

House Bill 416

In The House

January 22, 1981	Introduced and referred to Committee on Taxation.
January 23, 1981	Fiscal note requested.
January 27, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

1 ~~between a person and an individual that exists when the~~
 2 ~~person for whom services are performed has the right to~~
 3 ~~control and direct the individual who performs the services,~~
 4 ~~not only as to the result to be accomplished by the work but~~
 5 ~~also as to the details and means by which that result is~~
 6 ~~accomplished.~~

7 ~~(4)(5)~~ "Wages" means all remuneration (other than fees
 8 paid to a public official) for services performed by an
 9 employee for his employer, including the cash value of all
 10 remuneration paid in any medium other than cash, except that
 11 such term shall not include remuneration paid:

12 (a) for active service as a member of the armed forces
 13 of the United States;

14 (b) for agricultural labor as defined in subsection
 15 (1);

16 (c) for domestic service in a private home, a local
 17 college club, or local chapter of a college fraternity or
 18 sorority;

19 (d) for casual labor not in the course of the
 20 employer's trade or business performed in any calendar
 21 quarter by an employee unless the cash remuneration paid for
 22 such service is \$50 or more and such service is performed by
 23 an individual who is regularly employed by such employer to
 24 perform such service. For purposes of this subsection ~~(4)(d)~~
 25 ~~(5)(d)~~, an individual is considered to be regularly employed

1 by an employer during a calendar quarter only if:

2 (i) on each of some 24 days during such quarter such
 3 individual performs for such employer for some portion of
 4 the day service not in the course of the employer's trade or
 5 business;

6 (ii) such individual was regularly employed (as
 7 determined under subsection ~~(4)(d)(4)~~ ~~(5)(d)(i)~~) by such
 8 employer in the performance of such service during the
 9 preceding calendar quarter;

10 (e) for services by a citizen or resident of the
 11 United States for a foreign government or an international
 12 organization;

13 (f) for services performed by a duly ordained,
 14 commissioned, or licensed minister of a church in the
 15 exercise of his ministry or by a member of a religious order
 16 in the exercise of duties required by such order;

17 (g) (i) for services performed by an individual under
 18 the age of 18 in the delivery or distribution of newspapers
 19 or shopping news, not including delivery or distribution to
 20 any point for subsequent delivery or distribution; or

21 (ii) for services performed by an individual in and at
 22 the time of the sale of newspapers or magazines to ultimate
 23 consumers under an arrangement under which the newspapers or
 24 magazines are to be sold by him at a fixed price, his
 25 compensation being based on the retention of the excess of

1 such price over the amount at which the newspapers or
2 magazines are charged to him, whether or not he is
3 guaranteed a minimum amount of compensation for such service
4 or is entitled to be credited with the unsold newspapers or
5 magazines turned back;

6 (n) for services not in the course of the employer's
7 trade or business to the extent paid in any medium other
8 than cash when such payments are in the form of lodgings or
9 meals and such services are received by the employee at the
10 request of and for the convenience of the employer;

11 (i) to or for an employee as a payment for or a
12 contribution toward the cost of any group plan or program
13 which benefits the employee, including but not limited to
14 life insurance, hospitalization insurance for the employee
15 or dependents, and employees' club activities."

16 NEW SECTION. Section 2. Determination of employment
17 relationship. (1) The determination of the existence of the
18 employment relationship is made by the department. In a
19 doubtful case, the determination is based upon an
20 examination of the facts particular to the case. Service
21 performed by an individual for wages is considered to be
22 within the employment relationship unless and until it is
23 shown to the satisfaction of the department that:

24 (a) the individual has been and will continue to be
25 free from control or direction over the performance of the

1 services, both under his contract and in fact;

2 (b) (i) the service is either outside the usual course
3 of the business for which the service is performed; or

4 (ii) the service is performed outside of all the places
5 of business for the enterprise for which the service is
6 performed; and

7 (c) the individual is customarily engaged in an
8 independently established trade, occupation, profession, or
9 business.

10 (2) For the employment relationship to exist it is not
11 necessary that the employer actually direct or control the
12 manner in which the services are performed; it is sufficient
13 if the employer has the right to do so. The right to
14 discharge is another indication of the existence of the
15 employment relationship. Other factors characteristic of an
16 employer and the employment relationship, but not
17 necessarily present in all cases, are the furnishing of
18 tools and the furnishing of a place to work.

19 (3) If the employment relationship exists, the
20 designation or description of the relationship by the
21 parties as anything other than that of employer and employee
22 is immaterial.

23 Section 3. Section 15-30-202, MCA, is amended to read:
24 "15-30-202. Withholding of tax from wages. (1) Every
25 employer making payment of wages shall deduct and withhold

1 ~~upon such wages from the wages of each employee subject to~~
 2 ~~Montana individual income tax~~ a tax determined in accordance
 3 with the withholding tax tables which shall be prepared and
 4 issued by the department. ~~Persons on active service as~~
 5 ~~members of the armed forces of the United States shall not~~
 6 ~~be subject to the provisions of this section.~~

7 (2) The department shall prepare and issue withholding
 8 tax tables."

9 Section 4. Section 15-30-203, MCA, is amended to read:

10 "15-30-203. Employer liable for withholding. (1) Every
 11 employer ~~shall be~~ is liable for the amounts hereinbefore
 12 required to be deducted and withheld ~~under 15-30-202,~~ and
 13 such amounts plus interest due thereon ~~shall be~~ are
 14 considered as a tax, and with respect thereto the employer
 15 ~~shall be~~ is considered a taxpayer.

16 (2) The officer or employee of a corporation whose
 17 duty it is to collect, truthfully account for, and pay over
 18 to the state amounts withheld from the corporation's
 19 employees and who willfully fails to pay over the
 20 withholdings is liable to the state for amounts so withheld
 21 and the amount of penalty and interest due thereon.

22 (3) If the employer fails to deduct and withhold the
 23 amounts specified in 15-30-202 and thereafter the tax
 24 against which such deducted and withheld amounts would have
 25 been credited is paid, the amounts so required to be

1 deducted and withheld ~~shall~~ may not be collected from the
 2 employer."

3 Section 5. Section 15-30-204, MCA, is amended to read:

4 "15-30-204. Quarterly payment. (1) On or before the
 5 last day of the months of April, July, October, and January
 6 of each calendar year, every employer subject to the
 7 provisions of 15-30-202 and 15-30-203 shall file a return in
 8 such form and containing such information as may be required
 9 by the department and shall pay therewith the amount
 10 required by 15-30-202 to be deducted and withheld by ~~and~~
 11 ~~the~~ employer from wages paid during the preceding quarterly
 12 period of 3 months.

13 (2) If the total amount of the tax withheld by an
 14 employer under the provisions of 15-30-202 upon the wages of
 15 all employees of any employer is less than \$10 in each
 16 quarterly period of any year, such employer ~~shall~~ is not be
 17 required to file the quarterly returns or to make the
 18 quarterly payments as provided in the preceding subsection,
 19 but in lieu thereof such employer shall, on or before
 20 February 15 of the year succeeding that in which such wages
 21 were paid, file an annual return in such form as may be
 22 required by the department and shall pay therewith the
 23 amount required to be deducted and withheld by the employer
 24 from all wages paid during the preceding calendar year.

25 (3) If an employer fails to file the required returns,

1 ~~the department may estimate the amount of withholding tax~~
 2 ~~required to be withheld.~~ If the department has reason to
 3 believe that collection of the amount of any tax ~~required to~~
 4 ~~be withheld~~ is in jeopardy, it may proceed as provided for
 5 under 15-30-312 with respect to jeopardy assessments of
 6 income tax."

7 Section 6. Section 15-30-205, MCA, is amended to read:

8 "15-30-205. Amount withheld considered as tax
 9 collected. All amounts deducted and withheld ~~shall--be~~ are
 10 considered as a tax collected under the provisions of
 11 15-30-201 through 15-30-209, and no employee ~~shall--have~~ has
 12 any right of action against his employer in respect to any
 13 ~~moneys money~~ so deducted and withheld from his wages and
 14 paid to the state in compliance or intended compliance with
 15 15-30-201 through 15-30-209."

16 Section 7. Section 15-30-206, MCA, is amended to read:

17 "15-30-206. Annual withholding statement. (1) Every
 18 employer shall, prior to February 15 in each year, furnish
 19 to each employee a written statement showing the total wages
 20 paid by the employer to the employee during the preceding
 21 calendar year and showing the amount of the federal income
 22 tax deducted and withheld from such wages and the amount of
 23 the tax deducted and withheld therefrom under the provisions
 24 of 15-30-201 through 15-30-209. ~~and~~ This statement shall
 25 contain such additional information and shall be in such

1 form as the department ~~shall--prescribe~~ prescribes, and a
 2 duplicate thereof shall be filed by the employee with his
 3 state income tax return.

4 ~~(2) The employer shall file with the department a copy~~
 5 ~~of the statement, required by subsection (1), provided to~~
 6 ~~each employee at the same time the employer files the annual~~
 7 ~~statement required by 15-30-207.~~

8 ~~(3) In addition to any other penalty provided by law,~~
 9 ~~the failure of an employer to furnish a statement as~~
 10 ~~required by subsection (1) or to file a statement as~~
 11 ~~required by subsection (2) subjects the employer to a fine~~
 12 ~~of \$10 for each failure. This fine may be abated by the~~
 13 ~~department upon a showing of good cause by the employer. The~~
 14 ~~fine may be collected in the same manner as are other tax~~
 15 ~~debts."~~

16 Section 8. Section 15-30-207, MCA, is amended to read:

17 "15-30-207. Annual statement by employer. (1) Every
 18 employer shall, on or before February 15 in each year, file
 19 with the department a statement in such form and summarizing
 20 such information as the department ~~shall--require~~ requires,
 21 including the total wages paid to each employee during the
 22 preceding calendar year or any part thereof and showing the
 23 total amount of the federal income tax deducted and withheld
 24 from such wages and the total amount of the tax deducted and
 25 withheld therefrom under the provisions of 15-30-201 through

1 15-30-209. ~~The employer shall also file with the annual~~
 2 ~~statement copies of the withholding statements furnished to~~
 3 ~~employees pursuant to 15-30-206.~~

4 (2) ~~Said~~ The annual statement filed by an employer
 5 ~~shall~~, with respect to the wage payments reported therein
 6 constitute ~~constitutes~~ full compliance with the requirements
 7 of 15-30-301 relating to the duties of information agents,
 8 and no additional information return ~~shall--be~~ is required
 9 with respect to such wage payments."

10 Section 9. Section 15-30-208, MCA, is amended to read:

11 "15-30-208. Withheld taxes held in trust for state --
 12 warrants to collect. ~~Every--employer--who--deducts--and~~
 13 ~~withholds--any--amounts--under--the--provisions--of--15-30-201~~
 14 ~~through-15-30-209-shall-hold-the-same~~ Any amount required to
 15 ~~be withheld by 15-30-202 is considered to be held~~ in trust
 16 ~~by the employer~~ for the state of Montana, and if any tax
 17 imposed by 15-30-201 through 15-30-209 or any portion of
 18 such tax is not paid ~~within-60-days-after-the-same-becomes~~
 19 ~~when~~ due, the department ~~shall may~~ issue a warrant under its
 20 official seal, ~~which-shall-have~~ the warrant has the same
 21 force and effect and ~~shall-be~~ is enforced and carried into
 22 execution in the same manner as that specified in 15-30-311
 23 with respect to warrants relating to unpaid income taxes."

24 Section 10. Section 15-30-209, MCA, is amended to
 25 read:

1 "15-30-209. Violations by employer -- penalties and
 2 remedies. (1) If any employer ~~shall--fail~~ fails to pay over
 3 to the state the tax ~~required to be~~ deducted and withheld
 4 under the provisions of 15-30-201 through 15-30-208 or ~~shall~~
 5 ~~fail~~ fails to file or furnish any statement provided for
 6 within the time prescribed ~~therefor~~, the same additions to
 7 the amount of such tax shall be imposed and added as those
 8 specified in 15-30-321 with respect to failure to make a
 9 return of income or to pay any income tax, ~~and--any~~ Any
 10 individual, corporation, or partnership or any officer or
 11 employee thereof who, with intent to evade any tax or any
 12 requirement of 15-30-201 through 15-30-208, ~~fails to pay to~~
 13 ~~the state the tax required to be deducted and withheld under~~
 14 ~~the provisions of 15-30-201 through 15-30-208~~ or who, with
 15 like intent, files or supplies any false or fraudulent
 16 statement or information ~~shall-be~~ is liable to the same
 17 penalties as those imposed by ~~15-30-321~~ 15-30-321(3) with
 18 respect ~~to failure to pay tax or~~ to filing or supplying any
 19 false or fraudulent statement or information with respect to
 20 income taxes.

21 (2) All of the remedies available to the state for the
 22 administration, enforcement, and collection of income taxes
 23 ~~shall-be~~ are available and ~~shall~~ apply to the tax required
 24 to be deducted and withheld under ~~the~~ provisions of
 25 15-30-201 through 15-30-208."

1 **NEW SECTION.** Section 11. Employee status information.

2 (1) The department may adopt rules for an employee to submit
3 information to an employer concerning:

4 (a) the exemption allowances permitted the employee;
5 and

6 (b) the tax-exempt status of the employee.

7 (2) An employee who submits false information to an
8 employer concerning the exemption allowances permitted or
9 the tax-exempt status of the employee commits the offense of
10 unsworn falsification as provided for in 45-7-203, with the
11 employer considered a public servant under 45-7-203 for this
12 specific purpose.

13 (3) An employer is not required to use false
14 information submitted by an employee and may be prohibited
15 by the department from using false information submitted by
16 an employee.

17 **NEW SECTION.** Section 12. Treatment of refunds. The
18 department may adopt rules for the payment of refunds to
19 employees and employers. A person who is responsible for the
20 payment of the withholding tax to the department and who
21 fails to make such payment may not claim and is not entitled
22 to receive a refund on his own personal income tax.

23 Section 13. Section 15-30-221, MCA, is amended to
24 read:

25 "15-30-221. Withholding on payments to nonresidents --

1 exception. (1) Every person, firm, corporation, association,
2 partnership, or fiduciary doing business in or having income
3 in the state of Montana, including the state of Montana, its
4 agencies and instrumentalities, counties, cities, towns,
5 school districts, and municipal corporations of every kind,
6 which knowingly makes payments of any kind to any
7 nonresident of the state of Montana for services performed
8 within the state of Montana other than those payments
9 excepted in ~~15-30-201(4)~~ 15-30-201(5) or for casual sales of
10 property, either real or personal, located within the state
11 of Montana, or any prizes or winnings payable from or within
12 the state of Montana or hiring or having a contract with any
13 nonresident of a temporary nature to be carried out within
14 the state of Montana shall deduct from such payment or
15 payments an amount, to be set by the department, not to
16 exceed 3% of such payment which shall be transmitted by him
17 to the department as partial payment of such nonresident's
18 income tax.

19 (2) Upon finding that reports and information in
20 addition to that now required by law or regulation should be
21 filed in order to insure the collection of Montana state
22 income tax on payment to nonresidents for leases, rentals,
23 or royalties derived from property located within the state
24 of Montana, the department may adopt rules requiring the
25 filing of such reports and information.

1 (3) If, upon notice to a nonresident taxpayer and
 2 hearing, the department finds that withholding should be
 3 made on payments to the taxpayer for leases, rentals, or
 4 royalties derived from property located within the state of
 5 Montana in order to insure the collection of Montana state
 6 income tax, it may order withholding on such payments in an
 7 amount equal to the tax liability of the nonresident
 8 taxpayer. Such order is binding upon all withholding agents,
 9 as hereinafter described, who receive a copy thereof by mail
 10 or otherwise until such agent receives a copy of an order of
 11 the department terminating such withholding as to the
 12 nonresident taxpayer.

13 (4) Payments made for livestock or agricultural
 14 products raised or grown outside Montana and sold at a
 15 market within this state are not subject to withholding
 16 under this section."

17 Section 14. Section 15-50-302, MCA, is amended to
 18 read:

19 *15-50-302. Complaints against licensee -- grounds --
 20 investigation -- hearing -- suspension of license --
 21 appeals. (1) Any person or other organization, including the
 22 department of revenue, may file a duly verified complaint
 23 with the registrar charging that the licensee is guilty of
 24 one or more of the following acts or omissions:

25 (a) abandonment of any contract without legal excuse;

1 (b) diversion of funds or property received under
 2 express agreement for prosecution or completion of a
 3 specific contract under this chapter or for a specified
 4 purpose in the prosecution or completion of any contract and
 5 their application or use for any other contract, obligation,
 6 or purpose with intent to defraud or deceive creditors or
 7 the owner;

8 (c) the doing of any willful fraudulent act by the
 9 licensee as a public contractor in consequence of which
 10 another is substantially injured;

11 (d) the making of any false statement in any
 12 application for a license or renewal thereof;

13 (e) the failure to comply with the provisions of
 14 18-1-112 requiring preference of products manufactured or
 15 produced in this state by Montana industry and labor;

16 ~~(f) the failure to comply with the provisions of Title~~
 17 ~~15, chapter 30, part 2, relating to withholding tax.~~

18 (2) Upon the filing of such complaint, the registrar
 19 shall investigate the charge and within 60 days after the
 20 filing of such complaint shall render and file said
 21 registrar's decision with said registrar's reasons therefor.
 22 If the registrar's decision be that the licensee has been
 23 guilty of any of such acts or omissions, said registrar
 24 shall suspend the contractor's license. At any time within
 25 20 days thereafter, the complainant or the contractor may

1 petition the registrar for a rehearing. In the order
 2 granting or denying such rehearing, the registrar shall set
 3 forth a statement of the particular grounds and reasons for
 4 said registrar's actions on such petition and shall mail a
 5 copy of such order to the parties who have appeared in
 6 support of or in opposition to the petition for rehearing.
 7 If a rehearing be granted, the registrar shall set the
 8 matter for further hearing on due notice to the parties and,
 9 within 30 days after submission of the matter, serve said
 10 registrar's decision after rehearing in like manner as an
 11 original decision.

12 (3) The filing of such petition for rehearing as to
 13 the registrar's actions in suspending or canceling such
 14 license shall suspend the operation of such action and
 15 permit the licensee to continue to do business as a public
 16 contractor pending final determination of the controversy.

17 (4) Within 30 days after the decision on rehearing,
 18 any party aggrieved by such decision of the registrar may
 19 appeal therefrom to the district court in and for the county
 20 in which the licensee under this chapter resides or does
 21 business as a public contractor by serving upon the
 22 registrar a notice of such appeal. The matter shall
 23 thereupon be heard de novo by the district court. An appeal
 24 may be taken from the decision of the district court in the
 25 same manner as appeals in other civil cases.

1 (5) In all cases where the licensee has filed his
 2 notice of appeal from the decision of the registrar or from
 3 the decision of the district court, such licensee shall be
 4 entitled to continue to do business as a public contractor
 5 pending final decision of the controversy."

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

8 "15-30-303. Confidentiality of tax records. (1) Except
 9 in accordance with proper judicial order or as otherwise
 10 provided by law, it is unlawful for the department or any
 11 deputy, assistant, agent, clerk, or other officer or
 12 employee to divulge or make known in any manner the amount
 13 of income or any particulars set forth or disclosed in any
 14 report or return required under this chapter or any other
 15 information secured in the administration of this chapter.
 16 It is also unlawful to divulge or make known in any manner
 17 any federal return or federal return information disclosed
 18 on any return or report required by rule of the department
 19 or under this chapter.

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

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1 behalf of any party to any action or proceedings under the
 2 provisions of this chapter or such other act when the
 3 reports or facts shown thereby are directly involved in such
 4 action or proceedings, in either of which events the court
 5 may require the production of and may admit in evidence so
 6 much of said reports or of the facts shown thereby as are
 7 pertinent to the action or proceedings and no more.

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

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

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

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

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

24 (5) Any offense against subsections (1) through (4) of
 25 this section shall be punished by a fine not exceeding

1 \$1,000 or by imprisonment in the county jail not exceeding 1
 2 year, or both, at the discretion of the court, and if the
 3 offender be an officer or employee of the state, he shall be
 4 dismissed from office and be incapable of holding any public
 5 office in this state for a period of 1 year thereafter.

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

23 (7) Further, notwithstanding any of the provisions of
 24 this section:

25 (a) the department shall furnish to the division of

1 motor vehicles of the department of justice all information
 2 necessary to identify those persons qualifying for the
 3 additional exemption for blindness pursuant to 15-30-112(4),
 4 for the purpose of enabling said division to administer the
 5 provisions of 61-5-105;

6 (a) the department may make employer payroll
 7 information available to the department of labor and
 8 industry for the purpose of making determinations with
 9 respect to consistency in reporting and failure to report;
 10 and

11 (c) the department may make available to the secretary
 12 of state information concerning violation of the withholding
 13 tax provisions by a corporate employer for the purposes of
 14 35-1-1019 and 35-6-102.

15 (8) Information received by the department of labor
 16 and industry pursuant to subsection (7)(b) or by the
 17 secretary of state pursuant to subsection (7)(c) is subject
 18 to the confidentiality provisions of this section."

19 NEW SECTION. Section 16. Cooperation with department
 20 of revenue. Notwithstanding any other provision of this
 21 chapter, the division may make available employer payroll
 22 information to the department of revenue for the purpose of
 23 making determinations with respect to consistency in
 24 reporting and failure to report. Information made available
 25 to the department of revenue pursuant to this section is

1 subject to the confidentiality provisions of 15-30-303.

2 NEW SECTION. Section 17. Cooperation with department
 3 of revenue. Notwithstanding any other provision of this
 4 chapter, the division may make available employer payroll
 5 information to the department of revenue for the purpose of
 6 making determinations with respect to consistency in
 7 reporting and failure to report. Information made available
 8 to the department of revenue pursuant to this section is
 9 subject to the confidentiality provisions of 15-30-303.

10 Section 18. Section 15-57-110, MCA, is amended to
 11 read:

12 "15-57-110. Penalty -- revocation. (1) Any person or
 13 group who shall violate any of the provisions of this
 14 chapter shall be deemed guilty of a misdemeanor and upon
 15 conviction thereof shall be fined not less than \$25 or more
 16 than \$200, and each day that such violation shall continue
 17 shall constitute a separate and distinct offense.

18 (2) A license issued under the provisions of this
 19 chapter may be revoked by the department because of a
 20 violation of the provisions of Title 15, chapter 30, part 2,
 21 relating to withholding tax, by the holder of the license.
 22 A revocation is subject to the contested case provisions of
 23 the Montana Administrative Procedure Act."

24 Section 19. Section 16-4-406, MCA, is amended to read:

25 "16-4-406. Renewal -- suspension or revocation --

1 penalty. The department may upon its own motion and shall
 2 upon a written, verified complaint of any person investigate
 3 the action and operation of any brewer, wholesaler, or
 4 retailer licensed under this code. If the department, after
 5 investigation, shall have reasonable cause to believe that
 6 any such licensee has violated any of the provisions of this
 7 ~~code, the provisions of Title 15, chapter 30, part 2,~~
 8 ~~relating to withholding tax,~~ or any rules of the department,
 9 it may, in its discretion and in addition to the other
 10 penalties prescribed, reprimand a licensee, proceed to
 11 revoke the license of any such licensee or it may suspend
 12 the same for a period of not to exceed 3 months or it may
 13 refuse to grant a renewal of said license upon the
 14 expiration thereof or impose a civil penalty not to exceed
 15 \$1,500, subject to the opportunity for a hearing under the
 16 Montana Administrative Procedure Act."

17 Section 20. Section 35-1-1019, MCA, is amended to
 18 read:

19 "35-1-1019. Revocation of certificate of authority.
 20 (1) The certificate of authority of a foreign corporation to
 21 transact business in this state may be revoked by the
 22 secretary of state upon the conditions prescribed in this
 23 section when:

24 (a) the corporation has failed to file its annual
 25 report within the time required by this chapter or has

1 failed to pay any fees prescribed by this chapter when they
 2 have become due and payable;

3 (b) the corporation has failed to appoint and maintain
 4 a registered agent in this state as required by this
 5 chapter;

6 (c) the corporation has failed, after change of its
 7 registered office or registered agent, to file in the office
 8 of the secretary of state a statement of such change as
 9 required by this chapter;

10 (d) the corporation has failed to file in the office
 11 of the secretary of state any amendment to its articles of
 12 incorporation or any articles of merger within the time
 13 prescribed by this chapter; or

14 (e) a misrepresentation has been made of any material
 15 matter in any application, report, affidavit, or other
 16 document submitted by such corporation pursuant to this
 17 chapter; or

18 ~~(f) the corporation has failed to comply with the~~
 19 ~~provisions of Title 15, chapter 30, part 2, relating to~~
 20 ~~withholding tax, for three or more quarters.~~

21 (2) No certificate of authority of a foreign
 22 corporation shall be revoked by the secretary of state
 23 unless:

24 (a) he shall have given the corporation not less than
 25 60 days' notice thereof by mail addressed to its registered

1 office in this state; and

2 (b) the corporation shall fail prior to revocation to
3 file such annual report or pay such fees or file the
4 required statement of change of registered agent or
5 registered office or file such articles of amendment or
6 articles of merger or correct such misrepresentation ~~or pay~~
7 ~~past due withholding taxes, penalty, and interest."~~

8 Section 21. Section 35-6-102, MCA, is amended to read:

9 "35-6-102. Involuntary dissolution -- grounds. (1) Any
10 domestic corporation, whether for profit or not for profit,
11 may be dissolved involuntarily by order of the secretary of
12 state when:

13 (a) the corporation has failed to file its annual
14 report within the time required by law or failed to remit
15 any fees required by law;

16 (b) the corporation procured its certificate of
17 incorporation through fraud;

18 (c) the corporation has exceeded or abused the
19 authority conferred upon it by law and such excesses or
20 abuses have continued after a written notice specifying the
21 manner in which the corporation has exceeded or abused such
22 authority has been received by the registered agent of the
23 corporation from the secretary of state;

24 (d) the corporation has failed for 60 days to appoint
25 and maintain a registered agent in this state; or

1 (e) the corporation has failed for 60 days after
2 change of its registered office or registered agent to file
3 in the office of the secretary of state a statement of such
4 change; ~~or~~

5 ~~(f) the corporation has failed to comply with the~~
6 ~~provisions of Title 15, chapter 30, part 2, relating to~~
7 ~~withholding tax, for three or more quarters.~~

8 (2) If dissolution is sought under subsection (1)(b)
9 or (1)(c) of this section, the secretary of state may so
10 dissolve only when such fact is established by an order of
11 the district court. In addition to other persons so
12 authorized by law, the secretary of state or the attorney
13 general may maintain an action in the district court to
14 implement the provisions of this section."

15 Section 22. Section 35-6-201, MCA, is amended to read:

16 "35-6-201. Reinstatement of dissolved corporation. (1)
17 The secretary of state may:

18 (a) reinstate any corporation which has been dissolved
19 under the provisions of this chapter; and

20 (b) restore to such corporation its right to carry on
21 business in this state and to exercise all its corporate
22 privileges and immunities.

23 (2) A corporation applying for reinstatement shall
24 submit to the secretary of state in duplicate an
25 application, executed and verified by a person who was an

1 officer or director at the time of dissolution, setting
2 forth:

- 3 (a) the name of the corporation;
- 4 (b) a statement that the assets of the corporation
5 have not been liquidated pursuant to 35-1-921 or 35-2-711;
- 6 (c) a statement that not less than a majority of its
7 directors have authorized the application for reinstatement;
8 and
- 9 (d) if its corporate name has been legally acquired by
10 another corporation prior to its application for
11 reinstatement, the corporate name under which the
12 corporation desires to be reinstated.
- 13 (3) The corporation shall submit with its application
14 for reinstatement:
- 15 (a) a certificate from the department of revenue
16 stating that all taxes, including withholding taxes, imposed
17 pursuant to Title 15 have been paid; and
- 18 (b) a filing fee in an amount equal to one-half of the
19 filing and license fees which the corporation would be
20 required to pay if the corporation were filing its articles
21 of incorporation.
- 22 (4) When all requirements are met and the secretary of
23 state reinstates the corporation to its former rights, he
24 shall:
- 25 (a) conform and file in his office reports,

1 statements, and other instruments submitted for
2 reinstatement; and

- 3 (b) immediately issue and deliver to the corporation
4 so reinstated a certificate of reinstatement authorizing it
5 to transact business; and
- 6 (c) upon demand, issue to the corporation one or more
7 certified copies of such certificate of reinstatement.
- 8 (5) The secretary of state may not order a
9 reinstatement if 5 years have elapsed since the
10 dissolution."

11 Section 23. Codification instruction. (1) Sections 2,
12 11, and 12, are intended to be codified as an integral part
13 of Title 15, chapter 30, part 2, and the provisions of
14 15-30-201 through 15-30-209 apply to sections 2, 11, and 12.

15 (2) Section 15 is intended to be codified as an
16 integral part of Title 39, chapter 51, and the provisions of
17 Title 39, chapter 51, apply to section 15.

18 (3) Section 16 is intended to be codified as an
19 integral part of Title 39, chapter 71, and the provisions of
20 Title 39, chapter 71, apply to section 16.

21 (4) The code commissioner may change references to
22 15-30-201 through 15-30-208 or 15-30-201 through 15-30-209
23 to incorporate the additional provisions of sections 2, 11,
24 and 12.

25 Section 24. Applicability. This act applies to tax

LC 0210/01

1 years beginning after December 31, 1980, except that
2 requirements and penalties that apply on a quarterly basis
3 do not apply until the third calendar quarter of 1981.

-End-

STATE OF MONTANA

REQUEST NO. 206-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 23, 19 81, there is hereby submitted a Fiscal Note for HOUSE BILL 416 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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.

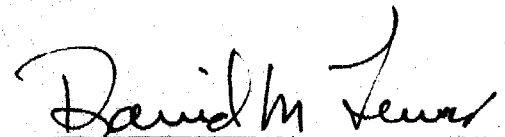
DESCRIPTION

An act to generally revise and clarify the laws relating to withholding tax; clarifying the meaning of employee and employment relationship and distinguishing which wages are subject to withholding; providing for estimates of withholding tax; increasing Department of Revenue enforcement and collection powers and providing additional penalties; providing additional rulemaking authority to the Department of Revenue; clarifying provisions relating to refunds; permitting the exchange of certain payroll information with certain state agencies and providing for the confidentiality of exchanged information.

FISCAL IMPACT

The fiscal impact of the proposed legislation cannot be estimated. The legislation should help to recover revenues that are lost due to non-compliance.

PREPARED BY THE DEPARTMENT OF REVENUE



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-81