

SENATE BILL NO. 242

INTRODUCED BY GAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE SENATE

January 21, 1983	Introduced and referred to Committee on Taxation.
February 17, 1983	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Taxation.
March 11, 1983	Committee recommend bill be concurred in. Report adopted.
March 14, 1983	Second reading, concurred in as amended.
March 15, 1983	Third reading, concurred in.

IN THE SENATE

March 16, 1983	Returned to Senate with amendments.
March 17, 1983	Second reading, amendments concurred in.
March 18, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

BILL NO. 242

INTRODUCED BY Rep. Davis  
BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS PERTAINING TO INCOME TAXATION OF ESTATES, PROPERTY HELD IN TRUST, AND BENEFICIARIES OF ESTATES OR TRUSTS; AMENDING SECTION 15-30-135, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-30-135, MCA, is amended to read:

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

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

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

interests;

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

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

~~(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary;~~

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be are taxable with reference to the income of such estate or trust. ~~The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust is paid to or held for the United States or any state, territory or any political subdivision thereof or the District of Columbia. In cases under subsections (a) and (d) and (e) of subsection (1) of this section, the fiduciary~~

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shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or

~~distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.~~

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

(e) If the taxpayer's net income for such the taxable year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending

1 within the fiscal or calendar year shall be computed upon  
2 the basis on which such beneficiary's net income is  
3 computed. In such cases, a beneficiary not a resident shall  
4 be taxable with respect to his income derived through such  
5 estate or trust only to the extent provided in 15-30-131 for  
6 individuals other than residents.

7 ~~†5†~~14 The fiduciary of a trust created by an employer  
8 as a part of a stock bonus, pension, or profit-sharing plan  
9 for the exclusive benefit of some or all of his employees,  
10 to which contributions are made by such employer or  
11 employees, or both, for the purpose of distributing to such  
12 employees the earnings and principal of the fund accumulated  
13 by the trust in accordance with such plan, shall not be  
14 taxable under this section, but any amount contributed to  
15 such fund by the employer and all earnings of such fund  
16 shall be included in computing the income of the distributee  
17 in the year in which distributed or made available to him.

18 ~~†6†~~15 Where any part of the income of a trust other  
19 than a testamentary trust is or may be applied to the  
20 payment of premiums upon policies of insurance on the life  
21 of the grantor (except policies of insurance irrevocably  
22 payable for the purposes and in the manner specified  
23 relating to the so-called "charitable contribution"  
24 deduction) or to the payment of premiums upon policies of  
25 life insurance under which the grantor is the beneficiary,

1 such part of the income of the trust shall be included in  
2 computing the net income of the grantor."

3 NEW SECTION. Section 2. Computation of net income of  
4 estates or trusts. (1) Except as otherwise provided in this  
5 chapter, "gross income" of estates or trusts means all  
6 income from whatever source derived in the taxable year,  
7 including but not limited to the following items:

- 8 (a) dividends;
- 9 (b) interest received or accrued, including interest  
10 received on obligations of another state or territory or a  
11 county, municipality, district, or other political  
12 subdivision thereof, but excluding interest income from  
13 obligations of:
- 14 (i) the United States government or the state of  
15 Montana;
- 16 (ii) a school district; or
- 17 (iii) a county, municipality, district, or other  
18 political subdivision of the state;
- 19 (c) income from partnerships and other fiduciaries;
- 20 (d) gross rents and royalties;
- 21 (e) gain from sale or exchange of property, including  
22 those gains that are excluded from gross income for federal  
23 fiduciary income tax purposes by section 641(c) of the  
24 Internal Revenue Code of 1954, as amended;
- 25 (f) gross profit from trade or business; and

1 (g) refunds recovered on federal income tax, to the  
2 extent the deduction of such tax resulted in a reduction of  
3 Montana income tax liability.

4 (2) In computing net income, there are allowed as  
5 deductions:

6 (a) interest expenses deductible for federal tax  
7 purposes according to section 163 of the Internal Revenue  
8 Code of 1954, as amended;

9 (b) taxes paid or accrued within the taxable year,  
10 including but not limited to federal income tax, but  
11 excluding Montana income tax;

12 (c) that fiduciary's portion of depreciation or  
13 depletion which is deductible for federal tax purposes  
14 according to sections 167, 611, and 642 of the Internal  
15 Revenue Code of 1954, as amended;

16 (d) charitable contributions that are deductible for  
17 federal tax purposes according to section 642(c) of the  
18 Internal Revenue Code of 1954, as amended;

19 (e) administrative expenses claimed for federal income  
20 tax purposes, according to sections 212 and 642(g) of the  
21 Internal Revenue Code of 1954, as amended, if such expenses  
22 were not claimed as a deduction in the determination of  
23 Montana inheritance tax;

24 (f) losses from fire, storm, shipwreck, or other  
25 casualty or from theft, to the extent not compensated for by

1 insurance or otherwise, that are deductible for federal tax  
2 purposes according to section 165 of the Internal Revenue  
3 Code of 1954, as amended;

4 (g) net operating loss deductions allowed for federal  
5 income tax under section 642(d) of the Internal Revenue Code  
6 of 1954, as amended, except estates may not claim losses  
7 that are deductible on the decedent's final return;

8 (h) all benefits received as federal employees'  
9 retirement not in excess of \$3,600;

10 (i) all benefits paid under the Montana teachers'  
11 retirement system that are specified as exempt from taxation  
12 by 19-4-706;

13 (j) all benefits paid under the Montana Public  
14 Employees' Retirement System Act that are specified as  
15 exempt from taxation by 19-3-105;

16 (k) all benefits paid under the Montana highway  
17 patrolmen's retirement system that are specified as exempt  
18 from taxation by 19-6-705;

19 (l) Montana income tax refunds or credits thereof;

20 (m) all benefits paid under 19-11-602, 19-11-604, and  
21 19-11-605 to retired and disabled firemen or their surviving  
22 spouses or children;

23 (n) all benefits paid by first- or second-class cities  
24 for the Montana police officers' retirement system provided  
25 for by the metropolitan police law;

(c) all benefits not in excess of \$360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

NEW SECTION. Section 3. Adjustments to income of estates and trusts. (1) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts required to be distributed, paid, or credited for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(2) The following exemptions are allowed for estates and trusts:

(a) \$600 for an estate;

(b) \$300 for a simple trust; and

(c) \$100 for a complex trust.

(3) The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

(4) Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

NEW SECTION. Section 4. Effective date -- applicability. This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1982.

NEW SECTION. Section 5. Codification instruction. Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, apply to sections 2 and 3.

Approved by committee  
on Taxation

## SENATE BILL NO. 242

INTRODUCED BY GAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS PERTAINING TO INCOME TAXATION OF ESTATES, PROPERTY HELD IN TRUST, AND BENEFICIARIES OF ESTATES OR TRUSTS; AMENDING SECTION 15-30-135, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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Section 1. Section 15-30-135, MCA, is amended to read:

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

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

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

interests;

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

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

~~(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.~~

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be ~~are~~ taxable with reference to the income of such estate or trust. ~~The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust is paid to or held for the United States or any state, territory or any political subdivision thereof or the District of Columbia. In cases under subsections (a) and (d) and (e) of subsection (1) of this section, the fiduciary~~



1 shall include in the return a statement of each  
2 beneficiary's distributive share of such net income, whether  
3 or not distributed before the close of the taxable year for  
4 which the return is made.

5 (3) In cases under subsections (a), (b), and (c) of  
6 subsection (1) of this section, the tax shall be imposed  
7 upon the fiduciary of the estate or trust with respect to  
8 the net income of the estate or trust and shall be paid by  
9 the fiduciary, except that in determining the net income of  
10 the estate of any deceased person during the period of  
11 administration or settlement, there may be deducted the  
12 amount of any income properly paid or credited to any  
13 legatee, heir, or other beneficiary. In such cases, the  
14 fiduciary of the estate or trust shall be allowed the same  
15 exemptions as are allowed to single persons under 15-38-112  
16 and the fiduciary of any estate or trust created by a person  
17 not a resident or of an estate of a person not a resident  
18 shall be subject to a tax only to the extent to which  
19 individuals other than residents are liable under 15-38-131.

20 (4) There shall be allowed as an additional  
21 deduction in computing the net income of the estate or trust  
22 the amount of the income of the estate or trust for its  
23 taxable year which is to be distributed currently by the  
24 fiduciary to the beneficiaries and the amount of the income  
25 collected by a guardian of an infant which is to be held or

1 distributed as the court may direct, but the amount so  
2 allowed as a deduction shall be included in computing the  
3 net income of the beneficiaries whether distributed to them  
4 or not. Any amount allowed as a deduction under this  
5 subsection shall not be allowed as a deduction under  
6 subsection (1)(b) of this section in the same or any  
7 succeeding taxable year.

8 (b) In the case of income received by estates of  
9 deceased persons during the period of administration or  
10 settlement of the estate and in the case of income which in  
11 the discretion of the fiduciary may be either distributed  
12 to the beneficiary or accumulated, there shall be allowed as  
13 an additional deduction in computing the net income of the  
14 estate or trust the amount of the income of the estate or  
15 trust for its taxable year which is properly paid or  
16 credited during such year to any legatee, heir, or  
17 beneficiary but the amount so allowed as a deduction shall  
18 be included in computing the net income of the legatee,  
19 heir, or beneficiary.

20 (c) If the taxpayer's net income for such the taxable  
21 year of the estate or trust is computed upon the basis of a  
22 period different from that upon the basis of which the net  
23 income of the estate or trust is computed, then his  
24 distributive share of the net income of the estate or trust  
25 for any accounting period of such estate or trust ending

within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

~~(5)~~<sup>(4)</sup> The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

~~(6)~~<sup>(5)</sup> Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary,

such part of the income of the trust shall be included in computing the net income of the grantor."

NEW SECTION. Section 2. Computation of net income of estates or trusts. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

1 (g) refunds recovered on federal income tax, to the  
2 extent the deduction of such tax resulted in a reduction of  
3 Montana income tax liability.

4 (2) In computing net income, there are allowed as  
5 deductions:

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7 purposes according to section 163 of the Internal Revenue  
8 Code of 1954, as amended;

9 (b) taxes paid or accrued within the taxable year,  
10 including but not limited to federal income tax, but  
11 excluding Montana income tax;

12 (c) that fiduciary's portion of depreciation or  
13 depletion which is deductible for federal tax purposes  
14 according to sections 167, 611, and 642 of the Internal  
15 Revenue Code of 1954, as amended;

16 (d) charitable contributions that are deductible for  
17 federal tax purposes according to section 642(c) of the  
18 Internal Revenue Code of 1954, as amended;

19 (e) administrative expenses claimed for federal income  
20 tax purposes, according to sections 212 and 642(g) of the  
21 Internal Revenue Code of 1954, as amended, if such expenses  
22 were not claimed as a deduction in the determination of  
23 Montana inheritance tax;

24 (f) losses from fire, storm, shipwreck, or other  
25 casualty or from theft, to the extent not compensated for by

1 insurance or otherwise, that are deductible for federal tax  
2 purposes according to section 165 of the Internal Revenue  
3 Code of 1954, as amended;

4 (g) net operating loss deductions allowed for federal  
5 income tax under section 642(d) of the Internal Revenue Code  
6 of 1954, as amended, except estates may not claim losses  
7 that are deductible on the decedent's final return;

8 (h) all benefits received as federal employees'  
9 retirement not in excess of \$3,600;

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11 retirement system that are specified as exempt from taxation  
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19 (l) Montana income tax refunds or credits thereof;

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21 19-11-605 to retired and disabled firemen or their surviving  
22 spouses or children;

23 (n) all benefits paid by first- or second-class cities  
24 for the Montana police officers' retirement system provided  
25 for by the metropolitan police law;

(c) all benefits not in excess of \$360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

NEW SECTION. Section 3. Adjustments to income of estates and trusts. (1) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts required to be distributed, paid, or credited for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

~~(2) The following exemptions are allowed for estates and trusts:~~

~~(a) \$600 for an estate;~~

~~(b) \$300 for a simple trust; and~~

~~(c) \$100 for a complex trust.~~ THE EXEMPTION ALLOWED FOR ESTATES AND TRUSTS IS THAT EXEMPTION PROVIDED IN 15-30-112(2)(A) AND 15-30-112(8).

(3) The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

(4) Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

NEW SECTION. Section 4. Effective date -- applicability. This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1982.

NEW SECTION. Section 5. Codification instruction. Sections 2 and 3 are intended to be codified as an integral

- 1 part of Title 15, chapter 30, part 1, and the provisions of
- 2 Title 15, chapter 30, apply to sections 2 and 3.

-End-

## SENATE BILL NO. 242

INTRODUCED BY GAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS PERTAINING TO INCOME TAXATION OF ESTATES, PROPERTY HELD IN TRUST, AND BENEFICIARIES OF ESTATES OR TRUSTS; AMENDING SECTION 15-30-135, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

interests;

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

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

~~(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.~~

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be are taxable with reference to the income of such estate or trust. ~~The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia. In cases under subsections (a) and (d) and (e) of subsection (1) of this section, the fiduciary~~

shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary in such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-38-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-38-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or

distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable years.

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

(c) If the taxpayer's net income for such taxable year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending

1 within the fiscal or calendar year shall be computed upon  
2 the basis on which such beneficiary's net income is  
3 computed. In such cases, a beneficiary not a resident shall  
4 be taxable with respect to his income derived through such  
5 estate or trust only to the extent provided in 15-30-131 for  
6 individuals other than residents.

7 ~~(5)(4)~~ The fiduciary of a trust created by an employer  
8 as a part of a stock bonus, pension, or profit-sharing plan  
9 for the exclusive benefit of some or all of his employees,  
10 to which contributions are made by such employer or  
11 employees, or both, for the purpose of distributing to such  
12 employees the earnings and principal of the fund accumulated  
13 by the trust in accordance with such plan, shall not be  
14 taxable under this section, but any amount contributed to  
15 such fund by the employer and all earnings of such fund  
16 shall be included in computing the income of the distributee  
17 in the year in which distributed or made available to him.

18 ~~(5)(5)~~ Where any part of the income of a trust other  
19 than a testamentary trust is or may be applied to the  
20 payment of premiums upon policies of insurance on the life  
21 of the grantor (except policies of insurance irrevocably  
22 payable for the purposes and in the manner specified  
23 relating to the so-called "charitable contribution"  
24 deduction) or to the payment of premiums upon policies of  
25 life insurance under which the grantor is the beneficiary,

1 such part of the income of the trust shall be included in  
2 computing the net income of the grantor."

3 **NEW SECTION.** Section 2. Computation of net income of  
4 estates or trusts. (1) Except as otherwise provided in this  
5 chapter, "gross income" of estates or trusts means all  
6 income from whatever source derived in the taxable year,  
7 including but not limited to the following items:

8 (a) dividends;

9 (b) interest received or accrued, including interest  
10 received on obligations of another state or territory or a  
11 county, municipality, district, or other political  
12 subdivision thereof, but excluding interest income from  
13 obligations of:

14 (i) the United States government or the state of  
15 Montana;

16 (ii) a school district; or

17 (iii) a county, municipality, district, or other  
18 political subdivision of the state;

19 (c) income from partnerships and other fiduciaries;

20 (d) gross rents and royalties;

21 (e) gain from sale or exchange of property, including  
22 those gains that are excluded from gross income for federal  
23 fiduciary income tax purposes by section 641(c) of the  
24 Internal Revenue Code of 1954, as amended;

25 (f) gross profit from trade or business; and



(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by

insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits received as federal employees' retirement not in excess of \$3,600;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid by first- or second-class cities for the Montana police officers' retirement system provided for by the metropolitan police law;

(c) all benefits not in excess of \$360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

**NEW SECTION.** Section 3. Adjustments to income of estates and trusts. (1) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts required to be distributed, paid, or credited for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

~~(2) The following exemptions are allowed for estates and trusts:~~

~~(a) --\$600 for an estate;~~

~~(b) --\$300 for a simple trust; and~~

~~(c) --\$100 for a complex trust. THE EXEMPTION ALLOWED~~

~~FOR ESTATES AND TRUSTS IS THAT EXEMPTION PROVIDED IN 15-30-112(2)(A) AND 15-30-112(B).~~

(3) The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

(4) Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

**NEW SECTION.** Section 4. Effective date -- applicability. This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1982.

**NEW SECTION.** Section 5. Codification instruction. Sections 2 and 3 are intended to be codified as an integral

- 1 part of Title 15, chapter 30, part 1, and the provisions of
- 2 Title 15, chapter 30, apply to sections 2 and 3.

-End-

HOUSE OF REPRESENTATIVES

March 14, 1983

Committee of the Whole Amendments to Senate Bill 242

1. Page 9, line 24.

Folliwing: "amounts"

Insert: "properly paid or credited or"

2. Page 9, line 24.

Following: "distributed"

Strike: ", "

3. Page 9, line 25.

Strike: "paid, or credited"

## SENATE BILL NO. 242

INTRODUCED BY GAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS PERTAINING TO INCOME TAXATION OF ESTATES, PROPERTY HELD IN TRUST, AND BENEFICIARIES OF ESTATES OR TRUSTS; AMENDING SECTION 15-30-135, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-30-135, MCA, is amended to read:

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

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

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

interests;

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

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

~~(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.~~

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be are taxable with reference to the income of such estate or trust. ~~The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust is paid to or held for the United States or any state, territory or any political subdivision thereof or the District of Columbia. In cases under subsections (a) and (d) and (e) of subsection (1) of this section, the fiduciary~~

1 shall include in the return a statement of each  
2 beneficiary's distributive share of such net income, whether  
3 or not distributed before the close of the taxable year for  
4 which the return is made.

5 (3) In cases under subsections (a), (b), and (c) of  
6 subsection (1) of this section, the tax shall be imposed  
7 upon the fiduciary of the estate or trust with respect to  
8 the net income of the estate or trust and shall be paid by  
9 the fiduciary, except that in determining the net income of  
10 the estate of any deceased person during the period of  
11 administration or settlement, there may be deducted the  
12 amount of any income properly paid or credited to any  
13 legatee, heir, or other beneficiary. In such cases, the  
14 fiduciary of the estate or trust shall be allowed the same  
15 exemptions as are allowed to single persons under 15-38-112  
16 and the fiduciary of any estate or trust created by a person  
17 not a resident or of an estate of a person not a resident  
18 shall be subject to a tax only to the extent to which  
19 individuals other than residents are liable under 15-38-131.

20 (4) (a) There shall be allowed as an additional  
21 deduction in computing the net income of the estate or trust  
22 the amount of the income of the estate or trust for its  
23 taxable year which is to be distributed currently by the  
24 fiduciary to the beneficiaries and the amount of the income  
25 collected by a guardian of an infant which is to be held or

1 distributed as the court may direct, but the amount so  
2 allowed as a deduction shall be included in computing the  
3 net income of the beneficiaries whether distributed to them  
4 or not. Any amount allowed as a deduction under this  
5 subsection shall not be allowed as a deduction under  
6 subsection (4) (b) of this section in the same or any  
7 succeeding taxable years.

8 (b) In the case of income received by estates of  
9 deceased persons during the period of administration or  
10 settlement of the estate and in the case of income which in  
11 the discretion of the fiduciary may be either distributed  
12 to the beneficiary or accumulated, there shall be allowed as  
13 an additional deduction in computing the net income of the  
14 estate or trust the amount of the income of the estate or  
15 trust for its taxable year which is properly paid or  
16 credited during such year to any legatee, heir, or  
17 beneficiary, but the amount so allowed as a deduction shall  
18 be included in computing the net income of the legatee,  
19 heir, or beneficiary.

20 (c) If the taxpayer's net income for such ~~the~~ taxable  
21 year of the estate or trust is computed upon the basis of a  
22 period different from that upon the basis of which the net  
23 income of the estate or trust is computed, then his  
24 distributive share of the net income of the estate or trust  
25 for any accounting period of such estate or trust ending

1 within the fiscal or calendar year shall be computed upon  
2 the basis on which such beneficiary's net income is  
3 computed. In such cases, a beneficiary not a resident shall  
4 be taxable with respect to his income derived through such  
5 estate or trust only to the extent provided in 15-30-131 for  
6 individuals other than residents.

7 ~~(5)(4)~~ The fiduciary of a trust created by an employer  
8 as a part of a stock bonus, pension, or profit-sharing plan  
9 for the exclusive benefit of some or all of his employees,  
10 to which contributions are made by such employer or  
11 employees, or both, for the purpose of distributing to such  
12 employees the earnings and principal of the fund accumulated  
13 by the trust in accordance with such plan, shall not be  
14 taxable under this section, but any amount contributed to  
15 such fund by the employer and all earnings of such fund  
16 shall be included in computing the income of the distributee  
17 in the year in which distributed or made available to him.

18 ~~(6)(5)~~ Where any part of the income of a trust other  
19 than a testamentary trust is or may be applied to the  
20 payment of premiums upon policies of insurance on the life  
21 of the grantor (except policies of insurance irrevocably  
22 payable for the purposes and in the manner specified  
23 relating to the so-called "charitable contribution"  
24 deduction) or to the payment of premiums upon policies of  
25 life insurance under which the grantor is the beneficiary,

1 such part of the income of the trust shall be included in  
2 computing the net income of the grantor."

3 NEW SECTION. Section 2. Computation of net income of  
4 estates or trusts. (1) Except as otherwise provided in this  
5 chapter, "gross income" of estates or trusts means all  
6 income from whatever source derived in the taxable year,  
7 including but not limited to the following items:

- 8 (a) dividends;
- 9 (b) interest received or accrued, including interest  
10 received on obligations of another state or territory or a  
11 county, municipality, district, or other political  
12 subdivision thereof, but excluding interest income from  
13 obligations of:
- 14 (i) the United States government or the state of  
15 Montana;
- 16 (ii) a school district; or
- 17 (iii) a county, municipality, district, or other  
18 political subdivision of the state;
- 19 (c) income from partnerships and other fiduciaries;
- 20 (d) gross rents and royalties;
- 21 (e) gain from sale or exchange of property, including  
22 those gains that are excluded from gross income for federal  
23 fiduciary income tax purposes by section 641(c) of the  
24 Internal Revenue Code of 1954, as amended;
- 25 (f) gross profit from trade or business; and

1 (g) refunds recovered on federal income tax, to the  
2 extent the deduction of such tax resulted in a reduction of  
3 Montana income tax liability.

4 (2) In computing net income, there are allowed as  
5 deductions:

6 (a) interest expenses deductible for federal tax  
7 purposes according to section 163 of the Internal Revenue  
8 Code of 1954, as amended;

9 (b) taxes paid or accrued within the taxable year,  
10 including but not limited to federal income tax, but  
11 excluding Montana income tax;

12 (c) that fiduciary's portion of depreciation or  
13 depletion which is deductible for federal tax purposes  
14 according to sections 167, 611, and 642 of the Internal  
15 Revenue Code of 1954, as amended;

16 (d) charitable contributions that are deductible for  
17 federal tax purposes according to section 642(c) of the  
18 Internal Revenue Code of 1954, as amended;

19 (e) administrative expenses claimed for federal income  
20 tax purposes, according to sections 212 and 642(g) of the  
21 Internal Revenue Code of 1954, as amended, if such expenses  
22 were not claimed as a deduction in the determination of  
23 Montana inheritance tax;

24 (f) losses from fire, storm, shipwreck, or other  
25 casualty or from theft, to the extent not compensated for by

1 insurance or otherwise, that are deductible for federal tax  
2 purposes according to section 165 of the Internal Revenue  
3 Code of 1954, as amended;

4 (g) net operating loss deductions allowed for federal  
5 income tax under section 642(d) of the Internal Revenue Code  
6 of 1954, as amended, except estates may not claim losses  
7 that are deductible on the decedent's final return;

8 (h) all benefits received as federal employees'  
9 retirement not in excess of \$3,600;

10 (i) all benefits paid under the Montana teachers'  
11 retirement system that are specified as exempt from taxation  
12 by 19-4-706;

13 (j) all benefits paid under the Montana Public  
14 Employees' Retirement System Act that are specified as  
15 exempt from taxation by 19-3-105;

16 (k) all benefits paid under the Montana highway  
17 patrolmen's retirement system that are specified as exempt  
18 from taxation by 19-6-705;

19 (l) Montana income tax refunds or credits thereof;

20 (m) all benefits paid under 19-11-602, 19-11-604, and  
21 19-11-605 to retired and disabled firemen or their surviving  
22 spouses or children;

23 (n) all benefits paid by first- or second-class cities  
24 for the Montana police officers' retirement system provided  
25 for by the metropolitan police law;



1 (o) all benefits not in excess of \$360 received as an  
2 annuity, pension, or endowment under private or corporate  
3 retirement plans or systems.

4 (3) In the case of a shareholder of a corporation with  
5 respect to which the election provided for under subchapter  
6 S. of the Internal Revenue Code of 1954, as amended, is in  
7 effect but with respect to which the election provided for  
8 under 15-31-202 is not in effect, net income does not  
9 include any part of the corporation's undistributed taxable  
10 income, net operating loss, capital gains or other gains,  
11 profits, or losses required to be included in the  
12 shareholder's federal income tax net income by reason of the  
13 election under subchapter S. However, the shareholder's net  
14 income shall include actual distribution from the  
15 corporation to the extent it would be treated as taxable  
16 dividends if the subchapter S. election were not in effect.

17 ~~NEW SECTION.~~ Section 3. Adjustments to income of  
18 estates and trusts. (1) The following additional deductions  
19 shall be allowed in deriving taxable income of estates and  
20 trusts:

21 (a) any amount of income for the taxable year  
22 currently required to be distributed to beneficiaries for  
23 such year;

24 (b) any other amounts ~~PROPERLY PAID OR CREDITED OR~~  
25 required to be distributed ~~or paid or credited~~ for the

1 taxable year;

2 (c) the amount of 60% of the excess of the net  
3 long-term capital gain over the net short-term capital loss  
4 for the taxable year.

5 ~~(2) The following exemptions are allowed for estates~~  
6 ~~and trusts:~~

7 ~~(a) \$600 for an estate;~~

8 ~~(b) \$300 for a simple trust; and~~

9 ~~(c) \$100 for a complex trust.~~ THE EXEMPTION ALLOWED  
10 FOR ESTATES AND TRUSTS IS THAT EXEMPTION PROVIDED IN  
11 15-30-112(2)(A) AND 15-30-112(8).

12 (3) The amount of tax must be determined from taxable  
13 income of an estate or trust in the same manner as the tax  
14 on taxable income of individuals, by applying the rates  
15 contained in 15-30-103. Credits allowed individuals under  
16 Title 15, chapter 30, also apply to estates and trusts when  
17 applicable.

18 (4) Remedies available for the administration,  
19 enforcement, and collection of individual income taxes also  
20 apply to estates and trusts.

21 ~~NEW SECTION.~~ Section 4. Effective date --  
22 applicability. This act is effective on passage and approval  
23 and is applicable to taxable years beginning after December  
24 31, 1982.

25 ~~NEW SECTION.~~ Section 5. Codification instruction.

- 1 Sections 2 and 3 are intended to be codified as an integral
- 2 part of Title 15, chapter 30, part 1, and the provisions of
- 3 Title 15, chapter 30, apply to sections 2 and 3.

-End-