxable years ending on or after December 31, 1962,~~ interest
25 shall be allowed on overpayments at the ~~SAME~~ rate of ~~--6 2%~~

1 ~~per-annum~~ AS IS CHARGED ON DELINQUENT TAXES DUE from the due
 2 date of the return or from the date of the overpayment
 3 (whichever date is later) to the date the department
 4 approves refunding or crediting of the overpayment. With
 5 respect to tax paid by withholding or by estimate, the date
 6 of overpayment shall be deemed to be the date on which the
 7 return for the taxable year was due. No interest shall
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 17 the date the return is due or the date the return is filed,
 18 whichever date is later;

19 (b) the overpayment results from the carryback of a
 20 net operating loss; or

21 (c) the amount of interest is less than \$1.

22 (5) An overpayment not made incident to a bona fide
 23 and orderly discharge of an actual income tax liability or
 24 one reasonably assumed to be imposed by this law shall not
 25 be considered an overpayment with respect to which interest

1 is allowable."

2 Section 2. Section 15-31-531, MCA, is amended to read:

3 "15-31-531. Credit for overpayment -- interest on
 4 overpayment. (1) If the department of revenue determines
 5 that the amount of tax, penalty, or interest due for any
 6 year is less than the amount paid, the amount of the
 7 overpayment shall be credited against any tax, penalty, or
 8 interest then due from the taxpayer and the balance refunded
 9 to the taxpayer or its successor through reorganization,
 10 merger, or consolidation or to its shareholders upon
 11 dissolution.

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 25 is filed, whichever is later; or

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2 (3) A payment not made incident to a bona fide and
3 orderly discharge of an actual corporation license tax
4 liability or one reasonably assumed to be imposed by this
5 law shall not be considered an overpayment with respect to
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 18 department shall so notify the taxpayer and shall grant a
 19 hearing thereon upon proper application by the taxpayer. If
 20 the department disapproves a claim for refund, review of the
 21 determination of the department may be had as otherwise
 22 provided in this chapter.

23 (4) Except as hereinafter provided for, ~~effective with~~
 24 ~~taxable years ending on or after December 31, 1962,~~ interest
 25 shall be allowed on overpayments at the ~~SAME~~ rate ~~of -- 6 %~~

1 per-annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
 2 date of the return or from the date of the overpayment
 3 (whichever date is later) to the date the department
 4 approves refunding or crediting of the overpayment. With
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 23 and orderly discharge of an actual income tax liability or
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 25 be considered an overpayment with respect to which interest

1 is allowable."

2 Section 2. Section 15-31-531, MCA, is amended to read:

3 "15-31-531. Credit for overpayment -- interest on
 4 overpayment. (1) If the department of revenue determines
 5 that the amount of tax, penalty, or interest due for any
 6 year is less than the amount paid, the amount of the
 7 overpayment shall be credited against any tax, penalty, or
 8 interest then due from the taxpayer and the balance refunded
 9 to the taxpayer or its successor through reorganization,
 10 merger, or consolidation or to its shareholders upon
 11 dissolution.

12 (2) Except as hereinafter provided for, interest shall
 13 be allowed on overpayments at the SAME rate of ~~6%~~ per
 14 annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
 15 date of the return or from the date of overpayment
 16 (whichever date is later) to the date the department
 17 approves refunding or crediting of the overpayment.
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 24 from the date the return is due or from the date the return
 25 is filed, whichever is later; or

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2 (3) A payment not made incident to a bona fide and
3 orderly discharge of an actual corporation license tax
4 liability or one reasonably assumed to be imposed by this
5 law shall not be considered an overpayment with respect to
6 which interest is allowable."

-End-

HOUSE BILL NO. 17

INTRODUCED BY NORDTVEDT

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX; TO CLARIFY THE PERIOD DURING WHICH REFUNDS AND CREDITS MAY BE GRANTED; AND TO PROVIDE FOR EXTENSIONS OF THE PERIOD BY AGREEMENT; AMENDING SECTIONS 15-30-145, 15-30-146, 15-30-149, AND 15-31-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

SECTION 1. SECTION 15-30-145, MCA, IS AMENDED TO READ:

"15-30-145. Revision of return by department -- examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such return. If any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties, and interest due the state from such taxpayer.

~~(2) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter as provided in 15-30-146:~~

~~(a) the amount of tax due under any return shall be determined by the department within 5 years after prior to the expiration of the 5-year period beginning on the date the return was made filed; and~~

~~(b) the department thereafter shall be barred from revising any such the returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said the 5-year period, notwithstanding the provisions of 15-30-322. In the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due and, where no return has been filed, the tax may be assessed at any time.~~

~~(2)(3) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by~~

1 it for that purpose any books, papers, or records of
 2 memoranda bearing upon the matters required to be included
 3 in the return and may require the attendance of the person
 4 rendering the return or any officer or employee of such
 5 person or the attendance of any person having knowledge in
 6 the premises and may take testimony and require proof
 7 material for its information, with power to administer oaths
 8 to such person or persons."

9 SECTION 2. SECTION 15-30-146, MCA, IS AMENDED TO READ:

10 "15-30-146. ~~Following~~ Extensions of statute of
 11 limitations. (1) The running of the statute of limitations
 12 provided for under 15-30-145 shall be suspended during:

13 (a) any period that the federal statute of limitations
 14 for ~~collection~~ adjustment of federal income tax has been
 15 suspended plus 1 year when the suspension is:

16 (i) by written agreement with the internal revenue
 17 service signed by the taxpayer; or

18 (ii) when because the taxpayer has instituted an action
 19 which that has the effect of suspending the running of the
 20 federal statute of limitations ~~and for 1 additional year; or~~

21 (b) any period that has been agreed upon by the
 22 taxpayer and the department in writing.

23 (2) If the taxpayer fails to file a record of changes
 24 in federal taxable income or an amended return as required
 25 by 15-30-304, the statute of limitations ~~shall~~ does not

1 apply begin to run until 5-years-from the date the federal
 2 changes become final or the amended federal return was
 3 filed.

4 (3) If the taxpayer omits from gross income an amount
 5 properly includable therein which is in excess of 25% of the
 6 amount of adjusted gross income stated in the return, the
 7 ~~statute-of-limitations-shall-not-apply 5-year period~~
 8 provided for in 15-30-145 is extended for 2 additional years
 9 ~~from-the-time-specified-in-15-30-145.~~

10 (4) In the case of a person who, with intent to evade
 11 the tax, purposely or knowingly files a false or fraudulent
 12 return violating the provisions of this chapter, the amount
 13 of tax due may be determined and collected at any time after
 14 it becomes due. When no return is filed, the tax may be
 15 determined and collected at any time.

16 (5) A taxpayer and the department may agree in writing
 17 to any extension or suspension of the 5-year period. To be
 18 effective, the agreement must be signed by the taxpayer and
 19 the director of the department or the director's designated
 20 agent."

21 Section 3. Section 15-30-149, MCA, is amended to read:

22 "15-30-149. Credits and refunds -- period of
 23 limitations. (1) If the department discovers from the
 24 examination of a return or upon claim duly filed by a
 25 taxpayer or upon final judgment of a court that the amount

1 of income tax collected is in excess of the amount due or
 2 that any penalty or interest was erroneously or illegally
 3 collected, the amount of the overpayment shall be credited
 4 against any income tax, penalty, or interest then due from
 5 the taxpayer and the balance of such excess shall be
 6 refunded to the taxpayer.

7 (2) ~~[A] Effective with taxable years ending on or~~
~~after December 31, 1959, no such credit or refund shall be~~
~~allowed or made after 5 years from the date prescribed by~~
~~statute for filing the return or after 1 year from the date~~
~~the overpayment occurred, whichever period expires later,~~
~~unless before the expiration of such period a claim therefor~~
~~is filed by the taxpayer or the department has determined~~
~~the existence of the overpayment and has approved the refund~~
~~or credit thereof. However, if an overpayment of tax results~~
 16 A CREDIT OR REFUND UNDER THE PROVISIONS OF THIS SECTION MAY
 17 BE ALLOWED ONLY IF, PRIOR TO THE EXPIRATION OF THE PERIOD
 18 PROVIDED BY 15-30-145 AND BY 15-30-146 DURING WHICH THE
 19 DEPARTMENT MAY DETERMINE TAX LIABILITY, THE TAXPAYER FILES A
 20 CLAIM OR THE DEPARTMENT DETERMINES THERE HAS BEEN AN
 21 OVERPAYMENT.

22 (B) IF AN OVERPAYMENT OF TAX RESULTS from a net
 23 operating loss carryback, the overpayment may be refunded or
 24 credited within the period that expires on the 15th day of
 25 the 40th month following the close of the taxable year of

1 the net operating loss if that period expires later than 5
 2 years from the due date of the return for the year to which
 3 the net operating loss is carried back.

4 (3) Within 6 months after a claim for refund is filed,
 5 the department shall examine said claim and either approve
 6 or disapprove it. If said claim is approved, the credit or
 7 refund shall be made to the taxpayer within 60 days after
 8 the claim is approved; if the claim is disallowed, the
 9 department shall so notify the taxpayer and shall grant a
 10 hearing thereon upon proper application by the taxpayer. If
 11 the department disapproves a claim for refund, review of the
 12 determination of the department may be had as otherwise
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14 (4) Except as hereinafter provided for, effective with
 15 taxable years ending on or after December 31, 1962, interest
 16 shall be allowed on overpayments at the SAME rate of 6%
 17 per annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
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 19 (whichever date is later) to the date the department
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18 Section 4. Section 15-31-531, MCA, is amended to read:

19 "15-31-531. Credit for overpayment -- interest on
 20 overpayment. (1) If the department of revenue determines
 21 that the amount of tax, penalty, or interest due for any
 22 year is less than the amount paid, the amount of the
 23 overpayment shall be credited against any tax, penalty, or
 24 interest then due from the taxpayer and the balance refunded
 25 to the taxpayer or its successor through reorganization,

1 merger, or consolidation or to its shareholders upon
 2 dissolution.

3 (2) Except as hereinafter provided for, interest shall
 4 be allowed on overpayments at the SAME rate of ~~6 9%~~ per
 5 annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
 6 date of the return or from the date of overpayment
 7 (whichever date is later) to the date the department
 8 approves refunding or crediting of the overpayment.
 9 Interest shall not accrue during any period the processing
 10 of a claim for refund is delayed more than 30 days by reason
 11 of failure of the taxpayer to furnish information requested
 12 by the department for the purpose of verifying the amount of
 13 the overpayment. No interest shall be allowed:

14 (a) if the overpayment is refunded within 6 months
 15 from the date the return is due or from the date the return
 16 is filed, whichever is later; or

17 (b) if the amount of interest is less than \$1.

18 (3) A payment not made incident to a bona fide and
 19 orderly discharge of an actual corporation license tax
 20 liability or one reasonably assumed to be imposed by this
 21 law shall not be considered an overpayment with respect to
 22 which interest is allowable."

23 SECTION 5. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON
 24 PASSAGE AND APPROVAL.

25 SECTION 6. APPLICABILITY. THIS ACT APPLIES TO CLAIMS

1 FOR REFUNDS OR CREDITS THAT WERE MADE WITHIN THE TIME PERIOD
2 FOR SUBMISSION OF CLAIMS THAT IS PERMITTED UNDER THIS ACT
3 EVEN THOUGH THE CLAIM MAY HAVE BEEN SUBMITTED AFTER THE
4 5-YEAR PERIOD PROVIDED IN 15-30-149, PRIOR TO AMENDMENT, HAD
5 EXPIRED.

-End-

JOINT CONFERENCE COMMITTEE
ON SENATE AMENDMENTS TO HOUSE BILL NO. 17

(Report No. 1, April 23, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on House Bill No. 17, met April 23, 1981, and considered:

Senate Taxation Standing Committee Amendments to the third reading copy, dated March 26, 1981, and;

That the House accede to Senate Standing Committee Amendments nos. 1, 2, 4, and 5;

That the Senate recede from Committee Amendment no. 3;

That the reference copy of House Bill No. 17 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Joint Conference Committee Report to House Bill 17 be adopted.

CLERICAL INSTRUCTIONS:

- 1. Page 1, line 15 through page 4, line 20.
- Strike: sections 1 and 2 in their entirety
- Renumber: subsequent sections

FOR THE HOUSE:

Nordtvedt
Nordtvedt, Chairman

Burnett
Burnett

Neuman
Neuman

FOR THE SENATE:

Robert S. Elliott
Elliott, Chairman

Lee Crippen
Crippen

Steve Brown
S. Brown

HOUSE BILL NO. 17

INTRODUCED BY NORDTVEIT

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX; TO CLARIFY THE PERIOD DURING WHICH REFUNDS AND CREDITS MAY BE GRANTED; AND TO PROVIDE FOR EXTENSIONS OF THE PERIOD BY AGREEMENT; AMENDING SECTIONS ~~15-30-145~~ 15-30-146 15-30-149~~y~~ AND 15-31-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

~~SECTION 1. SECTION 15-30-145, MCA, IS AMENDED TO READ:~~

~~"15-30-145. Revision of return by department. Examination of records and persons. (1) If in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such return. If any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayers.~~

~~(2) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, as provided in 15-30-146:~~

~~(a) the amount of tax due under any return shall be determined by the department within 5 years after prior to the expiration of the 5-year period beginning on the date the return was made filed; and~~

~~(b) the department thereafter shall be barred from revising any such the returns or recomputing the tax due thereon; and no proceeding in court for the collection of such tax shall be instituted after the expiration of said the 5-year period, notwithstanding the provisions of 15-30-322, in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due and, where no return has been filed, the tax may be assessed at any time.~~

~~(2)(3) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by~~

1 ~~it for that purpose any books, papers, or records of~~
 2 ~~memoranda bearing upon the matters required to be included~~
 3 ~~in the return and may require the attendance of the person~~
 4 ~~rendering the return or any officer or employee of such~~
 5 ~~person or the attendance of any person having knowledge in~~
 6 ~~the premises and may take testimony and require proof~~
 7 ~~material for its information, with power to administer oaths~~
 8 ~~to such person or persons."~~

9 ~~SECTION 2. SECTION 15-30-146, MCA, IS AMENDED TO READ:~~

10 ~~"15-30-146. Folling Extensions of statute of~~
 11 ~~limitations. (1) The running of the statute of limitations~~
 12 ~~provided for under 15-30-145 shall be suspended during~~

13 ~~(a) any period that the federal statute of limitations~~
 14 ~~for collection adjustment of federal income tax has been~~
 15 ~~suspended plus 1 year when the suspension is~~

16 ~~(ii) by written agreement with the internal revenue~~
 17 ~~service signed by the taxpayer; or~~

18 ~~(iii) when because the taxpayer has instituted an action~~
 19 ~~which that has the effect of suspending the running of the~~
 20 ~~federal statute of limitations and for 1 additional year; or~~

21 ~~(b) any period that has been agreed upon by the~~
 22 ~~taxpayer and the department in writing.~~

23 ~~(2) If the taxpayer fails to file a record of changes~~
 24 ~~in federal taxable income or an amended return as required~~
 25 ~~by 15-30-304, the statute of limitations shall does not~~

1 ~~apply begin to run until 5 years from the date the federal~~
 2 ~~changes become final or the amended federal return was~~
 3 ~~filed.~~

4 ~~(3) If the taxpayer omits from gross income an amount~~
 5 ~~properly includable therein which is in excess of 25% of the~~
 6 ~~amount of adjusted gross income stated in the return, the~~
 7 ~~statute of limitations shall not apply 5-year period~~
 8 ~~provided for in 15-30-145 is extended for 2 additional years~~
 9 ~~from the time specified in 15-30-145.~~

10 ~~(4) In the case of a person who with intent to evade~~
 11 ~~the tax purposely or knowingly files a false or fraudulent~~
 12 ~~return violating the provisions of this chapter, the amount~~
 13 ~~of tax due may be determined and collected at any time after~~
 14 ~~it becomes due. When no return is filed, the tax may be~~
 15 ~~determined and collected at any time.~~

16 ~~(5) A taxpayer and the department may agree in writing~~
 17 ~~to any extension or suspension of the 5-year periods to be~~
 18 ~~effective, the agreement must be signed by the taxpayer and~~
 19 ~~the director of the department or the director's designated~~
 20 ~~agents."~~

21 Section 1. Section 15-30-149, MCA, is amended to read:

22 "15-30-149. Credits and refunds -- period of
 23 limitations. (1) If the department discovers from the
 24 examination of a return or upon claim duly filed by a
 25 taxpayer or upon final judgment of a court that the amount

1 of income tax collected is in excess of the amount due or
 2 that any penalty or interest was erroneously or illegally
 3 collected, the amount of the overpayment shall be credited
 4 against any income tax, penalty, or interest then due from
 5 the taxpayer and the balance of such excess shall be
 6 refunded to the taxpayer.

7 ~~(2) (A) Effective--with--taxable--years--ending--on--or~~
 8 ~~after--December--31--1959--no--such--credit--or--refund--shall--be~~
 9 ~~allowed--or--made--after--5--years--from--the--date--prescribed--by~~
 10 ~~statute--for--filing--the--return--or--after--1--year--from--the--date~~
 11 ~~the--overpayment--occurred,--whichever--period--expires--later,~~
 12 ~~unless--before--the--expiration--of--such--period--a--claim--therefor~~
 13 ~~is--filed--by--the--taxpayer--or--the--department--has--determined~~
 14 ~~the--existence--of--the--overpayment--and--has--approved--the--refund~~
 15 ~~or--credit--thereof. However, if an overpayment of tax results~~
 16 A CREDIT OR REFUND UNDER THE PROVISIONS OF THIS SECTION MAY
 17 BE ALLOWED ONLY IF, PRIOR TO THE EXPIRATION OF THE PERIOD
 18 PROVIDED BY 15-30-145 AND BY 15-30-146 DURING WHICH THE
 19 DEPARTMENT MAY DETERMINE TAX LIABILITY, THE TAXPAYER FILES A
 20 CLAIM OR THE DEPARTMENT DETERMINES THERE HAS BEEN AN
 21 OVERPAYMENT.

22 (B) IF AN OVERPAYMENT OF TAX RESULTS from a net
 23 operating loss carryback, the overpayment may be refunded or
 24 credited within the period that expires on the 15th day of
 25 the 40th month following the close of the taxable year of

1 the net operating loss if that period expires later than 5
 2 years from the due date of the return for the year to which
 3 the net operating loss is carried back.

4 (3) Within 6 months after a claim for refund is filed,
 5 the department shall examine said claim and either approve
 6 or disapprove it. If said claim is approved, the credit or
 7 refund shall be made to the taxpayer within 60 days after
 8 the claim is approved; if the claim is disallowed, the
 9 department shall so notify the taxpayer and shall grant a
 10 hearing thereon upon proper application by the taxpayer. If
 11 the department disapproves a claim for refund, review of the
 12 determination of the department may be had as otherwise
 13 provided in this chapter.

14 (4) Except as hereinafter provided for, effective with
 15 taxable years ending on or after December 31, 1962, interest
 16 shall be allowed on overpayments at the SAME rate of 6 9%
 17 per annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
 18 date of the return or from the date of the overpayment
 19 (whichever date is later) to the date the department
 20 approves refunding or crediting of the overpayment. With
 21 respect to tax paid by withholding or by estimate, the date
 22 of overpayment shall be deemed to be the date on which the
 23 return for the taxable year was due. No interest shall
 24 accrue on an overpayment if the taxpayer elects to have it
 25 applied to his estimated tax for the succeeding taxable

1 year, nor shall interest accrue during any period the
2 processing of a claim for refund is delayed more than 30
3 days by reason of failure of the taxpayer to furnish
4 information requested by the department for the purpose of
5 verifying the amount of the overpayment. No interest shall
6 be allowed if:

7 (a) the overpayment is refunded within 6 months from
8 the date the return is due or the date the return is filed,
9 whichever date is later;

10 (b) the overpayment results from the carryback of a
11 net operating loss; or

12 (c) the amount of interest is less than \$1.

13 (5) An overpayment not made incident to a bona fide
14 and orderly discharge of an actual income tax liability or
15 one reasonably assumed to be imposed by this law shall not
16 be considered an overpayment with respect to which interest
17 is allowable."

18 Section 2. Section 15-31-531, MCA, is amended to read:

19 "15-31-531. Credit for overpayment -- interest on
20 overpayment. (1) If the department of revenue determines
21 that the amount of tax, penalty, or interest due for any
22 year is less than the amount paid, the amount of the
23 overpayment shall be credited against any tax, penalty, or
24 interest then due from the taxpayer and the balance refunded
25 to the taxpayer or its successor through reorganization,

1 merger, or consolidation or to its shareholders upon
2 dissolution.

3 (2) Except as hereinafter provided for, interest shall
4 be allowed on overpayments at the SAME rate of ~~6 9%~~ per
5 annum AS IS CHARGED ON DELINQUENT TAXES DUE from the due
6 date of the return or from the date of overpayment
7 (whichever date is later) to the date the department
8 approves refunding or crediting of the overpayment.
9 Interest shall not accrue during any period the processing
10 of a claim for refund is delayed more than 30 days by reason
11 of failure of the taxpayer to furnish information requested
12 by the department for the purpose of verifying the amount of
13 the overpayment. No interest shall be allowed:

14 (a) if the overpayment is refunded within 6 months
15 from the date the return is due or from the date the return
16 is filed, whichever is later; or

17 (b) if the amount of interest is less than \$1.

18 (3) A payment not made incident to a bona fide and
19 orderly discharge of an actual corporation license tax
20 liability or one reasonably assumed to be imposed by this
21 law shall not be considered an overpayment with respect to
22 which interest is allowable."

23 SECTION 3. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON
24 PASSAGE AND APPROVAL.

25 SECTION 4. APPLICABILITY. THIS ACT APPLIES TO CLAIMS

1 FOR REFUNDS OR CREDITS THAT WERE MADE WITHIN THE TIME PERIOD
2 FOR SUBMISSION OF CLAIMS THAT IS PERMITTED UNDER THIS ACT
3 EVEN THOUGH THE CLAIM MAY HAVE BEEN SUBMITTED AFTER THE
4 5-YEAR PERIOD PROVIDED IN 15-30-149, PRIOR TO AMENDMENT, HAD
5 EXPIRED.

-End-

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Taxation)

That House Bill No. 17 be amended as follows:

1. TITLE, line 7.

Following: "CORPORATION TAX"

Insert: "; TO CLARIFY THE PERIOD DURING WHICH REFUNDS AND CREDITS MAY BE GRANTED; AND TO PROVIDE FOR EXTENSIONS OF THE PERIOD BY AGREEMENT"

2. TITLE, line 8.

Following: "SECTIONS"

Insert: "15-30-145, 15-30-146,"

Following: "15-30-149"

Insert: ", "

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE"

3. Page 1, line 11.

Following: line 10

Insert: "Section 1. Section 15-30-145, MCA, is amended to read:

"15-30-145. Revision of return by department - examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such return. If any taxpayer fails to file a return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties, and interest due the state from such taxpayer.

~~(2) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter,~~ as provided in 15-30-146:

(a) the amount of tax due under any return shall be determined by the department within 5 years after prior to the expiration of the 5-year period beginning on the date the return was made filed; and

(b) the department thereafter shall be barred from revising any such returns the returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said the 5-year period, notwithstanding the provisions of 15-30-322. In the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due and, where no return has been filed, the tax may be assessed at any time.

~~(2)~~ (3) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of such person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to such person or persons."

Section 2. Section 15-30-146, MCA, is amended to read:

"15-30-146. ~~Welling Extensions~~ of statute of limitations. (1) The running of the statute of limitations provided for under 15-30-145 shall be suspended during:

(a) any period that the federal statute of limitations for ~~collection~~ adjustment of federal income tax has been suspended plus 1 year when the suspension is:

(i) by written agreement with the internal revenue service signed by the taxpayer; or

(ii) when because the taxpayer has instituted an action which that has the effect of suspending the running of the federal statute of limitations ~~and-for-1-additional-year~~; or

(b) any period that has been agreed upon by the taxpayer and the department in writing.

(2) If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by 15-30-304, the statute of limitations ~~shall~~ does not apply begin to run until ~~5-years-from~~ the date the federal changes become final or the amended federal return was filed.

(3) If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return, the ~~statute-of-limitations-shall-not-apply~~ 5-year period provided for in 15-30-145 is extended for 2 additional years from-the-time-specified-in 15-30-145-

(4) In the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due may be determined and collected at any time after it becomes due. When no return is filed, the tax may be determined and collected at any time.

(5) A taxpayer and the department may agree in writing to any extension or suspension of the 5-year period. To be effective, the agreement must be signed by the taxpayer and the director of the department or the director's designated agent."

ReNUMBER subsequent sections.

4. Amend page 1, line 22 through line 5, page 2.

Following: "(2)"

Strike: line 22 through line 5, page 2, in their entirety

Insert: " (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results"

5. Page 5, line 7.

Following: line 6

Insert: " Section 5. Effective date. This act is effective upon passage and approval.

Section 6. Applicability. This act applies to claims for refunds or credits that were made within the time period for submission of claims that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired".