

SENATE BILL 463

Introduced by Crippen, et al.

3/06	Introduced
3/06	Referred to Taxation
3/07	Fiscal Note Requested
3/10	Fiscal Note Received
3/14	Fiscal Note Printed
3/15	Hearing
3/27	Committee Report--Bill Passed as Amended
3/28	2nd Reading Passed as Amended
3/29	3rd Reading Passed

Transmited to House

3/29	Referred to Taxation
3/31	Fiscal Note Requested
4/03	Fiscal Note Received
4/05	Sponsor Fiscal Note Printed
4/06	Hearing
4/10	Hearing
4/11	Committee Report--Bill Not Concurred
4/12	Adverse Committee Report Adopted

1 *Senate* BILL NO. *462*
 2 INTRODUCED BY *C. J. Ramsey*
 3 BY REQUEST OF THE GOVERNOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN
 6 PROVISIONS RELATING TO THE TAXATION OF THE INCOME OF
 7 INDIVIDUALS AND CORPORATIONS; RESTRUCTURING THE TAX BRACKETS
 8 APPLICABLE TO THE TAXATION OF THE INCOME OF INDIVIDUALS;
 9 EXTENDING THE EXCLUSION OF INTEREST INCOME TO ALL
 10 INDIVIDUALS; ESTABLISHING CAPITAL GAINS AND LOSSES AS A
 11 SPECIFIC TYPE OF INCOME AND SUBJECTING CAPITAL GAINS AND
 12 LOSSES TO TAXATION; REVISING THE STANDARD DEDUCTION
 13 ALLOWABLE IN CALCULATING ADJUSTED GROSS INCOME FOR THE
 14 PURPOSE OF DETERMINING INDIVIDUAL INCOME TAXES; INDEXING FOR
 15 INFLATION THE AMOUNT OF RETIREMENT INCOME THAT IS EXCLUDABLE
 16 FROM ADJUSTED GROSS INCOME; REVISING FOR NONRESIDENTS THE
 17 FILING THRESHOLD ASSOCIATED WITH INDIVIDUAL INCOME TAXES;
 18 REVISING THE EXEMPTIONS ALLOWABLE IN CALCULATING INDIVIDUAL
 19 INCOME TAXES; REALLOCATING CORPORATION LICENSE TAXES
 20 COLLECTED FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS;
 21 AMENDING SECTIONS 15-30-103, 15-30-110 THROUGH 15-30-112,
 22 15-30-122, 15-30-131, 15-30-142, 15-30-149, 15-31-304,
 23 15-31-702, AND 20-9-343, MCA; AND PROVIDING AN IMMEDIATE
 24 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
 25

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

2 **Section 1.** Section 15-30-103, MCA, is amended to read:

3 "15-30-103. Rate of tax. (1) There shall be levied,
 4 collected, and paid for each taxable year commencing on or
 5 after December 31, 1968, upon the taxable income of every
 6 taxpayer subject to this tax, after making allowance for
 7 exemptions and deductions as hereinafter provided, a tax on
 8 the following brackets of taxable income as adjusted under
 9 subsection (2) at the following rates:

10 (a) on the first \$1,000 of taxable income or any part
 11 thereof, 2%;

12 (b) on the next \$1,000 of taxable income or any part
 13 thereof, 3%;

14 (c) on the next \$2,000 \$4,000 of taxable income or any
 15 part thereof, 4% 3%;

16 (d) (b) on the next \$2,000 of taxable income or any
 17 part thereof, 5%;

18 (e) on the next \$2,000 of taxable income or any part
 19 thereof, 6%;

20 (f) on the next \$2,000 \$6,000 of taxable income or any
 21 part thereof, 7% 6%; and

22 (g) on the next \$4,000 of taxable income or any part
 23 thereof, 8%;

24 (h) on the next \$6,000 of taxable income or any part
 25 thereof, 9%;

~~{i}--on-the-next-\$15,000-of-taxable-income-or-any--part thereof,--10%;~~

~~{j}(C) on any taxable income in excess of \$35,000 \$10,000 or any part thereof, -- 9%.~~

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section."

Section 2. Section 15-30-110, MCA, is amended to read:

"15-30-110. Exemption for Treatment of gain on sale or exchange of certain capital assets -- purpose -- duty of department. (1) It is the purpose of this section that true gain rather than nominal gain be used to determine the tax on the sale or exchange of certain capital assets.

(2) ~~Notwithstanding--the--provisions---of---15-30-111, adjusted Adjusted gross income does--not--include--40%--of includes all capital gains or losses~~ on the sale or exchange of capital assets ~~before--December-31,--1986,~~ as capital gains or losses are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986, and as adjusted for inflation by the department.

(3) The inflation factor to be used by the department

in adjusting capital gains or losses must be based on the same methodology as the inflation factors defined in 15-30-101(8).

(4) Each year the department shall prepare and provide with the income tax forms the inflation adjustment factors to be used for all holding periods of capital assets."

Section 3. Section 15-30-111, MCA, is amended to read:

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

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

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

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

(d) capital gains or losses, as described in 15-30-110.

(2) Notwithstanding the provisions of the federal

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

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

8 (b) interest income earned by a taxpayer ~~age--65--or~~
9 ~~older~~ in a taxable year up to and including:

10 (i) \$800 for a taxpayer filing a separate return,
11 adjusted by the inflation factor for that taxable year and
12 rounded to the nearest \$10, \$800; and

13 (ii) and--\$17,600 for each joint return, double the
14 amount listed in subsection (2)(b)(i) for a separate return;

15 (c) all benefits, not in excess of \$3,600, adjusted by
16 the inflation factor for that taxable year and rounded to
17 the nearest \$10, received:

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

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

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

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

25 (e) all benefits paid under The Public Employees'

1 Retirement System Act which are specified as exempt from
2 taxation by 19-3-105;

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

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

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

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

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

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

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

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

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

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-15-31-2027-as-amended,--is--not--in--effect,~~ adjusted
9 gross income ~~does--not--include--any--part-of~~ includes the
10 corporation's undistributed taxable income, net operating
11 loss, capital gains or other gains, profits, or losses
12 required to be included in the shareholder's federal income
13 tax adjusted gross income by reason of the said election
14 under subchapter S. ~~However,--the--shareholder's--adjusted~~
15 ~~gross--income--shall--include--actual-distributions-from-the~~
16 ~~corporation-to-the-extent-they-would-be-treated--as--taxable~~
17 ~~dividends--if-the-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 wages and salaries paid
5 regardless of the credit taken. The deduction must be made
6 in the year the wages and salaries were used to compute the
7 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

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.)"

Section 4. Section 15-30-112, MCA, is amended to read:

"15-30-112. **Exemptions.** (1) Except as provided in subsections (7) and (8), in the case of an individual, the exemptions provided by subsections (2) through (6) shall be

allowed as deductions in computing taxable income.

(2) (a) An exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the taxpayer.

(b) An additional exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the spouse of the taxpayer if a separate return is made by the

1 taxpayer and if the spouse has attained the age of 65 before
2 the close of such taxable year and, for the calendar year in
3 which the taxable year of the taxpayer begins, has no gross
4 income and is not the dependent of another taxpayer.

5 (4) (a) An additional exemption of \$800 ~~shall--be~~
6 ~~allowed~~ for taxable years beginning after December 31, 1978,
7 and ending prior to January 1, 1989, and of \$1,000 for
8 taxable years beginning after December 31, 1988, is allowed
9 for the taxpayer if he is blind at the close of his taxable
10 year.

11 (b) An additional exemption of \$800 ~~shall--be--allowed~~
12 for taxable years beginning after December 31, 1978, and
13 ending prior to January 1, 1989, and of \$1,000 for taxable
14 years beginning after December 31, 1988, is allowed for the
15 spouse of the taxpayer if a separate return is made by the
16 taxpayer and if the spouse is blind and, for the calendar
17 year in which the taxable year of the taxpayer begins, has
18 no gross income and is not the dependent of another
19 taxpayer. For the purposes of this subsection (4)(b), the
20 determination of whether the spouse is blind shall be made
21 as of the close of the taxable year of the taxpayer, except
22 that if the spouse dies during such taxable year, such
23 determination shall be made as of the time of such death.

24 (c) For purposes of this subsection (4), an individual
25 is blind only if his central visual acuity does not exceed

1 20/200 in the better eye with correcting lenses or if his
2 visual acuity is greater than 20/200 but is accompanied by a
3 limitation in the fields of vision such that the widest
4 diameter of the visual field subtends an angle no greater
5 than 20 degrees.

6 (5) (a) An exemption of \$800 ~~shall--be--allowed~~ for
7 taxable years beginning after December 31, 1978, and ending
8 prior to January 1, 1989, and of \$1,000 for taxable years
9 beginning after December 31, 1988, is allowed for each
10 dependent:

11 (i) whose gross income for the calendar year in which
12 the taxable year of the taxpayer begins is less than \$800;
13 or

14 (ii) who is a child of the taxpayer and who:

15 (A) has not attained the age of 19 years at the close
16 of the calendar year in which the taxable year of the
17 taxpayer begins; or

18 (B) is a student.

19 (b) No exemption shall be allowed under this
20 subsection for any dependent who has made a joint return
21 with his spouse for the taxable year beginning in the
22 calendar year in which the taxable year of the taxpayer
23 begins.

24 (c) For purposes of subsection (5)(a)(ii), the term
25 "child" means an individual who is a son, stepson, daughter,

or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.

(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section unadjusted by subsection (7) by the inflation factor for that taxable year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 5. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) In the case of a resident individual, a standard deduction ~~equal to 20% of adjusted gross income shall be~~ is allowed if elected by the taxpayer on his return. The standard deduction ~~shall be~~ is in lieu of all deductions allowed under 15-30-121. The maximum standard deduction ~~shall be \$1,500~~ is \$2,000, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction ~~shall be \$3,000~~ is \$4,000, as adjusted under the provisions of subsection (2). The standard deduction ~~shall~~ may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an

1 individual is married ~~shall~~ must be made as of the last day
2 of the taxable year; provided, however, if one of the
3 spouses dies during the taxable year, the determination
4 ~~shall~~ must be made as of the date of death.

5 (2) By November 1 of each year, the department shall
6 multiply the maximum standard deduction for single returns
7 by the inflation factor for that taxable year and round the
8 product to the nearest \$10. The standard deduction for
9 joint returns and qualified head of household returns ~~shall~~
10 be is twice the amount for single returns. The resulting
11 adjusted deductions are effective for that taxable year and
12 ~~shall~~ must be used in calculating the tax imposed in
13 15-30-103."

14 **Section 6.** Section 15-30-131, MCA, is amended to read:

15 "15-30-131. Nonresident and temporary resident
16 taxpayers -- adjusted gross income -- deductions. (1) In the
17 case of a taxpayer other than a resident of this state,
18 adjusted gross income includes the entire amount of adjusted
19 gross income from sources within this state but shall not
20 include income from annuities, interest on bank deposits,
21 interest on bonds, notes, or other interest-bearing
22 obligations, or dividends on stock of corporations except to
23 the extent to which the same shall be a part of income from
24 any business, trade, profession, or occupation carried on in
25 this state. Interest income from installment sales of real

1 or tangible commercial or business property located in
2 Montana must be included in adjusted gross income. Adjusted
3 gross income from sources within and without this state
4 shall be allocated and apportioned under rules prescribed by
5 the department.

6 (2) In the case of a taxpayer other than a resident of
7 this state ~~who-is-a-resident-of-a-state-that-imposes-a-tax~~
8 ~~on-the-income-of-natural-persons-residing-within-that-state,~~
9 the deductions allowed in computing net income are
10 restricted to those directly connected with the production
11 of Montana income.

12 ~~(3)--In-the-case-of-a-taxpayer-other-than-a-resident-of~~
13 ~~this-state-who-is-a-resident-of-a-state-that-does-not-impose~~
14 ~~a-tax-on-the-income-of-natural-persons-residing-within--that~~
15 ~~state;--the--deductions--allowed-in-computing-net-income-are~~
16 ~~restricted-to-the-greater-of-those-directly-relating-to--the~~
17 ~~production--of--Montana-income-or-a-prorated-amount-of-those~~
18 ~~allowed--under--15-30-121;--For--the--purposes--of--this~~
19 ~~subsection, deductions-allowed-under-15-30-121-apply-only-to~~
20 ~~earned--income--and--must-be-prorated-according-to-the-ratio~~
21 ~~that-the-taxpayer's--Montana--earned--income--bears--to--his~~
22 ~~federal-earned-income;~~

23 ~~††(3)~~ (3) A temporary resident shall be allowed those
24 deductions and the credit under 15-32-109 allowed a resident
25 to the extent that such deductions or credit were actually

1 incurred or expended in the state of Montana during the
2 course of his residency.

3 ~~†5†~~(4) For the purposes of this section, "earned
4 income" shall be defined as the same term is defined in
5 section 43 of the Internal Revenue Code, or as that section
6 may subsequently be amended.

7 ~~†6†~~(5) Notwithstanding the provisions of ~~subsections~~
8 ~~subsection~~ (2) ~~and-†3†~~, any contribution made after December
9 31, 1982, to the state of Montana or a political subdivision
10 thereof shall be an allowable deduction in computing net
11 income. The deduction is subject to the limitations set
12 forth in section 170 of the Internal Revenue Code of 1954,
13 as labeled or amended.

14 ~~†7†~~(6) For purposes of this section, "installment
15 sales" means sales in which the buyer agrees to pay the
16 seller in one or more deferred installments."

17 **Section 7.** Section 15-30-142, MCA, is amended to read:

18 "15-30-142. Returns and payment of tax -- penalty and
19 interest -- refunds -- credits. (1) Every single individual,
20 including a nonresident, and every married individual,
21 including a nonresident, not filing a joint return with his
22 or her spouse and having a gross income for the taxable year
23 of more than \$1,000, as adjusted under the provisions of
24 subsection (7), and married individuals, including
25 nonresidents, not filing separate returns and having a

1 combined gross income for the taxable year of more than
2 \$2,000, as adjusted under the provisions of subsection (7),
3 shall be liable for a return to be filed on such forms and
4 according to such rules as the department may prescribe. The
5 gross income amounts referred to in the preceding sentence
6 shall be increased by ~~9000~~ \$1,000, as adjusted under the
7 provisions of 15-30-112(7) and (8), for each additional
8 personal exemption allowance the taxpayer is entitled to
9 claim for himself and his spouse under 15-30-112(3) and (4).
10 ~~A-nonresident-shall-be-required-to--file--a--return--if--his~~
11 ~~gross---income---for---the---taxable---year---derived-from-sources~~
12 ~~within-Montana-exceeds-the-amount-of-the-exemption-deduction~~
13 ~~he-is-entitled-to-claim-for-himself-and-his-spouse-under-the~~
14 ~~provisions--of--15-30-112(2),--(3),--and--(4),--as--prorated~~
15 ~~according-to-15-30-112(6).~~

16 (2) In accordance with instructions set forth by the
17 department, every taxpayer who is married and living with
18 husband or wife and is required to file a return may, at his
19 or her option, file a joint return with husband or wife even
20 though one of the spouses has neither gross income nor
21 deductions. If a joint return is made, the tax shall be
22 computed on the aggregate taxable income and the liability
23 with respect to the tax shall be joint and several. If a
24 joint return has been filed for a taxable year, the spouses
25 may not file separate returns after the time for filing the

1 return of either has expired unless the department so
2 consents.

3 (3) If any such taxpayer is unable to make his own
4 return, the return shall be made by a duly authorized agent
5 or by a guardian or other person charged with the care of
6 the person or property of such taxpayer.

7 (4) All taxpayers, including but not limited to those
8 subject to the provisions of 15-30-202 and 15-30-241, shall
9 compute the amount of income tax payable and shall, at the
10 time of filing the return required by this chapter, pay to
11 the department any balance of income tax remaining unpaid
12 after crediting the amount withheld as provided by 15-30-202
13 and/or any payment made by reason of an estimated tax return
14 provided for in 15-30-241; provided, however, the tax so
15 computed is greater by \$1 than the amount withheld and/or
16 paid by estimated return as provided in this chapter. If the
17 amount of tax withheld and/or payment of estimated tax
18 exceeds by more than \$1 the amount of income tax as
19 computed, the taxpayer shall be entitled to a refund of the
20 excess.

21 (5) As soon as practicable after the return is filed,
22 the department shall examine and verify the tax.

23 (6) If the amount of tax as verified is greater than
24 the amount theretofore paid, the excess shall be paid by the
25 taxpayer to the department within 60 days after notice of

1 the amount of the tax as computed, with interest added at
2 the rate of 9% per annum or fraction thereof on the
3 additional tax. In such case there shall be no penalty
4 because of such understatement, provided the deficiency is
5 paid within 60 days after the first notice of the amount is
6 mailed to the taxpayer.

7 (7) By November 1 of each year, the department shall
8 multiply the minimum amount of gross income necessitating
9 the filing of a return by the inflation factor for the
10 taxable year. These adjusted amounts are effective for that
11 taxable year, and persons having gross incomes less than
12 these adjusted amounts are not required to file a return.

13 (8) Individual income tax forms distributed by the
14 department for each taxable year must contain instructions
15 and tables based on the adjusted base year structure for
16 that taxable year."

17 **Section 8.** Section 15-30-149, MCA, is amended to read:

18 "15-30-149. Credits and refunds -- period of
19 limitations. (1) If the department discovers from the
20 examination of a return or upon claim duly filed by a
21 taxpayer or upon final judgment of a court that the amount
22 of income tax collected is in excess of the amount due or
23 that any penalty or interest was erroneously or illegally
24 collected, the amount of the overpayment shall be credited
25 against any income tax, penalty, or interest then due from

1 the taxpayer and the balance of such excess shall be
2 refunded to the taxpayer.

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

9 (b) If an overpayment of tax results from a net
10 operating loss carryback, the overpayment may be refunded or
11 credited within the period that expires on the 15th day of
12 the 40th month following the close of the taxable year of
13 the net operating loss if that period expires later than 5
14 years from the due date of the return for the year to which
15 the net operating loss is carried back.

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

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

17 (a) the overpayment is refunded within ~~6-months~~ 60
18 days from the date the return is due or the date the return
19 is filed, whichever date is later;

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

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

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

1 be considered an overpayment with respect to which interest
2 is allowable."

3 **Section 9.** Section 15-31-304, MCA, is amended to read:

4 "15-31-304. Allocation of nonbusiness income. (1)

5 Rents and royalties from real or tangible personal property,
6 capital gains as described in 15-30-110, interest,
7 dividends, or patent or copyright royalties, to the extent
8 that they constitute nonbusiness income, shall be allocated
9 as provided in subsections (2) through (5) of this section.

10 (2) (a) Net rents and royalties from real property
11 located in this state are allocable to this state.

12 (b) Net rents and royalties from tangible personal
13 property are allocable to this state:

14 (i) if and to the extent that the property is utilized
15 in this state; or

16 (ii) in their entirety if the taxpayer's commercial
17 domicile is in this state and the taxpayer is not organized
18 under the laws of or taxable in the state in which the
19 property is utilized.

20 (c) The extent of utilization of tangible personal
21 property in a state is determined by multiplying the rents
22 and royalties by a fraction the numerator of which is the
23 number of days of physical location of the property in the
24 state during the rental or royalty period in the taxable
25 year and the denominator of which is the number of days of

1 physical location of the property everywhere during all
2 rental or royalty periods in the taxable year. If the
3 physical location of the property during the rental or
4 royalty period is unknown or unascertainable by the
5 taxpayer, tangible personal property is utilized in the
6 state in which the property was located at the time the
7 rental or royalty payer obtained possession.

8 (3) (a) Capital gains and losses, as described in
9 15-30-110, from sales of real property located in this state
10 are allocable to this state.

11 (b) Capital gains and losses, as described in
12 15-30-110, from sales of tangible personal property are
13 allocable to this state if:

14 (i) the property had a situs in this state at the time
15 of the sale; or

16 (ii) the taxpayer's commercial domicile is in this
17 state and the taxpayer is not taxable in the state in which
18 the property had a situs.

19 (c) Capital gains and losses, as described in
20 15-30-110, from sales of intangible personal property are
21 allocable to this state if the taxpayer's commercial
22 domicile is in this state.

23 (4) Interest and dividends are allocable to this state
24 if the taxpayer's commercial domicile is in this state.

25 (5) (a) Patent and copyright royalties are allocable

1 to this state if and to the extent that:

2 (i) the patent or copyright is utilized by the payer
3 in this state; or

4 (ii) the patent or copyright is utilized by the payer
5 in a state in which the taxpayer is not taxable and the
6 taxpayer's commercial domicile is in this state.

7 (b) A patent is utilized in a state to the extent that
8 it is employed in production, fabrication, manufacturing, or
9 other processing in the state or to the extent that a
10 patented product is produced in the state. If the basis of
11 receipts from patent royalties does not permit allocation to
12 states or if the accounting procedures do not reflect states
13 of utilization, the patent is utilized in the state in which
14 the taxpayer's commercial domicile is located.

15 (c) A copyright is utilized in a state to the extent
16 that printing or other publication originates in the state.
17 If the basis of receipts from copyright royalties does not
18 permit allocation to states or if the accounting procedures
19 do not reflect states of utilization, the copyright is
20 utilized in the state in which the taxpayer's commercial
21 domicile is located."

22 **Section 10.** Section 15-31-702, MCA, is amended to
23 read:

24 "15-31-702. Distribution of corporation license taxes
25 collected from banks or savings and loan associations. (1)

1 All corporation license taxes collected from banks and
2 savings and loan associations shall be distributed in the
3 following manner:

4 (a) 20% must be remitted to the state treasurer to be
5 allocated as provided in 15-1-501(2); and

6 (b) ~~88%~~ 32% is statutorily appropriated, as provided
7 in 17-7-502, for allocation to the various taxing
8 jurisdictions within the county, other than school-related
9 jurisdictions, in which the bank or savings and loan
10 association is located; and

11 (c) 48% must be remitted to the state treasurer to be
12 deposited in the state equalization aid account, described
13 in 20-9-343, within the state special revenue fund.

14 (2) The corporation license taxes distributed under
15 subsection (1)(b) shall be allocated to each taxing
16 jurisdiction in the proportion that its mill levy for that
17 fiscal year bears to the total mill levy of the taxing
18 authorities of the district in which the bank or savings and
19 loan association is located.

20 (3) "Taxing jurisdictions" means, for the purposes of
21 this section, all taxing authorities within a county, other
22 than school-related jurisdictions, permitted under state law
23 to levy mills against the taxable value of property in the
24 taxing district in which the bank or savings and loan
25 association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 11. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means ~~those moneys~~ the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid ~~shall~~ must be made in a single sum for the biennium. The superintendent of public instruction ~~has authority to~~ may spend ~~such~~ the appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following ~~shall~~ must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 31.8% of all money received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all money, except as provided in 15-31-702, received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 100% of the money allocated to state equalization from the collection of the severance tax on coal;

(d) 100% of the money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) income from the education trust fund account; and

(g) 48% of the revenue collected under 15-31-702 from corporation license taxes on banks and savings and loan associations; and

~~(g)(h)~~ in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium."

NEW SECTION. Section 12. Extension of authority. Any existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. **Section 13.** Effective date --
4 retroactive applicability. [This act] is effective on
5 passage and approval and applies retroactively, within the
6 meaning of 1-2-109, to taxable years beginning after
7 December 31, 1988, and all tax revenue recorded on or after
8 December 31, 1989, regardless of when the tax obligation
9 accrued.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB463, as introduced


DESCRIPTION OF PROPOSED LEGISLATION:

An act revising certain provisions relating to the taxation of the income of individuals and corporations; restructuring the tax brackets applicable to the taxation of the income of individuals; extending the exclusion of interest income to all individuals; establishing capital gains and losses as a specific type of income and subjecting capital gains and losses to taxation; revising the standard deduction allowable in calculating adjusted gross income for the purpose of determining individual income taxes; indexing for inflation the amount of retirement income that is excludable from adjusted gross income; revising for nonresidents the filing threshold associated with individual income taxes; revising the exemptions allowable in calculating individual income taxes; reallocating corporation license taxes collected from banks and savings and loan associations; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax collections are projected to be \$239,124,000 in FY90, and \$254,428,000 in FY91 (REAC).
2. Corporation license tax collections are projected to be \$49,207,000 in FY90, and \$49,503,000 in FY91 (REAC).
3. The distribution of net long-term capital gains and realizations across holding periods for Montana is the same as the national distribution.
4. The proposed law tax bracket boundaries, exemption levels, standard deduction amounts, interest exclusion amounts, and retirement exclusion amounts are base year 1980 values.
5. The proposal is not anticipated to impact Department of Revenue administrative expense.
6. The proposal applies to taxable years beginning after December 31, 1988, and all tax revenue recorded on or after December 31, 1989.
7. The line item impacts of the provisions of this proposal are estimated to be as follows:

<u>PROVISION</u>	<u>IMPACT</u>
Adjust Capital Gains for Inflation	\$(8,209,000)
Extend Elderly Interest Exclusion to All Filers	(6,031,000)
Adjust Interest Exclusion for Inflation	(1,707,000)
Adjust Retirement Exclusion for Inflation	(1,131,000)
Change Base Year Standard Deduction	(12,177,000)
Change Base Year Exemption Value	(9,615,000)
Change Base Year Tax Brackets	(2,606,000)
Interaction Effects	(152,000)
Total Change	\$(41,628,000)


RAY SHACKLEFORD, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE 3/10/89

DATE 3-13-89
BRUCE D. CRIPPEN, PRIMARY SPONSOR

Fiscal Note for SB463, as introduced**SB 463**

Fiscal Note Request SB463, as introduced
Form BD-15
Page 2

FISCAL IMPACT:

Revenue Impact:	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Individual						
Income Tax	\$239,124,000	\$197,496,000	\$(41,628,000)	\$254,428,000	\$212,800,000	\$(41,628,000)
Corporation						
License Tax	49,207,000	49,207,000	0	49,503,000	49,503,000	0
Total	\$288,331,000	\$246,703,000	\$(41,628,000)	\$303,931,000	\$262,303,000	\$(41,628,000)

Fund Information:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund	\$168,024,932	\$143,797,436	\$(24,227,496)	\$177,087,090	\$152,859,594	\$(24,227,496)
Foundation Program	87,312,824	75,311,549	(12,001,275)	92,240,133	81,507,360	(10,732,773)
Sinking Fund	28,871,813	24,709,013	(4,162,800)	30,428,893	26,266,093	(4,162,800)
Local Govt. - All	4,121,431	2,060,716	(2,060,715)	4,174,885	0	(4,174,885)
Nonschool						
Local Govt.	0	824,286	824,286	0	1,669,954	1,669,954
Total	\$239,124,000	\$197,496,000	\$(41,628,000)	\$303,931,000	\$262,303,000	\$(41,628,000)

SB 463

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB 463, on third readingDESCRIPTION OF PROPOSED LEGISLATION:

An act revising certain provisions relating to the taxation of the income of individuals and corporations; restructuring the tax brackets applicable to the taxation of the income of individuals; extending the exclusion of interest income to all individuals; establishing capital gains and losses as a specific type of income and subjecting capital gains and losses to taxation; revising the standard deduction allowable in calculating adjusted gross income for the purpose of determining individual income taxes; indexing for inflation the amount of retirement income that is excludable from adjusted gross income; revising for nonresidents the filing threshold associated with individual income taxes; revising the exemptions allowable in calculating individual income taxes; reallocating corporation license taxes collected from banks and savings and loan associations; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. Individual income tax collections are projected to be \$256,617,000 in FY90, and \$274,732,000 in FY91 (HJR13).
2. Corporation license tax collections are projected to be \$51,044,000 in FY90, and \$51,474,000 in FY91 (HJR13).
3. The distribution of net long-term capital gains and realizations across holding periods for Montana is the same as the national distribution.
4. Current law treatment of capital gains from installment sales would be repealed.
5. The proposed law tax bracket boundaries, exemption levels, standard deduction amounts, interest exclusion amounts, and retirement exclusion amounts are base year 1980 values.
6. The proposal is not anticipated to impact Department of Revenue administrative expense.
7. The proposal applies to taxable years beginning after December 31, 1989, and all tax revenue recorded on or after December 31, 1990.
8. The line item impacts of the provisions of this proposal are estimated to be as follows:

PROVISION	IMPACT
Adjust Capital Gains for Inflation	\$(5,903,000)
Change Base Year Standard Deduction	(12,504,000)
Change Base Year Exemption Value	(9,809,000)
Change Base Year Tax Brackets	(2,655,000)
Interaction Effects	(1,605,000)
Total Change	\$(32,476,000)

Dave Lewis DATE
DAVE LEWIS, BUDGET DIRECTOR
Office of Budget and Program Planning

Bruce D. Crippen DATE 4/4/89
BRUCE D. CRIPPEN, PRIMARY SPONSOR

Fiscal Note for SB463, on third reading

SB 463
3rd Reading

Fiscal Note Request SB463, on third reading

Form BD-15

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FISCAL IMPACT:

Revenue Impact:

	FY90		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Ind. Income Tax	\$256,617,000	\$256,617,000	\$ 0
Corp. License Tax	51,044,000	51,044,000	0
Total	\$307,661,000	\$307,661,000	\$ 0

	FY91		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
	\$274,732,000	\$242,256,000	\$(32,476,000)
	51,474,000	51,474,000	0
	\$326,206,000	\$293,730,000	\$(32,476,000)

Fund Information:

	FY90		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund	\$179,283,000	\$179,283,000	\$ 0
Foundation Program	93,296,000	93,296,000	0
Sinking Fund	30,807,000	30,807,000	0
Local Govt.	4,275,000	4,275,000	0
Total	\$307,661,000	\$307,661,000	\$ 0

	FY91		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
	\$190,059,000	\$171,158,000	\$(18,901,000)
	99,148,000	91,426,000	(7,722,000)
	32,657,000	29,410,000	(3,247,000)
	4,342,000	1,736,000	(2,606,000)
	\$326,206,000	\$262,303,000	\$(32,476,000)

SB 463
3rd. Reading

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 463
INTRODUCED BY CRIPPEN, RAMIREZ, GAGE
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS RELATING TO THE TAXATION OF THE INCOME OF INDIVIDUALS AND CORPORATIONS; RESTRUCTURING THE TAX BRACKETS APPLICABLE TO THE TAXATION OF THE INCOME OF INDIVIDUALS; EXTENDING THE EXCLUSION OF INTEREST INCOME TO ALL INDIVIDUALS; ESTABLISHING CAPITAL GAINS AND LOSSES AS A SPECIFIC TYPE OF INCOME AND SUBJECTING CAPITAL GAINS AND LOSSES TO TAXATION; REVISING THE STANDARD DEDUCTION ALLOWABLE IN CALCULATING ADJUSTED GROSS INCOME FOR THE PURPOSE OF DETERMINING INDIVIDUAL INCOME TAXES; INDEXING FOR INFLATION THE AMOUNT OF RETIREMENT INCOME THAT IS EXCLUDABLE FROM ADJUSTED GROSS INCOME; REVISING FOR NONRESIDENTS THE FILING THRESHOLD ASSOCIATED WITH INDIVIDUAL INCOME TAXES; REVISING THE EXEMPTIONS ALLOWABLE IN CALCULATING INDIVIDUAL INCOME TAXES; REALLOCATING CORPORATION LICENSE TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS; AMENDING SECTIONS 15-30-103, 15-30-110 THROUGH 15-30-112, 15-30-122, 15-30-131, 15-30-142, 15-30-149, 15-31-304, 15-31-702, AND 20-9-343, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A-RETROACTIVE AN APPLICABILITY DATE."

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

Section 1. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first \$1,000 of taxable income or any part thereof, 2%;

(b) on the next \$1,000 of taxable income or any part thereof, 3%;

(c) on the next \$2,000 \$4,000 of taxable income or any part thereof, 4% 3%;

(d) (b) on the next \$2,000 of taxable income or any part thereof, 5%;

(e) on the next \$2,000 of taxable income or any part thereof, 6%;

(f) on the next \$2,000 \$6,000 of taxable income or any part thereof, 7% 6%; and

(g) on the next \$4,000 of taxable income or any part thereof, 8%;

(h) on the next \$6,000 of taxable income or any part thereof, 9%;

1 ~~{i}--on-the-next-\$15,000-of-taxable-income-or-any--part~~
2 ~~thereof,--10%;~~

3 ~~{j}{(c)}~~ on any taxable income in excess of \$35,000
4 \$10,000 or any part thereof, ~~11%~~ 9%.

5 (2) By November 1 of each year, the department shall
6 multiply the bracket amount contained in subsection (1) by
7 the inflation factor for that taxable year and round the
8 cumulative brackets to the nearest \$100. The resulting
9 adjusted brackets are effective for that taxable year and
10 shall be used as the basis for imposition of the tax in
11 subsection (1) of this section."

12 **Section 2.** Section 15-30-110, MCA, is amended to read:

13 ~~"15-30-110. Exemption-for Treatment of gain on sale or~~
14 ~~exchange of certain capital assets -- purpose -- duty of~~
15 ~~department. (1) It is the purpose of this section that true~~
16 ~~gain rather than nominal gain be used to determine the tax~~
17 ~~on the sale or exchange of certain capital assets.~~

18 ~~(2) Notwithstanding--the--provisions--of--15-30-111,~~
19 ~~adjusted Adjusted gross income does--not--include--40%--of~~
20 ~~includes all capital gains or losses on the sale or exchange~~
21 ~~of capital assets before-December-31-1986, as capital gains~~
22 ~~or losses are determined under subchapter P. of Chapter 1 of~~
23 ~~the Internal Revenue Code as it read on December 31, 1986,~~
24 ~~and as adjusted for inflation by the department.~~

25 ~~(3) The inflation factor to be used by the department~~

1 in adjusting capital gains or losses must be based on the
2 same methodology as the inflation factors defined in
3 15-30-101(8).

4 (4) Each year the department shall prepare and provide
5 with the income tax forms the inflation adjustment factors
6 to be used for all holding periods of capital assets."

7 **Section 3.** Section 15-30-111, MCA, is amended to read:

8 ~~"15-30-111. Adjusted gross income. (1) Adjusted gross~~
9 ~~income shall be the taxpayer's federal income tax adjusted~~
10 ~~gross income as defined in section 62 of the Internal~~
11 ~~Revenue Code of 1954 or as that section may be labeled or~~
12 ~~amended and in addition shall include the following:~~

13 ~~(a) interest received on obligations of another state~~
14 ~~or territory or county, municipality, district, or other~~
15 ~~political subdivision thereof;~~

16 ~~(b) refunds received of federal income tax, to the~~
17 ~~extent the deduction of such tax resulted in a reduction of~~
18 ~~Montana income tax liability; and~~

19 ~~(c) that portion of a shareholder's income under~~
20 ~~subchapter S. of Chapter 1 of the Internal Revenue Code of~~
21 ~~1954 that has been reduced by any federal taxes paid by the~~
22 ~~subchapter S. corporation on the income; and~~

23 ~~(d) capital gains or losses, as described in~~
24 ~~15-30-110.~~

25 ~~(2) Notwithstanding the provisions of the federal~~

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

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

8 (b) interest income earned by a taxpayer ~~age--65--or~~
9 older AGE 65 OR OLDER in a taxable year up to and including:

10 (i) ~~\$800~~ \$550 for a taxpayer filing a separate return,
11 adjusted by the inflation factor for that taxable year and
12 rounded to the nearest \$107--\$800; and

13 (ii) ~~and \$17,600~~ for each joint return, double the
14 amount listed in subsection (2)(b)(i) for a separate return;

15 (c) all benefits, not in excess of ~~\$3,600~~ \$2,400,
16 adjusted by the inflation factor for that taxable year and
17 rounded to the nearest \$10, received:

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

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

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

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

25 (e) all benefits paid under The Public Employees'

1 Retirement System Act which are specified as exempt from
2 taxation by 19-3-105;

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

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

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

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

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

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

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

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

(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212.

(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,--as-amended,--is--not--in--effect,~~ adjusted gross income ~~does--not--include--any--part-of~~ includes 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 adjusted gross income by reason of the said election under subchapter S. ~~However,--the--shareholder's--adjusted gross--income--shall--include--actual-distributions-from-the corporation-to-the-extent-they-would-be-treated--as--taxable dividends--if-the-subchapter-S--election-were-not-in-effect--~~

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

(5) A taxpayer who, in determining federal adjusted 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 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

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 **Section 4.** Section 15-30-112, MCA, is amended to read:

23 "15-30-112. **Exemptions.** (1) Except as provided in
 24 subsections (7) and (8), in the case of an individual, the
 25 exemptions provided by subsections (2) through (6) shall be

1 allowed as deductions in computing taxable income.

2 (2) (a) An exemption of \$800 ~~shall--be--allowed~~ for
 3 taxable years beginning after December 31, 1978, and ending
 4 prior to January 1, 1989, and of \$1,000 for taxable years
 5 beginning after December 31, 1988, is allowed for the
 6 taxpayer.

7 (b) An additional exemption of \$800 ~~shall--be--allowed~~
 8 for taxable years beginning after December 31, 1978, and
 9 ending prior to January 1, 1989, and of \$1,000 for taxable
 10 years beginning after December 31, 1988, is allowed for the
 11 spouse of the taxpayer if a separate return is made by the
 12 taxpayer and if the spouse, for the calendar year in which
 13 the taxable year of the taxpayer begins, has no gross income
 14 and is not the dependent of another taxpayer.

15 (3) (a) An additional exemption of \$800 ~~shall--be~~
 16 allowed for taxable years beginning after December 31, 1978,
 17 and ending prior to January 1, 1989, and of \$1,000 for
 18 taxable years beginning after December 31, 1988, is allowed
 19 for the taxpayer if he has attained the age of 65 before the
 20 close of his taxable year.

21 (b) An additional exemption of \$800 ~~shall--be--allowed~~
 22 for taxable years beginning after December 31, 1978, and
 23 ending prior to January 1, 1989, and of \$1,000 for taxable
 24 years beginning after December 31, 1988, is allowed for the
 25 spouse of the taxpayer if a separate return is made by the

taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of \$800 ~~shall--be~~ allowed for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed

20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of \$800 ~~shall--be--allowed~~ for taxable years beginning after December 31, 1978, and ending prior to January 1, 1989, and of \$1,000 for taxable years beginning after December 31, 1988, is allowed for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter,

or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.

(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section unadjusted by subsection (7) by the inflation factor for that taxable year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 5. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) In the case of a resident individual, a standard deduction ~~equal to 20% of adjusted-gross-income-shall-be~~ is allowed if elected by the taxpayer on his return. The standard deduction ~~shall-be~~ is in lieu of all deductions allowed under 15-30-121. The ~~maximum standard deduction shall-be-\$1,500~~ is \$2,000, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the ~~maximum standard deduction shall-be-\$3,000~~ is \$4,000, as adjusted under the provisions of subsection (2). The standard deduction ~~shall~~ may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an

1 individual is married ~~shall~~ must be made as of the last day
2 of the taxable year; provided, however, if one of the
3 spouses dies during the taxable year, the determination
4 ~~shall~~ must be made as of the date of death.

5 (2) By November 1 of each year, the department shall
6 multiply the ~~maximum~~ standard deduction for single returns
7 by the inflation factor for that taxable year and round the
8 product to the nearest \$10. The standard deduction for
9 joint returns and qualified head of household returns ~~shall~~
10 be is twice the amount for single returns. The resulting
11 adjusted deductions are effective for that taxable year and
12 ~~shall~~ must be used in calculating the tax imposed in
13 15-30-103."

14 **Section 6.** Section 15-30-131, MCA, is amended to read:

15 "15-30-131. Nonresident and temporary resident
16 taxpayers -- adjusted gross income -- deductions. (1) In the
17 case of a taxpayer other than a resident of this state,
18 adjusted gross income includes the entire amount of adjusted
19 gross income from sources within this state but shall not
20 include income from annuities, interest on bank deposits,
21 interest on bonds, notes, or other interest-bearing
22 obligations, or dividends on stock of corporations except to
23 the extent to which the same shall be a part of income from
24 any business, trade, profession, or occupation carried on in
25 this state. Interest income from installment sales of real

1 or tangible commercial or business property located in
2 Montana must be included in adjusted gross income. Adjusted
3 gross income from sources within and without this state
4 shall be allocated and apportioned under rules prescribed by
5 the department.

6 (2) In the case of a taxpayer other than a resident of
7 this state ~~who-is-a-resident-of-a-state-that-imposes-a-tax~~
8 ~~on-the-income-of-natural-persons-residing-within-that-state,~~
9 the deductions allowed in computing net income are
10 restricted to those directly connected with the production
11 of Montana income.

12 ~~{3}--In-the-case-of-a-taxpayer-other-than-a-resident-of~~
13 ~~this-state-who-is-a-resident-of-a-state-that-does-not-impose~~
14 ~~a-tax-on-the-income-of-natural-persons-residing-within--that~~
15 ~~state;--the--deductions--allowed-in-computing-net-income-are~~
16 ~~restricted-to-the-greater-of-those-directly-relating-to--the~~
17 ~~production--of--Montana-income-or-a-prorated-amount-of-those~~
18 ~~allowed--under--15-30-121;--For---the---purposes---of---this~~
19 ~~subsection;--deductions-allowed-under-15-30-121-apply-only-to~~
20 ~~earned--income--and--must-be-prorated-according-to-the-ratio~~
21 ~~that-the-taxpayer's--Montana--earned--income--bears--to--his~~
22 ~~federal-earned-income;~~

23 ~~{4}{3}~~ (3) A temporary resident shall be allowed those
24 deductions and the credit under 15-32-109 allowed a resident
25 to the extent that such deductions or credit were actually

1 incurred or expended in the state of Montana during the
2 course of his residency.

3 ~~(5)~~(4) For the purposes of this section, "earned
4 income" shall be defined as the same term is defined in
5 section 43 of the Internal Revenue Code, or as that section
6 may subsequently be amended.

7 ~~(6)~~(5) Notwithstanding the provisions of ~~subsections~~
8 ~~subsection~~ (2) ~~and (3)~~, any contribution made after December
9 31, 1982, to the state of Montana or a political subdivision
10 thereof shall be an allowable deduction in computing net
11 income. The deduction is subject to the limitations set
12 forth in section 170 of the Internal Revenue Code of 1954,
13 as labeled or amended.

14 ~~(7)~~(6) For purposes of this section, "installment
15 sales" means sales in which the buyer agrees to pay the
16 seller in one or more deferred installments."

17 **Section 7.** Section 15-30-142, MCA, is amended to read:

18 "15-30-142. Returns and payment of tax -- penalty and
19 interest -- refunds -- credits. (1) Every single individual,
20 including a nonresident, and every married individual,
21 including a nonresident, not filing a joint return with his
22 or her spouse and having a gross income for the taxable year
23 of more than \$1,000, as adjusted under the provisions of
24 subsection (7), and married individuals, including
25 nonresidents, not filing separate returns and having a

1 combined gross income for the taxable year of more than
2 \$2,000, as adjusted under the provisions of subsection (7),
3 shall be liable for a return to be filed on such forms and
4 according to such rules as the department may prescribe. The
5 gross income amounts referred to in the preceding sentence
6 shall be increased by ~~\$800~~ \$1,000, as adjusted under the
7 provisions of 15-30-112(7) and (8), for each additional
8 personal exemption allowance the taxpayer is entitled to
9 claim for himself and his spouse under 15-30-112(3) and (4).
10 ~~A nonresident shall be required to file a return if his~~
11 ~~gross income for the taxable year derived from sources~~
12 ~~within Montana exceeds the amount of the exemption deduction~~
13 ~~he is entitled to claim for himself and his spouse under the~~
14 ~~provisions of 15-30-112(2), (3), and (4), as prorated~~
15 ~~according to 15-30-112(6).~~

16 (2) In accordance with instructions set forth by the
17 department, every taxpayer who is married and living with
18 husband or wife and is required to file a return may, at his
19 or her option, file a joint return with husband or wife even
20 though one of the spouses has neither gross income nor
21 deductions. If a joint return is made, the tax shall be
22 computed on the aggregate taxable income and the liability
23 with respect to the tax shall be joint and several. If a
24 joint return has been filed for a taxable year, the spouses
25 may not file separate returns after the time for filing the

1 return of either has expired unless the department so
2 consents.

3 (3) If any such taxpayer is unable to make his own
4 return, the return shall be made by a duly authorized agent
5 or by a guardian or other person charged with the care of
6 the person or property of such taxpayer.

7 (4) All taxpayers, including but not limited to those
8 subject to the provisions of 15-30-202 and 15-30-241, shall
9 compute the amount of income tax payable and shall, at the
10 time of filing the return required by this chapter, pay to
11 the department any balance of income tax remaining unpaid
12 after crediting the amount withheld as provided by 15-30-202
13 and/or any payment made by reason of an estimated tax return
14 provided for in 15-30-241; provided, however, the tax so
15 computed is greater by \$1 than the amount withheld and/or
16 paid by estimated return as provided in this chapter. If the
17 amount of tax withheld and/or payment of estimated tax
18 exceeds by more than \$1 the amount of income tax as
19 computed, the taxpayer shall be entitled to a refund of the
20 excess.

21 (5) As soon as practicable after the return is filed,
22 the department shall examine and verify the tax.

23 (6) If the amount of tax as verified is greater than
24 the amount theretofore paid, the excess shall be paid by the
25 taxpayer to the department within 60 days after notice of

1 the amount of the tax as computed, with interest added at
2 the rate of 9% per annum or fraction thereof on the
3 additional tax. In such case there shall be no penalty
4 because of such understatement, provided the deficiency is
5 paid within 60 days after the first notice of the amount is
6 mailed to the taxpayer.

7 (7) By November 1 of each year, the department shall
8 multiply the minimum amount of gross income necessitating
9 the filing of a return by the inflation factor for the
10 taxable year. These adjusted amounts are effective for that
11 taxable year, and persons having gross incomes less than
12 these adjusted amounts are not required to file a return.

13 (8) Individual income tax forms distributed by the
14 department for each taxable year must contain instructions
15 and tables based on the adjusted base year structure for
16 that taxable year."

17 **Section 8.** Section 15-30-149, MCA, is amended to read:

18 "15-30-149. Credits and refunds -- period of
19 limitations. (1) If the department discovers from the
20 examination of a return or upon claim duly filed by a
21 taxpayer or upon final judgment of a court that the amount
22 of income tax collected is in excess of the amount due or
23 that any penalty or interest was erroneously or illegally
24 collected, the amount of the overpayment shall be credited
25 against any income tax, penalty, or interest then due from

1 the taxpayer and the balance of such excess shall be
2 refunded to the taxpayer.

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

9 (b) If an overpayment of tax results from a net
10 operating loss carryback, the overpayment may be refunded or
11 credited within the period that expires on the 15th day of
12 the 40th month following the close of the taxable year of
13 the net operating loss if that period expires later than 5
14 years from the due date of the return for the year to which
15 the net operating loss is carried back.

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

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

17 (a) the overpayment is refunded within 6-months 60
18 days from the date the return is due or the date the return
19 is filed, whichever date is later;

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

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

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

1 be considered an overpayment with respect to which interest
2 is allowable."

3 **Section 9.** Section 15-31-304, MCA, is amended to read:

4 "15-31-304. Allocation of nonbusiness income. (1)
5 Rents and royalties from real or tangible personal property,
6 capital gains as described in 15-30-110, interest,
7 dividends, or patent or copyright royalties, to the extent
8 that they constitute nonbusiness income, shall be allocated
9 as provided in subsections (2) through (5) of this section.

10 (2) (a) Net rents and royalties from real property
11 located in this state are allocable to this state.

12 (b) Net rents and royalties from tangible personal
13 property are allocable to this state:

14 (i) if and to the extent that the property is utilized
15 in this state; or

16 (ii) in their entirety if the taxpayer's commercial
17 domicile is in this state and the taxpayer is not organized
18 under the laws of or taxable in the state in which the
19 property is utilized.

20 (c) The extent of utilization of tangible personal
21 property in a state is determined by multiplying the rents
22 and royalties by a fraction the numerator of which is the
23 number of days of physical location of the property in the
24 state during the rental or royalty period in the taxable
25 year and the denominator of which is the number of days of

1 physical location of the property everywhere during all
2 rental or royalty periods in the taxable year. If the
3 physical location of the property during the rental or
4 royalty period is unknown or unascertainable by the
5 taxpayer, tangible personal property is utilized in the
6 state in which the property was located at the time the
7 rental or royalty payer obtained possession.

8 (3) (a) Capital gains and losses, as described in
9 15-30-110, from sales of real property located in this state
10 are allocable to this state.

11 (b) Capital gains and losses, as described in
12 15-30-110, from sales of tangible personal property are
13 allocable to this state if:

14 (i) the property had a situs in this state at the time
15 of the sale; or

16 (ii) the taxpayer's commercial domicile is in this
17 state and the taxpayer is not taxable in the state in which
18 the property had a situs.

19 (c) Capital gains and losses, as described in
20 15-30-110, from sales of intangible personal property are
21 allocable to this state if the taxpayer's commercial
22 domicile is in this state.

23 (4) Interest and dividends are allocable to this state
24 if the taxpayer's commercial domicile is in this state.

25 (5) (a) Patent and copyright royalties are allocable

1 to this state if and to the extent that:

2 (i) the patent or copyright is utilized by the payer
3 in this state; or

4 (ii) the patent or copyright is utilized by the payer
5 in a state in which the taxpayer is not taxable and the
6 taxpayer's commercial domicile is in this state.

7 (b) A patent is utilized in a state to the extent that
8 it is employed in production, fabrication, manufacturing, or
9 other processing in the state or to the extent that a
10 patented product is produced in the state. If the basis of
11 receipts from patent royalties does not permit allocation to
12 states or if the accounting procedures do not reflect states
13 of utilization, the patent is utilized in the state in which
14 the taxpayer's commercial domicile is located.

15 (c) A copyright is utilized in a state to the extent
16 that printing or other publication originates in the state.
17 If the basis of receipts from copyright royalties does not
18 permit allocation to states or if the accounting procedures
19 do not reflect states of utilization, the copyright is
20 utilized in the state in which the taxpayer's commercial
21 domicile is located."

22 **Section 10.** Section 15-31-702, MCA, is amended to
23 read:

24 "15-31-702. Distribution of corporation license taxes
25 collected from banks or savings and loan associations. (1)

1 All corporation license taxes collected from banks and
2 savings and loan associations shall be distributed in the
3 following manner:

4 (a) 20% must be remitted to the state treasurer to be
5 allocated as provided in 15-1-501(2); and

6 (b) ~~88%~~ 32% is statutorily appropriated, as provided
7 in 17-7-502, for allocation to the various taxing
8 jurisdictions within the county, other than school-related
9 jurisdictions, in which the bank or savings and loan
10 association is located; and

11 (c) 48% must be remitted to the state treasurer to be
12 deposited in the state equalization aid account, described
13 in 20-9-343, within the state special revenue fund.

14 (2) The corporation license taxes distributed under
15 subsection (1)(b) shall be allocated to each taxing
16 jurisdiction in the proportion that its mill levy for that
17 fiscal year bears to the total mill levy of the taxing
18 authorities of the district in which the bank or savings and
19 loan association is located.

20 (3) "Taxing jurisdictions" means, for the purposes of
21 this section, all taxing authorities within a county, other
22 than school-related jurisdictions, permitted under state law
23 to levy mills against the taxable value of property in the
24 taxing district in which the bank or savings and loan
25 association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 11. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means ~~those moneys~~ the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid ~~shall~~ must be made in a single sum for the biennium. The superintendent of public instruction ~~has~~ authority to may spend ~~such the~~ appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following ~~shall~~ must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 31.8% of all money received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all money, except as provided in 15-31-702, received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 100% of the money allocated to state equalization from the collection of the severance tax on coal;

(d) 100% of the money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) income from the education trust fund account; ~~and~~
(g) 48% of the revenue collected under 15-31-702 from corporation license taxes on banks and savings and loan associations; and

~~(g)~~(h) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium."

NEW SECTION. **Section 12.** Extension of authority. Any existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. SECTION 13. COORDINATION INSTRUCTION.
4 IF [THIS ACT] IS PASSED AND APPROVED AND SENATE BILL NO. 469
5 IS NOT PASSED BY THE 51ST LEGISLATURE OR IS NOT APPROVED BY
6 THE PEOPLE AT THE SPECIAL ELECTION, [THIS ACT] IS VOID.

7 NEW SECTION. Section 14. Effective date --
8 retroactive applicability. [This act] is effective on
9 passage and approval and applies retroactively, within the
10 meaning of 1-2-1997 to taxable years beginning after
11 December 31, 1988 1989, and all tax revenue recorded on or
12 after December 31, 1989 1990, regardless of when the tax
13 obligation accrued.

-End-

SENATE BILL NO. 463

INTRODUCED BY CRIPPEN, RAMIREZ, GAGE

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS RELATING TO THE TAXATION OF THE INCOME OF INDIVIDUALS AND CORPORATIONS; RESTRUCTURING THE TAX BRACKETS APPLICABLE TO THE TAXATION OF THE INCOME OF INDIVIDUALS; EXTENDING THE EXCLUSION OF INTEREST INCOME TO ALL INDIVIDUALS; ESTABLISHING CAPITAL GAINS AND LOSSES AS A SPECIFIC TYPE OF INCOME AND SUBJECTING CAPITAL GAINS AND LOSSES TO TAXATION; REVISING THE STANDARD DEDUCTION ALLOWABLE IN CALCULATING ADJUSTED GROSS INCOME FOR THE PURPOSE OF DETERMINING INDIVIDUAL INCOME TAXES; INDEXING FOR INFLATION THE AMOUNT OF RETIREMENT INCOME THAT IS EXCLUDABLE FROM ADJUSTED GROSS INCOME; REVISING FOR NONRESIDENTS THE FILING THRESHOLD ASSOCIATED WITH INDIVIDUAL INCOME TAXES; REVISING THE EXEMPTIONS ALLOWABLE IN CALCULATING INDIVIDUAL INCOME TAXES; REALLOCATING CORPORATION LICENSE TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS; AMENDING SECTIONS 15-30-103, 15-30-110 THROUGH 15-30-112, 15-30-122, 15-30-131, 15-30-142, 15-30-149, 15-31-304, 15-31-702, AND 20-9-343, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE AN APPLICABILITY DATE."

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

Section 1. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first \$1,000 of taxable income or any part thereof, 2%;

(b) on the next \$1,000 of taxable income or any part thereof, 3%;

(c) on the next \$2,000 \$4,000 of taxable income or any part thereof, 4% 3%;

(d)(b) on the next \$2,000 of taxable income or any part thereof, 5%;

(e) on the next \$2,000 of taxable income or any part thereof, 6%;

(f) on the next \$2,000 \$6,000 of taxable income or any part thereof, 7% 6%; and

(g) on the next \$4,000 of taxable income or any part thereof, 8%;

(h) on the next \$6,000 of taxable income or any part thereof, 9%;

1 ~~{i}--on-the-next-\$15,000-of-taxable-income-or-any--part~~
2 ~~thereof--10%;~~

3 ~~{j}(c) on any taxable income in excess of \$35,000~~
4 ~~\$10,000 or any part thereof, 11% 9%.~~

5 (2) By November 1 of each year, the department shall
6 multiply the bracket amount contained in subsection (1) by
7 the inflation factor for that taxable year and round the
8 cumulative brackets to the nearest \$100. The resulting
9 adjusted brackets are effective for that taxable year and
10 shall be used as the basis for imposition of the tax in
11 subsection (1) of this section."

12 **Section 2.** Section 15-30-110, MCA, is amended to read:

13 "15-30-110. Exemption for Treatment of gain on sale or
14 exchange of certain capital assets -- purpose -- duty of
15 department. (1) It is the purpose of this section that true
16 gain rather than nominal gain be used to determine the tax
17 on the sale or exchange of certain capital assets.

18 (2) Notwithstanding the provisions of 15-30-111,
19 adjusted Adjusted gross income does not include 40% of
20 includes all capital gains or losses on the sale or exchange
21 of capital assets before December 31, 1986, as capital gains
22 or losses are determined under subchapter P. of Chapter 1 of
23 the Internal Revenue Code as it read on December 31, 1986,
24 and as adjusted for inflation by the department.

25 (3) The inflation factor to be used by the department

1 in adjusting capital gains or losses must be based on the
2 same methodology as the inflation factors defined in
3 15-30-101(8).

4 (4) Each year the department shall prepare and provide
5 with the income tax forms the inflation adjustment factors
6 to be used for all holding periods of capital assets.

7 (5) FOR CAPITAL ASSETS HELD MORE THAN 1 YEAR, THE
8 TAXPAYER MAY ADJUST THE COST BASIS OF THE ASSETS BY THE
9 INFLATION ADJUSTMENT FACTOR FOR THE APPROPRIATE HOLDING
10 PERIOD. FOR CASH, AS WELL AS INSTALLMENT PURCHASES OR SALES
11 OF ASSETS, THE DEPARTMENT SHALL ADOPT RULES AND PROVIDE
12 FORMS FOR USE BY THE TAXPAYER IN MAKING INFLATION
13 ADJUSTMENTS OF CAPITAL ASSET COSTS."

14 **Section 3.** Section 15-30-111, MCA, is amended to read:

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

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

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

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

(d) capital gains or losses, as described in 15-30-110.

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

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

(b) interest income earned by a taxpayer age--65--or older AGE 65 OR OLDER in a taxable year up to and including:

(i) \$800 \$550 for a taxpayer filing a separate return, adjusted by the inflation factor for that taxable year and rounded to the nearest \$10,--\$800; and

(ii) and--\$1,600 for each joint return, double the amount listed in subsection (2)(b)(i) for a separate return;

(c) all benefits, not in excess of \$3,600 \$2,400, adjusted by the inflation factor for that taxable year and rounded to the nearest \$10, received:

(i) under the Federal Employees' Retirement Act;

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

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

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

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

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

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

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

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

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

(k) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered

1 by them to patrons of premises licensed to provide food,
2 beverage, or lodging;

3 (l) all benefits received under the workers'
4 compensation laws;

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

8 (n) all benefits paid under an optional retirement
9 program that are specified as exempt from taxation by
10 19-21-212.

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

25 (4) A shareholder of a DISC that is exempt from the

1 corporation license tax under 15-31-102(1)(1) shall include
2 in his adjusted gross income the earnings and profits of the
3 DISC in the same manner as provided by federal law (section
4 995, Internal Revenue Code) for all periods for which the
5 DISC election is effective.

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

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

1 (7) A taxpayer receiving retirement disability
 2 benefits who has not attained age 65 by the end of the
 3 taxable year and who has retired as permanently and totally
 4 disabled may exclude from adjusted gross income up to \$100
 5 per week received as wages or payments in lieu of wages for
 6 a period during which the employee is absent from work due
 7 to the disability. If the adjusted gross income before this
 8 exclusion and before application of the two-earner married
 9 couple deduction exceeds \$15,000, the excess reduces the
 10 exclusion by an equal amount. This limitation affects the
 11 amount of exclusion, but not the taxpayer's eligibility for
 12 the exclusion. If eligible, married individuals shall apply
 13 the exclusion separately, but the limitation for income
 14 exceeding \$15,000 is determined with respect to the spouses
 15 on their combined adjusted gross income. For the purpose of
 16 this subsection, permanently and totally disabled means
 17 unable to engage in any substantial gainful activity by
 18 reason of any medically determined physical or mental
 19 impairment lasting or expected to last at least 12 months.

20 (8) A person receiving benefits described in
 21 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
 22 exclude benefits described in subsection (2)(c) from
 23 adjusted gross income unless the benefits received under
 24 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
 25 less than \$3,600, in which case the person may combine

1 benefits to exclude up to a total of \$3,600 from adjusted
 2 gross income. (Subsection (2)(k) terminates on occurrence
 3 of contingency--sec. 3, Ch. 634, L. 1983.)"

4 **Section 4.** Section 15-30-112, MCA, is amended to read:

5 "15-30-112. **Exemptions.** (1) Except as provided in
 6 subsections (7) and (8), in the case of an individual, the
 7 exemptions provided by subsections (2) through (6) shall be
 8 allowed as deductions in computing taxable income.

9 (2) (a) An exemption of \$800 ~~shall be allowed~~ for
 10 taxable years beginning after December 31, 1978, and ending
 11 prior to January 1, 1989, and of \$1,000 for taxable years
 12 beginning after December 31, 1988, is allowed for the
 13 taxpayer.

14 (b) An additional exemption of \$800 ~~shall be allowed~~
 15 for taxable years beginning after December 31, 1978, and
 16 ending prior to January 1, 1989, and of \$1,000 for taxable
 17 years beginning after December 31, 1988, is allowed for the
 18 spouse of the taxpayer if a separate return is made by the
 19 taxpayer and if the spouse, for the calendar year in which
 20 the taxable year of the taxpayer begins, has no gross income
 21 and is not the dependent of another taxpayer.

22 (3) (a) An additional exemption of \$800 ~~shall be~~
 23 allowed for taxable years beginning after December 31, 1978,
 24 and ending prior to January 1, 1989, and of \$1,000 for
 25 taxable years beginning after December 31, 1988, is allowed

1 for the taxpayer if he has attained the age of 65 before the
2 close of his taxable year.

3 (b) An additional exemption of \$800 ~~shall be allowed~~
4 for taxable years beginning after December 31, 1978, and
5 ending prior to January 1, 1989, and of \$1,000 for taxable
6 years beginning after December 31, 1988, is allowed for the
7 spouse of the taxpayer if a separate return is made by the
8 taxpayer and if the spouse has attained the age of 65 before
9 the close of such taxable year and, for the calendar year in
10 which the taxable year of the taxpayer begins, has no gross
11 income and is not the dependent of another taxpayer.

12 (4) (a) An additional exemption of \$800 ~~shall--be~~
13 ~~allowed~~ for taxable years beginning after December 31, 1978,
14 and ending prior to January 1, 1989, and of \$1,000 for
15 taxable years beginning after December 31, 1988, is allowed
16 for the taxpayer if he is blind at the close of his taxable
17 year.

18 (b) An additional exemption of \$800 ~~shall be allowed~~
19 for taxable years beginning after December 31, 1978, and
20 ending prior to January 1, 1989, and of \$1,000 for taxable
21 years beginning after December 31, 1988, is allowed for the
22 spouse of the taxpayer if a separate return is made by the
23 taxpayer and if the spouse is blind and, for the calendar
24 year in which the taxable year of the taxpayer begins, has
25 no gross income and is not the dependent of another

1 taxpayer. For the purposes of this subsection (4)(b), the
2 determination of whether the spouse is blind shall be made
3 as of the close of the taxable year of the taxpayer, except
4 that if the spouse dies during such taxable year, such
5 determination shall be made as of the time of such death.

6 (c) For purposes of this subsection (4), an individual
7 is blind only if his central visual acuity does not exceed
8 20/200 in the better eye with correcting lenses or if his
9 visual acuity is greater than 20/200 but is accompanied by a
10 limitation in the fields of vision such that the widest
11 diameter of the visual field subtends an angle no greater
12 than 20 degrees.

13 (5) (a) An exemption of \$800 ~~shall--be allowed~~ for
14 taxable years beginning after December 31, 1978, and ending
15 prior to January 1, 1989, and of \$1,000 for taxable years
16 beginning after December 31, 1988, is allowed for each
17 dependent:

18 (i) whose gross income for the calendar year in which
19 the taxable year of the taxpayer begins is less than \$800;
20 or

21 (ii) who is a child of the taxpayer and who:

22 (A) has not attained the age of 19 years at the close
23 of the calendar year in which the taxable year of the
24 taxpayer begins; or

25 (B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio

the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.

(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section unadjusted by subsection (7) by the inflation factor for that taxable year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 5. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) In the case of a resident individual, a standard deduction ~~equal to 20% of adjusted gross income shall be~~ is allowed if elected by the taxpayer on his return. The standard deduction ~~shall be~~ is in lieu of all deductions allowed under 15-30-121. The ~~maximum standard deduction shall be \$1,500~~ is \$2,000, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as

1 a head of household on his federal income tax return, the
 2 maximum standard deduction ~~shall be \$3,000~~ is \$4,000, as
 3 adjusted under the provisions of subsection (2). The
 4 standard deduction ~~shall~~ may not be allowed to either the
 5 husband or the wife if the tax of one of the spouses is
 6 determined without regard to the standard deduction. For
 7 purposes of this section, the determination of whether an
 8 individual is married ~~shall~~ must be made as of the last day
 9 of the taxable year; provided, however, if one of the
 10 spouses dies during the taxable year, the determination
 11 ~~shall~~ must be made as of the date of death.

12 (2) By November 1 of each year, the department shall
 13 multiply the maximum standard deduction for single returns
 14 by the inflation factor for that taxable year and round the
 15 product to the nearest \$10. The standard deduction for
 16 joint returns and qualified head of household returns ~~shall~~
 17 be is twice the amount for single returns. The resulting
 18 adjusted deductions are effective for that taxable year and
 19 ~~shall~~ must be used in calculating the tax imposed in
 20 15-30-103."

21 **Section 6.** Section 15-30-131, MCA, is amended to read:

22 "15-30-131. Nonresident and temporary resident
 23 taxpayers -- adjusted gross income -- deductions. (1) In the
 24 case of a taxpayer other than a resident of this state,
 25 adjusted gross income includes the entire amount of adjusted

1 gross income from sources within this state but shall not
 2 include income from annuities, interest on bank deposits,
 3 interest on bonds, notes, or other interest-bearing
 4 obligations, or dividends on stock of corporations except to
 5 the extent to which the same shall be a part of income from
 6 any business, trade, profession, or occupation carried on in
 7 this state. Interest income from installment sales of real
 8 or tangible commercial or business property located in
 9 Montana must be included in adjusted gross income. Adjusted
 10 gross income from sources within and without this state
 11 shall be allocated and apportioned under rules prescribed by
 12 the department.

13 (2) In the case of a taxpayer other than a resident of
 14 this state ~~who is a resident of a state that imposes a tax~~
 15 ~~on the income of natural persons residing within that state,~~
 16 the deductions allowed in computing net income are
 17 restricted to those directly connected with the production
 18 of Montana income.

19 ~~(3) In the case of a taxpayer other than a resident of~~
 20 ~~this state who is a resident of a state that does not impose~~
 21 ~~a tax on the income of natural persons residing within that~~
 22 ~~state, the deductions allowed in computing net income are~~
 23 ~~restricted to the greater of those directly relating to the~~
 24 ~~production of Montana income or a prorated amount of those~~
 25 ~~allowed under 15-30-121. For the purposes of this~~

~~subsection, deductions allowed under 15-30-112 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.~~

~~(4)(3)~~ A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.

~~(5)(4)~~ For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

~~(6)(5)~~ Notwithstanding the provisions of ~~subsections subsection (2) and (3)~~, any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

~~(7)(6)~~ For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments."

Section 7. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and

interest -- refunds -- credits. (1) Every single individual, including a nonresident, and every married individual, including a nonresident, not filing a joint return with his or her spouse and having a gross income for the taxable year of more than \$1,000, as adjusted under the provisions of subsection (7), and married individuals, including nonresidents, not filing separate returns and having a combined gross income for the taxable year of more than \$2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by ~~\$800~~ \$1,000, as adjusted under the provisions of 15-30-112(7) and (8), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his

1 or her option, file a joint return with husband or wife even
 2 though one of the spouses has neither gross income nor
 3 deductions. If a joint return is made, the tax shall be
 4 computed on the aggregate taxable income and the liability
 5 with respect to the tax shall be joint and several. If a
 6 joint return has been filed for a taxable year, the spouses
 7 may not file separate returns after the time for filing the
 8 return of either has expired unless the department so
 9 consents.

10 (3) If any such taxpayer is unable to make his own
 11 return, the return shall be made by a duly authorized agent
 12 or by a guardian or other person charged with the care of
 13 the person or property of such taxpayer.

14 (4) All taxpayers, including but not limited to those
 15 subject to the provisions of 15-30-202 and 15-30-241, shall
 16 compute the amount of income tax payable and shall, at the
 17 time of filing the return required by this chapter, pay to
 18 the department any balance of income tax remaining unpaid
 19 after crediting the amount withheld as provided by 15-30-202
 20 and/or any payment made by reason of an estimated tax return
 21 provided for in 15-30-241; provided, however, the tax so
 22 computed is greater by \$1 than the amount withheld and/or
 23 paid by estimated return as provided in this chapter. If the
 24 amount of tax withheld and/or payment of estimated tax
 25 exceeds by more than \$1 the amount of income tax as

1 computed, the taxpayer shall be entitled to a refund of the
 2 excess.

3 (5) As soon as practicable after the return is filed,
 4 the department shall examine and verify the tax.

5 (6) If the amount of tax as verified is greater than
 6 the amount theretofore paid, the excess shall be paid by the
 7 taxpayer to the department within 60 days after notice of
 8 the amount of the tax as computed, with interest added at
 9 the rate of 9% per annum or fraction thereof on the
 10 additional tax. In such case there shall be no penalty
 11 because of such understatement, provided the deficiency is
 12 paid within 60 days after the first notice of the amount is
 13 mailed to the taxpayer.

14 (7) By November 1 of each year, the department shall
 15 multiply the minimum amount of gross income necessitating
 16 the filing of a return by the inflation factor for the
 17 taxable year. These adjusted amounts are effective for that
 18 taxable year, and persons having gross incomes less than
 19 these adjusted amounts are not required to file a return.

20 (8) Individual income tax forms distributed by the
 21 department for each taxable year must contain instructions
 22 and tables based on the adjusted base year structure for
 23 that taxable year."

24 **Section 8.** Section 15-30-149, MCA, is amended to read:
 25 "15-30-149. Credits and refunds -- period of

1 limitations. (1) If the department discovers from the
2 examination of a return or upon claim duly filed by a
3 taxpayer or upon final judgment of a court that the amount
4 of income tax collected is in excess of the amount due or
5 that any penalty or interest was erroneously or illegally
6 collected, the amount of the overpayment shall be credited
7 against any income tax, penalty, or interest then due from
8 the taxpayer and the balance of such excess shall be
9 refunded to the taxpayer.

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

16 (b) If an overpayment of tax results from a net
17 operating loss carryback, the overpayment may be refunded or
18 credited within the period that expires on the 15th day of
19 the 40th month following the close of the taxable year of
20 the net operating loss if that period expires later than 5
21 years from the due date of the return for the year to which
22 the net operating loss is carried back.

23 (3) Within 6 months after a claim for refund is filed,
24 the department shall examine said claim and either approve
25 or disapprove it. If said claim is approved, the credit or

1 refund shall be made to the taxpayer within 60 days after
2 the claim is approved; if the claim is disallowed, the
3 department shall so notify the taxpayer and shall grant a
4 hearing thereon upon proper application by the taxpayer. If
5 the department disapproves a claim for refund, review of the
6 determination of the department may be had as otherwise
7 provided in this chapter.

8 (4) Except as hereinafter provided for, interest shall
9 be allowed on overpayments at the same rate as is charged on
10 delinquent taxes due from the due date of the return or from
11 the date of the overpayment (whichever date is later) to the
12 date the department approves refunding or crediting of the
13 overpayment. With respect to tax paid by withholding or by
14 estimate, the date of overpayment shall be deemed to be the
15 date on which the return for the taxable year was due. No
16 interest shall accrue on an overpayment if the taxpayer
17 elects to have it applied to his estimated tax for the
18 succeeding taxable year, nor shall interest accrue during
19 any period the processing of a claim for refund is delayed
20 more than 30 days by reason of failure of the taxpayer to
21 furnish information requested by the department for the
22 purpose of verifying the amount of the overpayment. No
23 interest shall be allowed if:

24 (a) the overpayment is refunded within 6 months 60
25 days from the date the return is due or the date the return

1 is filed, whichever date is later;

2 (b) the overpayment results from the carryback of a
3 net operating loss; or

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

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

10 **Section 9.** Section 15-31-304, MCA, is amended to read:

11 "15-31-304. Allocation of nonbusiness income. (1)
12 Rents and royalties from real or tangible personal property,
13 capital gains as described in 15-30-110, interest,
14 dividends, or patent or copyright royalties, to the extent
15 that they constitute nonbusiness income, shall be allocated
16 as provided in subsections (2) through (5) of this section.

17 (2) (a) Net rents and royalties from real property
18 located in this state are allocable to this state.

19 (b) Net rents and royalties from tangible personal
20 property are allocable to this state:

21 (i) if and to the extent that the property is utilized
22 in this state; or

23 (ii) in their entirety if the taxpayer's commercial
24 domicile is in this state and the taxpayer is not organized
25 under the laws of or taxable in the state in which the

1 property is utilized.

2 (c) The extent of utilization of tangible personal
3 property in a state is determined by multiplying the rents
4 and royalties by a fraction the numerator of which is the
5 number of days of physical location of the property in the
6 state during the rental or royalty period in the taxable
7 year and the denominator of which is the number of days of
8 physical location of the property everywhere during all
9 rental or royalty periods in the taxable year. If the
10 physical location of the property during the rental or
11 royalty period is unknown or unascertainable by the
12 taxpayer, tangible personal property is utilized in the
13 state in which the property was located at the time the
14 rental or royalty payer obtained possession.

15 (3) (a) Capital gains and losses, as described in
16 15-30-110, from sales of real property located in this state
17 are allocable to this state.

18 (b) Capital gains and losses, as described in
19 15-30-110, from sales of tangible personal property are
20 allocable to this state if:

21 (i) the property had a situs in this state at the time
22 of the sale; or

23 (ii) the taxpayer's commercial domicile is in this
24 state and the taxpayer is not taxable in the state in which
25 the property had a situs.

(c) Capital gains and losses, as described in 15-30-110, from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures

do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located."

Section 10. Section 15-31-702, MCA, is amended to read:

"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes collected from banks and savings and loan associations shall be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501(2); and

(b) ~~88%~~ 32% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county, other than school-related jurisdictions, in which the bank or savings and loan association is located; and

(c) 48% must be remitted to the state treasurer to be deposited in the state equalization aid account, described in 20-9-343, within the state special revenue fund.

(2) The corporation license taxes distributed under subsection (1)(b) shall be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and

1 loan association is located.

2 (3) "Taxing jurisdictions" means, for the purposes of
3 this section, all taxing authorities within a county, other
4 than school-related jurisdictions, permitted under state law
5 to levy mills against the taxable value of property in the
6 taxing district in which the bank or savings and loan
7 association is located.

8 (4) If a return filed by a bank or savings and loan
9 association involves branches or offices in more than one
10 taxing jurisdiction, the department of revenue shall provide
11 a method by rule for equitable distribution among those
12 taxing jurisdictions."

13 **Section 11.** Section 20-9-343, MCA, is amended to read:

14 "20-9-343. Definition of and revenue for state
15 equalization aid. (1) As used in this title, the term "state
16 equalization aid" means ~~those moneys~~ the money deposited in
17 the state special revenue fund as required in this section
18 plus any legislative appropriation of money from other
19 sources for distribution to the public schools for the
20 purpose of equalization of the foundation program.

21 (2) The legislative appropriation for state
22 equalization aid ~~shall~~ must be made in a single sum for the
23 biennium. The superintendent of public instruction ~~has~~
24 ~~authority to~~ may spend ~~such the~~ appropriation, together with
25 the earmarked revenues provided in subsection (3), as

1 required for foundation program purposes throughout the
2 biennium.

3 (3) The following ~~shall~~ must be paid into the state
4 special revenue fund for state equalization aid to public
5 schools of the state:

6 (a) 31.8% of all money received from the collection of
7 income taxes under chapter 30 of Title 15;

8 (b) 25% of all money, except as provided in 15-31-702,
9 received from the collection of corporation license and
10 income taxes under chapter 31 of Title 15, as provided by
11 15-1-501;

12 (c) 100% of the money allocated to state equalization
13 from the collection of the severance tax on coal;

14 (d) 100% of the money received from the treasurer of
15 the United States as the state's shares of oil, gas, and
16 other mineral royalties under the federal Mineral Lands
17 Leasing Act, as amended;

18 (e) interest and income money described in 20-9-341
19 and 20-9-342;

20 (f) income from the education trust fund account; and

21 (g) 48% of the revenue collected under 15-31-702 from
22 corporation license taxes on banks and savings and loan
23 associations; and

24 ~~(g)(h)~~ in addition to these revenues, the surplus
25 revenues collected by the counties for foundation program

support according to 20-9-331 and 20-9-333.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium."

NEW SECTION. Section 12. 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].

NEW SECTION. SECTION 13. COORDINATION INSTRUCTION.
IF [THIS ACT] IS PASSED AND APPROVED AND SENATE BILL NO. 469
IS NOT PASSED BY THE 51ST LEGISLATURE OR IS NOT APPROVED BY
THE PEOPLE AT THE SPECIAL ELECTION, [THIS ACT] IS VOID.

NEW SECTION. Section 14. Effective date --
retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning--of--1-2-1997, to taxable years beginning after December 31, 1988 1989, and all tax revenue recorded on or after December 31, 1989 1990, regardless of when the tax obligation accrued.

-End-