

HOUSE BILL NO. 545

INTRODUCED BY SCHYE, RANEY, NISBET, CODY, COHEN,  
WESTLAKE, L. NELSON, KIMBERLEY, D. BROWN, ADDY, HARPER,  
STRIZICH, GERVAIS, STICKNEY, WHALEN, KILPATRICK, JOHNSON,  
DEMARS, RUSSELL, DAILY, PAVLOVICH, LEE, SIMPKINS, O'KEEFE,  
BRADLEY, DRISCOLL, PATTERSON, PECK, MENAHAN, HALLIGAN,  
DEVLIN, NATHE, ZOOK, JENKINS, JERGESON, CONNELLY, FARRELL

IN THE HOUSE

FEBRUARY 2, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON TAXATION.

FIRST READING.

FEBRUARY 28, 1989

COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

MARCH 1, 1989

PRINTING REPORT.

MARCH 2, 1989

SECOND READING, DO PASS.

MARCH 3, 1989

ENGROSSING REPORT.

MARCH 4, 1989

THIRD READING, PASSED.  
AYES, 91; NOES, 0.

IN THE SENATE

MARCH 6, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON TAXATION.

FIRST READING.

MARCH 30, 1989

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 31, 1989

SECOND READING, CONCURRED IN.

APRIL 3, 1989

THIRD READING, CONCURRED IN.  
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

APRIL 3, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 545  
 2 INTRODUCED BY Delva Roney Nisbet Coley Cahan  
 3 Nelson Don Brown St. Helens Whalen Johnnie  
 4 Phillips Althoff Flannery Slattery DeWitt Reid  
 5 Wagner Robert De Simplicis Steffe Bailey  
 6 WATKINS Payson Good Merchar Bally Wright  
 7 APPLICABILITY DATE. Good Yerkes Ferguson  
 8 Tanell Connelly

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

10 **Section 1.** Section 15-30-111, MCA, is amended to read:

11 "15-30-111. Adjusted gross income. (1) Adjusted gross  
 12 income shall be the taxpayer's federal income tax adjusted  
 13 gross income as defined in section 62 of the Internal  
 14 Revenue Code of 1954 or as that section may be labeled or  
 15 amended and in addition shall include the following:

16 (a) interest received on obligations of another state  
 17 or territory or county, municipality, district, or other  
 18 political subdivision thereof;

19 (b) refunds received of federal income tax, to the  
 20 extent the deduction of such tax resulted in a reduction of  
 21 Montana income tax liability; and

22 (c) that portion of a shareholder's income under  
 23 subchapter S. of Chapter 1 of the Internal Revenue Code of  
 24 1954, that has been reduced by any federal taxes paid by the  
 25 subchapter S. corporation on the income.

1 (2) Notwithstanding the provisions of the federal  
 2 Internal Revenue Code of 1954, as labeled or amended,  
 3 adjusted gross income does not include the following which  
 4 are exempt from taxation under this chapter:

5 (a) all interest income from obligations of the United  
 6 States government, the state of Montana, county,  
 7 municipality, district, or other political subdivision  
 8 thereof;

9 (b) interest income earned by a taxpayer age 65 or  
 10 older in a taxable year up to and including \$800 for a  
 11 taxpayer filing a separate return and \$1,600 for each joint  
 12 return;

13 (c) all benefits, not in excess of \$3,600, received:

14 (i) under the Federal Employees' Retirement Act;

15 (ii) under the public employee retirement laws of a  
 16 state other than Montana; or

17 (iii) as an annuity, pension, or endowment under any  
 18 private or corporate retirement plan or system;

19 (d) all benefits paid under the teachers' retirement  
 20 law which are specified as exempt from taxation by 19-4-706;

21 (e) all benefits paid under The Public Employees'  
 22 Retirement System Act which are specified as exempt from  
 23 taxation by 19-3-105;

24 (f) all benefits paid under the highway patrol  
 25 retirement law which are specified as exempt from taxation

1 by 19-6-705;

2 (g) all Montana income tax refunds or credits thereof;

3 (h) all benefits paid under 19-11-602, 19-11-604, and  
4 19-11-605 to retired and disabled firefighters, their  
5 surviving spouses and orphans or specified as exempt from  
6 taxation by 19-13-1003;

7 (i) all benefits paid under the municipal police  
8 officers' retirement system that are specified as exempt  
9 from taxation by 19-9-1005;

10 (j) gain required to be recognized by a liquidating  
11 corporation under 15-31-113(1)(a)(ii);

12 (k) all tips covered by section 3402(k) of the  
13 Internal Revenue Code of 1954, as amended and applicable on  
14 January 1, 1983, received by persons for services rendered  
15 by them to patrons of premises licensed to provide food,  
16 beverage, or lodging;

17 (l) all benefits received under the workers'  
18 compensation laws;

19 (m) all health insurance premiums paid by an employer  
20 for an employee if attributed as income to the employee  
21 under federal law; and

22 (n) all benefits paid under an optional retirement  
23 program that are specified as exempt from taxation by  
24 19-21-212; and

25 (o) all money received because of a settlement

1 agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages  
3 resulting from exposure to "agent orange".

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, as amended, is not in effect, adjusted  
9 gross income does not include any part of the corporation's  
10 undistributed taxable income, net operating loss, capital  
11 gains or other gains, profits, or losses required to be  
12 included in the shareholder's federal income tax adjusted  
13 gross income by reason of the said election under subchapter  
14 S. However, the shareholder's adjusted gross income shall  
15 include actual distributions from the corporation to the  
16 extent they would be treated as taxable dividends if the  
17 subchapter S. election were not in effect.

18 (4) A shareholder of a DISC that is exempt from the  
19 corporation license tax under 15-31-102(1)(1) shall include  
20 in his adjusted gross income the earnings and profits of the  
21 DISC in the same manner as provided by federal law (section  
22 995, Internal Revenue Code) for all periods for which the  
23 DISC election is effective.

24 (5) A taxpayer who, in determining federal adjusted  
25 gross income, has reduced his business deductions by an

1 amount for wages and salaries for which a federal tax credit  
 2 was elected under section 44B of the Internal Revenue Code  
 3 of 1954 or as that section may be labeled or amended is  
 4 allowed to deduct the amount of such the wages and salaries  
 5 paid regardless of the credit taken. The deduction must be  
 6 made in the year the wages and salaries were used to compute  
 7 the credit. In the case of a partnership or small business  
 8 corporation, the deduction must be made to determine the  
 9 amount of income or loss of the partnership or small  
 10 business corporation.

11 (6) Married taxpayers filing a joint federal return  
 12 who must include part of their social security benefits or  
 13 part of their tier 1 railroad retirement benefits in federal  
 14 adjusted gross income may split the federal base used in  
 15 calculation of federal taxable social security benefits or  
 16 federal taxable tier 1 railroad retirement benefits when  
 17 they file separate Montana income tax returns. The federal  
 18 base must be split equally on the Montana return.

19 (7) A taxpayer receiving retirement disability  
 20 benefits who has not attained age 65 by the end of the  
 21 taxable year and who has retired as permanently and totally  
 22 disabled may exclude from adjusted gross income up to \$100  
 23 per week received as wages or payments in lieu of wages for  
 24 a period during which the employee is absent from work due  
 25 to the disability. If the adjusted gross income before this

1 exclusion and before application of the two-earner married  
 2 couple deduction exceeds \$15,000, the excess reduces the  
 3 exclusion by an equal amount. This limitation affects the  
 4 amount of exclusion, but not the taxpayer's eligibility for  
 5 the exclusion. If eligible, married individuals shall apply  
 6 the exclusion separately, but the limitation for income  
 7 exceeding \$15,000 is determined with respect to the spouses  
 8 on their combined adjusted gross income. For the purpose of  
 9 this subsection, permanently and totally disabled means  
 10 unable to engage in any substantial gainful activity by  
 11 reason of any medically determined physical or mental  
 12 impairment lasting or expected to last at least 12 months.

13 (8) A person receiving benefits described in  
 14 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
 15 exclude benefits described in subsection (2)(c) from  
 16 adjusted gross income unless the benefits received under  
 17 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
 18 less than \$3,600, in which case the person may combine  
 19 benefits to exclude up to a total of \$3,600 from adjusted  
 20 gross income. (Subsection (2)(k) terminates on occurrence  
 21 of contingency--sec. 3, Ch. 634, L. 1983.)"

22 NEW SECTION. **Section 2.** Extension of authority. Any  
 23 existing authority to make rules on the subject of the  
 24 provisions of [this act] is extended to the provisions of  
 25 [this act].

LC 1213/01

1        NEW SECTION.   **Section 3.**   Retroactive   applicability.  
2   [This act] applies retroactively, within the meaning of  
3   1-2-109, to taxable years beginning after December 31, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB545, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION:


An act exempting "agent orange" payments from individual income taxation; and providing a retroactive applicability date.

ASSUMPTIONS:

According to information provided by the Department of Military Affairs, there are currently about 36,000 Vietnam era veterans in Montana, and 8,277,000 Vietnam era veterans nationwide. The total amount to be distributed to veterans in the agent orange settlement is \$170 million. Based on the ratio of Montana Vietnam veterans to total U.S. Vietnam veterans, Montana veterans would receive a total of approximately \$740,000 in settlement payments. Given an average marginal tax rate of 6%, this bill is estimated to reduce individual income tax revenue about \$44,000 over the course of the 1990-91 biennium.

There is no impact on expenditures.

 2/7/89  
RAY SHACKLEFORD, BUDGET DIRECTOR      DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING

 2/08/89  
TED E. SCHYE, PRIMARY SPONSOR      DATE  
Fiscal Note for HB545, as introduced  
**HB 545**

APPROVED BY COMMITTEE  
ON TAXATION1 House BILL NO. 5452 INTRODUCED BY Delgo Roney Nisbet Cody Coker3 Nelson Dave Brown Stu Hewas Whalen Johnson4 Richardson Walt Tracy Shirley Harold DeWitt Russell

5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING 'AGENT

6 'ORANGE' PAYMENTS FROM INDIVIDUAL INCOME TAXATION; AMENDING

7 SECTION 15-30-111, MCA; AND PROVIDING A RETROACTIVE

8 APPLICABILITY DATE."

9 WATKINS Book Yerkas Jerguson10 Tanell Connelly

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

88

89

90

91

92

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

204

205

206

207

208

209

210

211

212

213

214

215

216

217

218

219

220

221

222

223

224

225

226

227

228

229

230

231

232

233

234

235

236

237

238

239

240

241

242

243

244

245

246

247

248

249

250

251

252

253

254

255

256

257

258

259

260

261

262

263

264

265

266

267

268

269

270

271

272

273

274

275

276

277

278

279

280

281

282

283

284

285

286

287

288

289

290

291

292

293

294

295

296

297

298

299

300

301

302

303

304

305

306

307

308

309

310

311

312

313

314

315

316

317

318

319

320

321

322

323

324

325

326

327

328

329

330

331

332

333

334

335

336

337

338

339

340

341

342

343

344

345

346

347

348

349

350

351

352

353

354

355

356

357

358



1 by 19-6-705;

2 (g) all Montana income tax refunds or credits thereof;

3 (h) all benefits paid under 19-11-602, 19-11-604, and  
4 19-11-605 to retired and disabled firefighters, their  
5 surviving spouses and orphans or specified as exempt from  
6 taxation by 19-13-1003;

7 (i) all benefits paid under the municipal police  
8 officers' retirement system that are specified as exempt  
9 from taxation by 19-9-1005;

10 (j) gain required to be recognized by a liquidating  
11 corporation under 15-31-113(1)(a)(ii);

12 (k) all tips covered by section 3402(k) of the  
13 Internal Revenue Code of 1954, as amended and applicable on  
14 January 1, 1983, received by persons for services rendered  
15 by them to patrons of premises licensed to provide food,  
16 beverage, or lodging;

17 (l) all benefits received under the workers'  
18 compensation laws;

19 (m) all health insurance premiums paid by an employer  
20 for an employee if attributed as income to the employee  
21 under federal law; and

22 (n) all benefits paid under an optional retirement  
23 program that are specified as exempt from taxation by  
24 19-21-212; and

25 (o) all money received because of a settlement

1 agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages  
3 resulting from exposure to "agent orange".

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, as amended, is not in effect, adjusted  
9 gross income does not include any part of the corporation's  
10 undistributed taxable income, net operating loss, capital  
11 gains or other gains, profits, or losses required to be  
12 included in the shareholder's federal income tax adjusted  
13 gross income by reason of the said election under subchapter  
14 S. However, the shareholder's adjusted gross income shall  
15 include actual distributions from the corporation to the  
16 extent they would be treated as taxable dividends if the  
17 subchapter S. election were not in effect.

18 (4) A shareholder of a DISC that is exempt from the  
19 corporation license tax under 15-31-102(1)(1) shall include  
20 in his adjusted gross income the earnings and profits of the  
21 DISC in the same manner as provided by federal law (section  
22 995, Internal Revenue Code) for all periods for which the  
23 DISC election is effective.

24 (5) A taxpayer who, in determining federal adjusted  
25 gross income, has reduced his business deductions by an

1 amount for wages and salaries for which a federal tax credit  
 2 was elected under section 44B of the Internal Revenue Code  
 3 of 1954 or as that section may be labeled or amended is  
 4 allowed to deduct the amount of such the wages and salaries  
 5 paid regardless of the credit taken. The deduction must be  
 6 made in the year the wages and salaries were used to compute  
 7 the credit. In the case of a partnership or small business  
 8 corporation, the deduction must be made to determine the  
 9 amount of income or loss of the partnership or small  
 10 business corporation.

11 (6) Married taxpayers filing a joint federal return  
 12 who must include part of their social security benefits or  
 13 part of their tier 1 railroad retirement benefits in federal  
 14 adjusted gross income may split the federal base used in  
 15 calculation of federal taxable social security benefits or  
 16 federal taxable tier 1 railroad retirement benefits when  
 17 they file separate Montana income tax returns. The federal  
 18 base must be split equally on the Montana return.

19 (7) A taxpayer receiving retirement disability  
 20 benefits who has not attained age 65 by the end of the  
 21 taxable year and who has retired as permanently and totally  
 22 disabled may exclude from adjusted gross income up to \$100  
 23 per week received as wages or payments in lieu of wages for  
 24 a period during which the employee is absent from work due  
 25 to the disability. If the adjusted gross income before this

1 exclusion and before application of the two-earner married  
 2 couple deduction exceeds \$15,000, the excess reduces the  
 3 exclusion by an equal amount. This limitation affects the  
 4 amount of exclusion, but not the taxpayer's eligibility for  
 5 the exclusion. If eligible, married individuals shall apply  
 6 the exclusion separately, but the limitation for income  
 7 exceeding \$15,000 is determined with respect to the spouses  
 8 on their combined adjusted gross income. For the purpose of  
 9 this subsection, permanently and totally disabled means  
 10 unable to engage in any substantial gainful activity by  
 11 reason of any medically determined physical or mental  
 12 impairment lasting or expected to last at least 12 months.

13 (8) A person receiving benefits described in  
 14 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
 15 exclude benefits described in subsection (2)(c) from  
 16 adjusted gross income unless the benefits received under  
 17 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
 18 less than \$3,600, in which case the person may combine  
 19 benefits to exclude up to a total of \$3,600 from adjusted  
 20 gross income. (Subsection (2)(k) terminates on occurrence  
 21 of contingency--sec. 3, Ch. 634, L. 1983.)"

22 NEW SECTION. **Section 2. Extension of authority.** Any  
 23 existing authority to make rules on the subject of the  
 24 provisions of [this act] is extended to the provisions of  
 25 [this act].

LC 1213/01

1        NEW SECTION.   **Section 3.**   Retroactive   applicability.  
2        [This act] applies retroactively, within the meaning of  
3        1-2-109, to taxable years beginning after December 31, 1988.

-End-

House BILL NO. **545**

1 INTRODUCED BY *Sen. Roney* *Rep. Coker*  
 2 *Nelson* *Don Brown* *Sen. Hewes* *Whalen* *Donner*  
 3 *Pringle* *Adair* *Flannery* *Waters* *DeWitt*  
 4 BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING 'AGENT  
 5 ORANGE' PAYMENTS FROM INDIVIDUAL INCOME TAXATION; AMENDING  
 6 SECTION 15-30-111, MCA; AND PROVIDING A RETROACTIVE  
 7 APPLICABILITY DATE." *Watke* *Jack Verbeke* *Ferguson*  
 8 *Tarell* *Connelly*

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

10 **Section 1.** Section 15-30-111, MCA, is amended to read:

11 "15-30-111. Adjusted gross income. (1) Adjusted gross  
 12 income shall be the taxpayer's federal income tax adjusted  
 13 gross income as defined in section 62 of the Internal  
 14 Revenue Code of 1954 or as that section may be labeled or  
 15 amended and in addition shall include the following:

16 (a) interest received on obligations of another state  
 17 or territory or county, municipality, district, or other  
 18 political subdivision thereof;

19 (b) refunds received of federal income tax, to the  
 20 extent the deduction of such tax resulted in a reduction of  
 21 Montana income tax liability; and

22 (c) that portion of a shareholder's income under  
 23 subchapter S. of Chapter 1 of the Internal Revenue Code of  
 24 1954, that has been reduced by any federal taxes paid by the  
 25 subchapter S. corporation on the income.

1 (2) Notwithstanding the provisions of the federal  
 2 Internal Revenue Code of 1954, as labeled or amended,  
 3 adjusted gross income does not include the following which  
 4 are exempt from taxation under this chapter:

5 (a) all interest income from obligations of the United  
 6 States government, the state of Montana, county,  
 7 municipality, district, or other political subdivision  
 8 thereof;

9 (b) interest income earned by a taxpayer age 65 or  
 10 older in a taxable year up to and including \$800 for a  
 11 taxpayer filing a separate return and \$1,600 for each joint  
 12 return;

13 (c) all benefits, not in excess of \$3,600, received:

14 (i) under the Federal Employees' Retirement Act;

15 (ii) under the public employee retirement laws of a  
 16 state other than Montana; or

17 (iii) as an annuity, pension, or endowment under any  
 18 private or corporate retirement plan or system;

19 (d) all benefits paid under the teachers' retirement  
 20 law which are specified as exempt from taxation by 19-4-706;

21 (e) all benefits paid under The Public Employees'  
 22 Retirement System Act which are specified as exempt from  
 23 taxation by 19-3-105;

24 (f) all benefits paid under the highway patrol  
 25 retirement law which are specified as exempt from taxation

1 by 19-6-705;

2 (g) all Montana income tax refunds or credits thereof;

3 (h) all benefits paid under 19-11-602, 19-11-604, and  
4 19-11-605 to retired and disabled firefighters, their  
5 surviving spouses and orphans or specified as exempt from  
6 taxation by 19-13-1003;

7 (i) all benefits paid under the municipal police  
8 officers' retirement system that are specified as exempt  
9 from taxation by 19-9-1005;

10 (j) gain required to be recognized by a liquidating  
11 corporation under 15-31-113(1)(a)(ii);

12 (k) all tips covered by section 3402(k) of the  
13 Internal Revenue Code of 1954, as amended and applicable on  
14 January 1, 1983, received by persons for services rendered  
15 by them to patrons of premises licensed to provide food,  
16 beverage, or lodging;

17 (l) all benefits received under the workers'  
18 compensation laws;

19 (m) all health insurance premiums paid by an employer  
20 for an employee if attributed as income to the employee  
21 under federal law; and

22 (n) all benefits paid under an optional retirement  
23 program that are specified as exempt from taxation by  
24 19-21-212; and

25 (o) all money received because of a settlement

1 agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages  
3 resulting from exposure to "agent orange".

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, as amended, is not in effect, adjusted  
9 gross income does not include any part of the corporation's  
10 undistributed taxable income, net operating loss, capital  
11 gains or other gains, profits, or losses required to be  
12 included in the shareholder's federal income tax adjusted  
13 gross income by reason of the said election under subchapter  
14 S. However, the shareholder's adjusted gross income shall  
15 include actual distributions from the corporation to the  
16 extent they would be treated as taxable dividends if the  
17 subchapter S. election were not in effect.

18 (4) A shareholder of a DISC that is exempt from the  
19 corporation license tax under 15-31-102(1)(1) shall include  
20 in his adjusted gross income the earnings and profits of the  
21 DISC in the same manner as provided by federal law (section  
22 995, Internal Revenue Code) for all periods for which the  
23 DISC election is effective.

24 (5) A taxpayer who, in determining federal adjusted  
25 gross income, has reduced his business deductions by an

amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this

exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than \$3,600, in which case the person may combine benefits to exclude up to a total of \$3,600 from adjusted gross income. (Subsection (2)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. **Section 2.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

LC 1213/01

1        NEW SECTION.   **Section 3. Retroactive   applicability.**  
2        [This act] applies retroactively, within the meaning of  
3        1-2-109, to taxable years beginning after December 31, 1988.

-End-

## 1 HOUSE BILL NO. 545

2 INTRODUCED BY SCHYE, RANEY, NISBET, CODY, COHEN,

3 WESTLAKE, L. NELSON, KIMBERLEY, D. BROWN, ADDY, HARPER,

4 STRIZICH, GERVAIS, STICKNEY, WHALEN, KILPATRICK, JOHNSON,

5 DEMARS, RUSSELL, DAILY, PAVLOVICH, LEE, SIMPKINS, O'KEEFE,

6 BRADLEY, DRISCOLL, PATTERSON, PECK, MENAHAN, HALLIGAN,

7 DEVLIN, NATHE, ZOOK, JENKINS, JERGESON, CONNELLY, FARRELL

8  
9 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING "AGENT  
10 ORANGE" PAYMENTS FROM INDIVIDUAL INCOME TAXATION; AMENDING  
11 SECTION 15-30-111, MCA; AND PROVIDING A RETROACTIVE  
12 APPLICABILITY DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 15-30-111, MCA, is amended to read:

16 "15-30-111. Adjusted gross income. (1) Adjusted gross  
17 income shall be the taxpayer's federal income tax adjusted  
18 gross income as defined in section 62 of the Internal  
19 Revenue Code of 1954 or as that section may be labeled or  
20 amended and in addition shall include the following:

21 (a) interest received on obligations of another state  
22 or territory or county, municipality, district, or other  
23 political subdivision thereof;

24 (b) refunds received of federal income tax, to the  
25 extent the deduction of such tax resulted in a reduction of

1 Montana income tax liability; and

2 (c) that portion of a shareholder's income under  
3 subchapter S. of Chapter 1 of the Internal Revenue Code of  
4 1954, that has been reduced by any federal taxes paid by the  
5 subchapter S. corporation on the income.

6 (2) Notwithstanding the provisions of the federal  
7 Internal Revenue Code of 1954, as labeled or amended,  
8 adjusted gross income does not include the following which  
9 are exempt from taxation under this chapter:

10 (a) all interest income from obligations of the United  
11 States government, the state of Montana, county,  
12 municipality, district, or other political subdivision  
13 thereof;

14 (b) interest income earned by a taxpayer age 65 or  
15 older in a taxable year up to and including \$800 for a  
16 taxpayer filing a separate return and \$1,600 for each joint  
17 return;

18 (c) all benefits, not in excess of \$3,600, received:

19 (i) under the Federal Employees' Retirement Act;

20 (ii) under the public employee retirement laws of a  
21 state other than Montana; or

22 (iii) as an annuity, pension, or endowment under any  
23 private or corporate retirement plan or system;

24 (d) all benefits paid under the teachers' retirement  
25 law which are specified as exempt from taxation by 19-4-706;



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

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

7 (g) all Montana income tax refunds or credits thereof;

8 (h) all benefits paid under 19-11-602, 19-11-604, and  
9 19-11-605 to retired and disabled firefighters, their  
10 surviving spouses and orphans or specified as exempt from  
11 taxation by 19-13-1003;

12 (i) all benefits paid under the municipal police  
13 officers' retirement system that are specified as exempt  
14 from taxation by 19-9-1005;

15 (j) gain required to be recognized by a liquidating  
16 corporation under 15-31-113(1)(a)(ii);

17 (k) all tips covered by section 3402(k) of the  
18 Internal Revenue Code of 1954, as amended and applicable on  
19 January 1, 1983, received by persons for services rendered  
20 by them to patrons of premises licensed to provide food,  
21 beverage, or lodging;

22 (l) all benefits received under the workers'  
23 compensation laws;

24 (m) all health insurance premiums paid by an employer  
25 for an employee if attributed as income to the employee

1 under federal law; and

2 (n) all benefits paid under an optional retirement  
3 program that are specified as exempt from taxation by  
4 19-21-212; and

5 (o) all money received because of a settlement  
6 agreement or judgment in a lawsuit brought against a  
7 manufacturer or distributor of "agent orange" for damages  
8 resulting from exposure to "agent orange".

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

23 (4) A shareholder of a DISC that is exempt from the  
24 corporation license tax under 15-31-102(1)(1) shall include  
25 in his adjusted gross income the earnings and profits of the

1 DISC in the same manner as provided by federal law (section  
2 995, Internal Revenue Code) for all periods for which the  
3 DISC election is effective.

4 (5) A taxpayer who, in determining federal adjusted  
5 gross income, has reduced his business deductions by an  
6 amount for wages and salaries for which a federal tax credit  
7 was elected under section 44B of the Internal Revenue Code  
8 of 1954 or as that section may be labeled or amended is  
9 allowed to deduct the amount of such the wages and salaries  
10 paid regardless of the credit taken. The deduction must be  
11 made in the year the wages and salaries were used to compute  
12 the credit. In the case of a partnership or small business  
13 corporation, the deduction must be made to determine the  
14 amount of income or loss of the partnership or small  
15 business corporation.

16 (6) Married taxpayers filing a joint federal return  
17 who must include part of their social security benefits or  
18 part of their tier 1 railroad retirement benefits in federal  
19 adjusted gross income may split the federal base used in  
20 calculation of federal taxable social security benefits or  
21 federal taxable tier 1 railroad retirement benefits when  
22 they file separate Montana income tax returns. The federal  
23 base must be split equally on the Montana return.

24 (7) A taxpayer receiving retirement disability  
25 benefits who has not attained age 65 by the end of the

1 taxable year and who has retired as permanently and totally  
2 disabled may exclude from adjusted gross income up to \$100  
3 per week received as wages or payments in lieu of wages for  
4 a period during which the employee is absent from work due  
5 to the disability. If the adjusted gross income before this  
6 exclusion and before application of the two-earner married  
7 couple deduction exceeds \$15,000, the excess reduces the  
8 exclusion by an equal amount. This limitation affects the  
9 amount of exclusion, but not the taxpayer's eligibility for  
10 the exclusion. If eligible, married individuals shall apply  
11 the exclusion separately, but the limitation for income  
12 exceeding \$15,000 is determined with respect to the spouses  
13 on their combined adjusted gross income. For the purpose of  
14 this subsection, permanently and totally disabled means  
15 unable to engage in any substantial gainful activity by  
16 reason of any medically determined physical or mental  
17 impairment lasting or expected to last at least 12 months.

18 (8) A person receiving benefits described in  
19 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
20 exclude benefits described in subsection (2)(c) from  
21 adjusted gross income unless the benefits received under  
22 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
23 less than \$3,600, in which case the person may combine  
24 benefits to exclude up to a total of \$3,600 from adjusted  
25 gross income. (Subsection (2)(k) terminates on occurrence

1 of contingency--sec. 3, Ch. 634, L. 1983.)"

2 NEW SECTION. Section 2. Extension of authority. Any  
3 existing authority to make rules on the subject of the  
4 provisions of [this act] is extended to the provisions of  
5 [this act].

6 NEW SECTION. Section 3. Retroactive applicability.  
7 [This act] applies retroactively, within the meaning of  
8 1-2-109, to taxable years beginning after December 31, 1988.

-End-