

SENATE BILL 471

Introduced by Eck

4/04	Introduced
4/04	Referred to Taxation
4/05	Fiscal Note Requested
4/06	Fiscal Note Received
4/07	Hearing
4/08	Fiscal Note Printed
	Died in Committee

1 *Senate* BILL NO. *471*
 2 INTRODUCED BY *Clark*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM TAXATION
 5 THE FIRST \$16,000 OF RETIREMENT BENEFITS RECEIVED UNDER
 6 MONTANA AND FEDERAL PUBLIC PENSIONS; AMENDING SECTIONS
 7 15-30-111, 15-30-136, 19-3-105, 19-4-706, 19-5-704,
 8 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504,
 9 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
 11 APPLICABILITY DATE."
 12

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

14 **Section 1.** 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

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

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

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

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

17 (c) all benefits, not in excess of \$3,600, 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)(ii) as an annuity, pension, or endowment under~~
 22 ~~any private or corporate retirement plan or system;~~

23 (d) all benefits ~~paid under the teachers' not in~~
 24 ~~excess of \$16,000 received under Title 19 or federal public~~
 25 ~~employee retirement law which are specified as exempt from~~

1 taxation-by-19-4-706;
 2 ~~{e}--all--benefits--paid--under--The--Public-Employees'~~
 3 ~~Retirement-System-Act-which-are--specified--as--exempt--from~~
 4 ~~taxation-by-19-3-105;~~
 5 ~~{f}--all--benefits--paid--under--the--highway--patrol~~
 6 ~~retirement-law-which-are-specified-as-exempt--from--taxation~~
 7 ~~by-19-6-705;~~
 8 {g}{e} all Montana income tax refunds or credits
 9 thereof;
 10 ~~{h}--all--benefits--paid--under-19-11-602,-19-11-604,--and~~
 11 ~~19-11-605--to--retired--and--disabled--firefighters,--their~~
 12 ~~surviving spouses and orphans or specified as exempt--from~~
 13 ~~taxation-by-19-13-1003;~~
 14 ~~{i}--all--benefits--paid--under--the--municipal--police~~
 15 ~~officers'-retirement-system-that--are--specified--as--exempt~~
 16 ~~from-taxation-by-19-9-1005;~~
 17 {jj}{f} gain required to be recognized by a liquidating
 18 corporation under 15-31-113(1)(a)(ii);
 19 {k}{g} all tips covered by section 3402(k) of the
 20 Internal Revenue Code of 1954, as amended and applicable on
 21 January 1, 1983, received by persons for services rendered
 22 by them to patrons of premises licensed to provide food,
 23 beverage, or lodging;
 24 {l}{h} all benefits received under the workers'
 25 compensation laws; and

1 {m}{i} all health insurance premiums paid by an
 2 employer for an employee if attributed as income to the
 3 employee under federal law; and
 4 {n}--all--benefits--paid--under--an--optional--retirement
 5 program--that--are--specified--as--exempt from taxation-by
 6 19-21-212.

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

21 (4) A shareholder of a DISC that is exempt from the
 22 corporation license tax under 15-31-102(1)(1) shall include
 23 in his adjusted gross income the earnings and profits of the
 24 DISC in the same manner as provided by federal law (section
 25 995, Internal Revenue Code) for all periods for which the

1 DISC election is effective.

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

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

22 (7) A taxpayer receiving retirement disability
23 benefits who has not attained age 65 by the end of the
24 taxable year and who has retired as permanently and totally
25 disabled may exclude from adjusted gross income up to \$100

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

16 (8) A person receiving benefits described in
17 subsections subsection (2)(d) through--(2){f};--(2){h};--or
18 (2){i} may not exclude benefits described in subsection
19 (2)(c) from adjusted gross income unless the benefits
20 received under subsections subsection (2)(d) through (2){f};
21 (2){h};--or--(2){i} are less than \$3,600, in which case the
22 person may combine benefits to exclude up to a total of
23 \$3,600 from adjusted gross income. (Subsection (2){k}
24 (2)(g) terminates on occurrence of contingency--sec. 3, Ch.
25 634, L. 1983.)"

Section 2. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the

extent the deduction of such tax resulted in a reduction of Montana income tax liability.

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

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

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

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

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

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

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax

1 purposes according to section 165 of the Internal Revenue
2 Code of 1954, as amended;

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

7 (h) all benefits, not in excess of \$3,600, received:

8 (i) ~~as federal employees' retirement;~~

9 ~~as retirement from public employment in a state~~
10 ~~other than Montana; or~~

11 ~~as an annuity, pension, or endowment under~~
12 ~~private or corporate retirement plans or systems;~~

13 (i) ~~all benefits paid under the Montana teachers'~~
14 ~~retirement system that are specified as exempt from taxation~~
15 ~~by 19-4-706 not in excess of \$16,000 received under Title 19~~
16 ~~or federal public employee retirement law;~~

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

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

23 (j) Montana income tax refunds or credits thereof;

24 ~~(m) all benefits paid under 19-11-602, 19-11-604, and~~
25 ~~19-11-605 to retired and disabled firemen or their surviving~~

1 spouses or children;

2 ~~(n) all benefits paid under the municipal police~~
3 ~~officers' retirement system that are specified as exempt~~
4 ~~from taxation by 19-9-1005.~~

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

18 (4) The following additional deductions shall be
19 allowed in deriving taxable income of estates and trusts:

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

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

25 (c) the amount of 60% of the excess of the net

1 long-term capital gain over the net short-term capital loss
2 for the taxable year.

3 (5) The exemption allowed for estates and trusts is
4 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

5 (6) A trust or estate excluding benefits under
6 ~~subsections subsection (2)(i) through--(2)(k);--(2)(m);--or~~
7 ~~(2)(n)~~ may not exclude benefits described in subsection
8 (2)(h) from net income unless the benefits received under
9 ~~subsections subsection (2)(i) through--(2)(k);--(2)(m);--or~~
10 ~~(2)(n)~~ are less than \$3,600, in which case the trust or
11 estate may combine benefits to exclude up to a total of
12 \$3,600 from net income."

13 **Section 3.** Section 19-3-105, MCA, is amended to read:

14 "19-3-105. Exemption from taxes and legal process. The
15 right of a person to a retirement allowance or any other
16 benefit under this chapter and the moneys money in the fund
17 created under this chapter ~~is~~ are not:

18 (1) subject to execution, garnishment, attachment, or
19 any other process;

20 (2) subject to state, county, or municipal taxes
21 except:

22 (a) for the amount received in excess of \$16,000; or

23 (b) for a refund paid under 19-3-703 of a member's
24 contributions picked up by an employer after June 30, 1985,
25 as provided in 19-3-701; or

1 (3) assignable except as in this chapter specifically
2 provided."

3 **Section 4.** Section 19-4-706, MCA, is amended to read:

4 "19-4-706. Exemption from taxation and legal process.

5 The pensions, annuities, or any other benefits accrued or
6 accruing to any person under the provisions of the
7 retirement system and the accumulated contributions and cash
8 and securities in the various funds of the retirement system
9 are:

10 (1) exempted from any state, county, or municipal tax
11 of the state of Montana except for:

12 (a) the amount received in excess of \$16,000; or

13 (b) a refund paid under 19-4-601 of a member's
14 contributions picked up by an employer after June 30, 1985,
15 as provided in 19-4-602;

16 (2) not subject to execution, garnishment, attachment
17 by trustee process or otherwise, in law or equity, or any
18 other process; and

19 (3) unassignable except as specifically provided in
20 this chapter."

21 **Section 5.** Section 19-5-704, MCA, is amended to read:

22 "19-5-704. Exemption from taxes and legal process. Any
23 money (1) Money received or to be paid as a member's
24 annuity, state annuity, or return of deductions or the right
25 of any of these ~~shall--be~~ is exempt from any state-or

~~municipal-tax-and~~ from levy, sale, garnishment, attachment, or any other process ~~whatsoever and shall-be~~ is unassignable except as specifically provided in 19-5-705.

(2) The first \$16,000 received under this chapter is exempt from state, county, or municipal taxation."

Section 6. Section 19-6-705, MCA, is amended to read:

"19-6-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) the amount received in excess of \$16,000; or

(b) a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-6-706."

Section 7. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) the amount received in excess of \$16,000; or

(b) a refund paid under 19-7-304(1) of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-7-706."

Section 8. Section 19-8-805, MCA, is amended to read:

"19-8-805. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) the amount received in excess of \$16,000; or

(b) a refund paid under 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-8-806."

Section 9. Section 19-9-1005, MCA, is amended to read:

"19-9-1005. **Exemption from taxes.** Any money paid in accordance with the provisions of this chapter is exempt from any state, county, or municipal tax except for:

(1) the amount received in excess of \$16,000; or

(2) a refund paid under 19-9-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-9-601."

Section 10. Section 19-10-504, MCA, is amended to read:

"19-10-504. **Protection of benefits from legal process and taxation.** (1) The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505.

(2) The first \$16,000 of benefits received under this part are exempt from state, county, and municipal taxation."

Section 11. Section 19-11-612, MCA, is amended to read:

"19-11-612. **Protection of benefits from legal process -- nonassignability -- exemption from taxation.** (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the

right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first \$16,000 of benefits received under this chapter are exempt from state, county, and municipal taxation."

Section 12. Section 19-12-407, MCA, is amended to read:

"19-12-407. **Payment of pension benefits -- exemption from taxation.** (1) All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1).

(2) The first \$16,000 of benefits received under this chapter are exempt from state, county, and municipal taxation."

Section 13. Section 19-13-1003, MCA, is amended to read:

"19-13-1003. **Exemption from taxes.** Any money paid in accordance with the provisions of this chapter is exempt from any state, county, or municipal tax except for:

(1) the amount received in excess of \$16,000; or

(2) refunds paid under 19-13-602 of the member's contributions picked up by an employer after June 30, 1987, as provided in 19-13-601."

Section 14. Section 19-21-212, MCA, is amended to

read:

"19-21-212. Exemption from taxation, legal process, and assessments. All contracts, benefits, and contributions under the optional retirement program and the earnings thereon are:

(1) except for the amount received in excess of \$16,000, exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

NEW SECTION. **Section 15.** Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB471, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting from taxation the first \$16,000 of retirement benefits received under Montana and federal public pensions; and providing an immediate effective date and a retroactive 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. Setting a cap of \$16,000 on pension and retirement benefits received by federal and state/local employees is estimated to decrease revenues \$2.27 million annually (Department of Revenue).
3. This proposal applies to taxable years beginning after December 31, 1988.
4. There is no impact on Department of Revenue administrative expenditures.
5. The Teachers Retirement System will require additional funding for modification of their computer system to withhold state income taxes. The costs are \$10,000 in FY90 and \$2,000 in FY91.
6. The Public Employees' Retirement Division will require additional administrative expenses. The costs are \$5,000 in FY90 and \$2,000 in FY91.

FISCAL IMPACT:Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Ind. Income Tax	\$256,617,000	\$254,347,000	(\$2,270,000)	\$274,732,000	\$272,462,000	(\$2,270,000)

Fund Information:

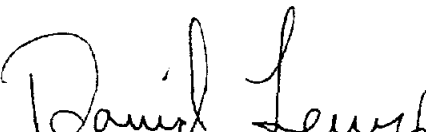
General Fund	\$149,351,094	\$148,029,954	\$(1,321,140)	\$159,894,024	\$158,572,884	\$(1,321,140)
Foundation Program	81,604,206	80,882,346	(721,860)	87,364,776	86,642,916	(721,860)
Sinking Fund	25,661,700	25,434,700	(227,000)	27,473,200	27,246,200	(227,000)
Total	\$256,617,000	\$254,347,000	\$(2,270,000)	\$274,732,000	\$272,462,000	\$(2,270,000)

Additional Expenditure Impact:Teachers' Retirement System (Pension Fund Interest Earnings)

Operating Expenses	\$	10,000	\$	10,000	\$	2,000	\$	2,000
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Public Employees' Retirement Division (Pension Fund Interest Earnings)

Operating Expenses	\$	5,000	\$	5,000	\$	2,000	\$	2,000
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 DATE _____
 DAVID LEWIS, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE 4-6-89
 DOROTHY ECK, PRIMARY SPONSOR

Fiscal Note for SB471, as introduced

SB 471