

HOUSE BILL 43

Introduced by O'Keefe, et al.

6/21	Introduced
6/21	Referred to Taxation
6/21	Fiscal Note Requested
6/22	Hearing
6/22	Fiscal Note Received
6/22	Fiscal Note Printed
	Died in Committee

1 *House* BILL NO. *43*
 2 INTRODUCED BY *Rufe Hawn*
 3 *Wesley Brock Kelly*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT FEDERAL
 5 RETIREMENT BENEFITS FROM STATE INCOME TAXATION; AMENDING
 6 SECTIONS 15-30-111 AND 15-30-136, MCA; PROVIDING AN
 7 IMMEDIATE EFFECTIVE DATE FOR THIS ACT AND FOR CHAPTER 532,
 8 LAWS OF 1987, AND SECTION 3, CHAPTER 617, LAWS OF 1989; AND
 9 PROVIDING A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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

24 (c) that portion of a shareholder's income under
25 subchapter S. of Chapter 1 of the Internal Revenue Code of

1 1954, that has been reduced by any federal taxes paid by the
2 subchapter S. corporation on the income; and

3 (d) depreciation or amortization taken on a title
4 plant as defined in 33-25-105(15).

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 received under the Federal Employees'
24 Retirement Act;

25 ~~(d)(e)~~ all benefits paid under the teachers'



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1 retirement law which are specified as exempt from taxation
2 by 19-4-706;

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

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

9 ~~f~~g~~f~~(h) all Montana income tax refunds or credits
10 thereof;

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

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

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

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

25 ~~f~~i~~f~~(m) all benefits received under the workers'

1 compensation laws;

2 ~~f~~m~~f~~(n) all health insurance premiums paid by an
3 employer for an employee if attributed as income to the
4 employee under federal law;

5 ~~f~~n~~f~~(o) all benefits paid under an optional retirement
6 program that are specified as exempt from taxation by
7 19-21-212; and

8 ~~f~~o~~f~~(p) all money received because of a settlement
9 agreement or judgment in a lawsuit brought against a
10 manufacturer or distributor of "agent orange" for damages
11 resulting from exposure to "agent orange".

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

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

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

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

1 base must be split equally on the Montana return.

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

21 (8) A person receiving benefits described in
22 subsections (2)(d) through (2)(h) (2)(g), (2)(i), or
23 (2)(j) may not exclude benefits described in
24 subsection (2)(c) from adjusted gross income unless the
25 benefits received under subsections (2)(d) through (2)(h)

1 ~~(2)(h)~~ (2)(g), (2)(i), or ~~(2)(i)~~ (2)(j) are less than
 2 \$3,600, in which case the person may combine benefits to
 3 exclude up to a total of \$3,600 from adjusted gross income.
 4 (Subsection ~~(2)(k)~~ (2)(l) terminates on occurrence of
 5 contingency--sec. 3, Ch. 634, L. 1983.)"

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

7 "15-30-136. Computation of income of estates or trusts
 8 -- exemption. (1) Except as otherwise provided in this
 9 chapter, "gross income" of estates or trusts means all
 10 income from whatever source derived in the taxable year,
 11 including but not limited to the following items:

12 (a) dividends;

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

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

20 (ii) a school district; or

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

23 (c) income from partnerships and other fiduciaries;

24 (d) gross rents and royalties;

25 (e) gain from sale or exchange of property, including

1 those gains that are excluded from gross income for federal
 2 fiduciary income tax purposes by section 641(c) of the
 3 Internal Revenue Code of 1954, as amended;

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

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

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

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

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

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

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

23 (e) administrative expenses claimed for federal income
 24 tax purposes, according to sections 212 and 642(g) of the
 25 Internal Revenue Code of 1954, as amended, if such expenses

1 were not claimed as a deduction in the determination of
2 Montana inheritance tax;

3 (f) losses from fire, storm, shipwreck, or other
4 casualty or from theft, to the extent not compensated for by
5 insurance or otherwise, that are deductible for federal tax
6 purposes according to section 165 of the Internal Revenue
7 Code of 1954, as amended;

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

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

13 (i) ~~as-federal-employees'-retirement;~~

14 ~~{ii}~~-as retirement from public employment in a state
15 other than Montana; or

16 ~~{iii}~~(ii) as an annuity, pension, or endowment under
17 private or corporate retirement plans or systems;

18 (i) all benefits received as federal employees'
19 retirement;

20 ~~{i}~~(j) all benefits paid under the Montana teachers'
21 retirement system that are specified as exempt from taxation
22 by 19-4-706;

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

1 ~~{k}~~(l) all benefits paid under the Montana highway
2 patrol officers' retirement system that are specified as
3 exempt from taxation by 19-6-705;

4 ~~{i}~~(m) Montana income tax refunds or credits thereof;
5 ~~{m}~~(n) all benefits paid under 19-11-602, 19-11-604,
6 and 19-11-605 to retired and disabled firemen or their
7 surviving spouses or children;

8 ~~{n}~~(o) all benefits paid under the municipal police
9 officers' retirement system that are specified as exempt
10 from taxation by 19-9-1005.

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 is not in effect, net income does not
16 include any part of the corporation's undistributed taxable
17 income, net operating loss, capital gains or other gains,
18 profits, or losses required to be included in the
19 shareholder's federal income tax net income by reason of the
20 election under subchapter S. However, the shareholder's net
21 income shall include actual distribution from the
22 corporation to the extent it would be treated as taxable
23 dividends if the subchapter S. election were not in effect.

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

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

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

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

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

11 (6) A trust or estate excluding benefits under
12 subsections (2)(i) through ~~(2)(k)~~ ~~(2)(m)~~ (2)(l), (2)(n), or
13 ~~(2)(n)~~ (2)(o) may not exclude benefits described in
14 subsection (2)(h) from net income unless the benefits
15 received under subsections (2)(i) through ~~(2)(k)~~ ~~(2)(m)~~
16 (2)(l), (2)(n), or ~~(2)(n)~~ (2)(o) are less than \$3,600, in
17 which case the trust or estate may combine benefits to
18 exclude up to a total of \$3,600 from net income."

19 NEW SECTION. Section 3. Effective date -- retroactive
20 applicability. (1) (a) [This act] is effective on passage
21 and approval.

22 (b) Chapter 532, Laws of 1987, and section 3, Chapter
23 617, Laws of 1989, are effective on passage and approval of
24 [this act].

25 (2) [This act] applies retroactively, within the

1 meaning of 1-2-109, to taxable years beginning after
2 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 HB43, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to exempt federal retirement benefits from state income taxation; providing a retroactive applicability date; and providing an immediate effective date for this act and for Chapter 532, Laws of 1987, and Section 3, Chapter 617, Laws of 1989.

ASSUMPTIONS:

1. Individual income tax collections are projected to be \$256,617,000 in FY90, and \$274,732,000 in FY91 (HJR13).
2. Excluding federal retirement benefits from state income taxation are estimated to decrease revenues \$2.54 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.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Individual Income Tax	\$256,617,000	\$254,077,000	(\$2,540,000)	\$274,732,000	\$272,192,000	(\$2,540,000)
<u>Fund Information</u>						
General Fund	\$149,351,094	\$147,872,814	(\$1,478,280)	\$159,894,024	\$158,415,744	(\$1,478,280)
Foundation Program	81,604,206	80,796,486	(807,720)	87,364,776	96,557,056	(807,720)
Debt Service	25,661,700	25,407,700	(254,000)	27,473,200	27,219,200	(254,000)
Total	\$256,617,000	\$254,077,000	(\$2,540,000)	\$274,732,000	\$272,192,000	(\$2,540,000)

W. David Darby
W. DAVID DARBY, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 6/22/89

Mark O'Keefe
MARK O'KEEFE, PRIMARY SPONSOR

DATE 6/24/89

Fiscal Note for HB43, as introduced**HB 43**